

Independent Expert Panel

The Conduct of Mr Neil Coyle MP

Presented to the House of Commons
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The Independent Expert Panel

The Independent Expert Panel was established by the House of Commons on 23 June 2020. The Panel determines appeals and sanctions in cases where complaints have been brought against MPs of bullying, harassment or sexual misconduct under the Independent Complaints and Grievance Scheme (ICGS). It also hears appeals against decisions by the Committee on Standards from MPs who have been found to have breached the Code of Conduct for MPs.

Current membership

Mrs Lisa Ball
Monica Daley
Mrs Johanna Higgins
Sir Stephen Irwin (Chair)
Professor Clare McGlynn KC (Hon)
Miss Dale Simon
Sir Peter Thornton KC
Dr Matthew Vickers

Powers

The Panel's powers are set out in House of Commons Standing Orders Nos 150A to 150D. These are available on the internet via www.parliament.uk.

Publication

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Report by the Chair of the Panel

- 1.1 The Independent Expert Panel (the Panel) was established by the House of Commons on 23 June 2020. The Panel hears any appeals from decisions by the Parliamentary Commissioner for Standards (the Commissioner) on complaints against a MP, or former MP, under the Independent Complaints and Grievance Scheme (ICGS); and considers referrals from the Commissioner to determine sanctions where they have upheld a complaint in serious cases. These are cases involving an allegation of a breach of the Bullying and Harassment Policy for UK Parliament, or the Sexual Misconduct Policy for UK Parliament. It also hears appeals against decisions by the Committee on Standards from MPs who have been found to have breached the Code of Conduct for MPs.
- 1.2 The Panel is guided by the principles of natural justice, fairness for all parties, transparency and proportionality. We understand the seriousness of, and the harm caused by bullying, harassment and sexual misconduct. We are rigorously independent, impartial and objective, acting without any political input or influence.
- 1.3 This is a report of the decisions of the Panel on the appeal of the Commissioner's decision in one case, and determination of the appropriate sanction in that case and one other. These cases follow a referral from the Commissioner of two complaints under the Bullying and Harassment Policy that she had upheld against Mr Neil Coyle MP, the Member for Bermondsey and Old Southwark.
- 1.4 In the first case (BH22/1004) it was established that the respondent had engaged in foul-mouthed and drunken abuse of a Parliamentary Assistant to another MP. The episode took place in Strangers' Bar in the House of Commons. The details are set out below. The Commissioner concluded that the conduct did not represent bullying, since the necessary element of abuse or misuse of power was missing. However, she did conclude that this episode was properly characterised as harassment. The respondent accepted the events as they were found and did not seek to appeal the conclusions of the Commissioner. The question of sanction was referred to the Panel.

- 1.5 In the second case (BH22/1005) the respondent was accused of bullying and harassment of a Parliamentary journalist, a member of the Press Gallery and a Passholder. This episode also took place in Strangers' Bar, and the respondent accepts that he was also drunk on this occasion. On one of the two aspects of this episode, the respondent was found to have used abusive language with racial overtones.
- 1.6 The complaint in relation to BH22/1005 was made on 9 February 2022. On the following day, in full knowledge of his obligation to maintain confidentiality, this complainant made public all the details of his complaint, leading to wide publicity and to reputational damage to the respondent, before there had been any investigation or findings as to what had happened.
- 1.7 Regrettably, the Commissioner concluded that the first investigation into this episode was flawed and, without revision and expansion could not properly be the basis for her decision. She was driven to ask for a second investigation. Necessarily that introduced delay.
- 1.8 Again, following the second investigator's report, the Commissioner disagreed that the conduct on this occasion represented bullying, since the necessary element of abuse or misuse of power was missing. However, she did conclude that this episode was properly characterised as comprising two instances of harassment.
- 1.9 The respondent appealed to the Panel on a number of grounds. The sub-panel considered them carefully and gave detailed reasons for their rejection of all the grounds advanced. One ground was the deliberate breach of confidentiality by the complainant, which the sub-panel described as "egregious". However, they found that this matter was not capable of being a successful ground of appeal. Such behaviour by a complainant could not affect what had happened or the character of what had happened.
- 1.10 The sub-panel then considered sanction on all matters. They set out both aggravating and mitigating factors, which are recited in the body of their report. The most striking aggravating factor in relation to BH 22/1004 was the 'power gradient' between an MP and a junior member of staff. The most striking aggravating factor in BH 22/1005 was the racial overtone in the verbal abuse. In relation to both episodes, it was clear that very marked abuse of alcohol was

at the root of events. As to mitigating factors, it was clear that the respondent had accepted what he had done, and fully agreed that what he did was far below any acceptable level of conduct. He also acknowledged that he had been heavily abusing alcohol at the time. Since then he had stopped consuming alcohol completely, and had maintained his abstinence for the year following the complaints. The sub-panel accepted that fact. He apologised in direct and full terms for what had happened.

- 1.11 The sub-panel concluded that the appropriate sanction for the earlier episode (BH22/1004) was that the respondent should apologise to the House by way of personal statement and be suspended for two days. In relation to BH22/1005, the Panel decided that the respondent should here too apologise to the House by way of personal statement, and be suspended for an additional three days. We understand that Mr Coyle is away from Parliament on Committee business next week. We would expect that his suspension should take effect when he would otherwise have returned to Westminster.
- 1.12 After the final hearing in BH22/1005, the respondent too breached the confidentiality of the complaint, by giving an interview about the affair. Even though he was not the first to breach confidentiality, and even though he had held his peace until then in the face of the breach by the complainant, this was highly regrettable. Had his account been the first breach, or indeed had his public account sought to undermine his acceptance of misconduct and his direct apology to the sub-panel, then it is very likely he would have faced further sanction.
- 1.13 I make this report to the House pursuant to Standing Order No 150A(5)(d) as the sub-panel has determined sanctions only the House can impose. All other information about this case except as referred to in this report, including the investigators' reports, the Commissioner's memoranda, and the identities of the complainants and any witnesses, remain confidential.

Rt Hon Sir Stephen Irwin
3 March 2023

Case 1: Decision on sanction

Decision on sanction following referral by the Parliamentary Commissioner for Standards for case BH 22/1004 (date of incident 31 January 2022): Memorandum of decision dated 5 July 2022

Decision of sub-panel dated 17 February 2023

Sub-panel members: Professor Clare McGlynn KC (Hon) (chair), Sir Peter Thornton KC and Dr Matthew Vickers

Background

- 2.1 The respondent has been the Member of Parliament for Bermondsey and Old Southwark since 7 May 2015. The complainant is a Parliamentary Assistant to an MP, not the respondent, and passholder since December 2021.

The complaint

- 2.2 In her Memorandum, the Parliamentary Commissioner for Standards (the Commissioner) set out the detail of the complaint as follows. On the evening of 31 January 2022, in Strangers' Bar on the Parliamentary estate, the complainant and respondent were engaged in a heated debate when the respondent behaved in an 'aggressive and intimidating fashion' to the complainant, by:
- (1) Shouting at the complainant including saying 'Fuck you, fuck you, fuck off';
 - (2) calling the complainant a 'cunt'; and
 - (3) asking the complainant who his employer was, leading the complainant to infer that the respondent intended to complain about him to his employer.
- 2.3 The complainant raised a complaint with the UK Parliament's Independent Complaints and Grievance Scheme (ICGS) on the basis that the conduct constituted harassment and bullying under the Bullying and Harassment Policy.
- 2.4 Following this and a related incident, the Serjeant at Arms put in place a non-punitive restriction on the respondent's access to bars on the Parliamentary estate for six months. This restriction on access ceased on 3 August 2022. There are no known breaches of this ban.

The Bullying and Harassment Policy

2.5 Parliament's Bullying & Harassment Policy defines harassment as:

2.6 [...] any unwanted conduct that has the purpose or effect of violating a person's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for them. All harassment, regardless of whether or not it relates to a protected characteristic, is covered by this policy. [...]

2.8 Harassment may be persistent or an isolated incident and can be manifest, hidden or insidious. It may take place in person, by telephone or in writing, including emails, texts or online communications, including social media.

2.9 Harassment can be intentional or unintentional. It can occur where A engages in conduct which has the effect of violating B's dignity or creating an intimidating, hostile, degrading or offensive environment for B, even if A didn't intend this. Whether conduct constitutes harassment will depend on both B's perception and whether it is reasonable for B to have perceived A's conduct in that way. [...]

2.11 Examples of harassment, other than sexual harassment, may include, but are not limited to: [...]

Mocking, mimicking, belittling or making jokes and comments about a person (or a group stereotype); Use of unacceptable or inappropriate language or racial or other stereotypes (regardless of whether the complainant is in fact a member of the group stereotyped).

2.6 Parliament's Bullying & Harassment Policy defines bullying as:

2.3 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.

2.4 Like harassment, bullying can take the form of physical, verbal and nonverbal conduct. 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. Whether conduct constitutes bullying will depend on both the perception of the person experiencing the conduct and whether it is reasonable for that person to have perceived the conduct as bullying.

2.5 Elements 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; [...]

The Commissioner's decision

- 2.7 An investigation into the allegation was undertaken and the Commissioner received the investigator's report on 10 June 2022. The investigator recommended that the respondent was in breach of the Bullying & Harassment Policy, finding all three elements of the allegation proven on the balance of probabilities.
- 2.8 The Commissioner reviewed the evidence and the investigator's report and concluded that the respondent breached the harassment element of the Bullying and Harassment Policy (but not the bullying element).
- 2.9 The Commissioner noted that it is 'clear from the evidence' that both the complainant and respondent had been drinking alcohol and were voluntarily engaged in a 'heated' and 'robust' debate. In addition, the respondent acknowledges that his alcohol in-take on the evening in question was excessive and was, at that time, part of a pattern of exceptionally heavy drinking.
- 2.10 At one point during the discussion, a member of the bar staff intervened as the debate was becoming too loud and they were told to keep the noise down. An MP tried to intervene to try to stop the shouting and that MP was verbally abused by the respondent. At one point, the shouting became so loud that the bar fell silent.
- 2.11 The Commissioner found that the respondent shouted at the complainant,

using expletives, and in the form of a personal attack. In asking who the complainant worked for, the Commissioner found that that, given the general atmosphere and context to the question, it was reasonable for the complainant to have felt threatened by the question posed by the respondent.

- 2.12 The Commissioner concluded that there is ‘no doubt’ that alcohol played a part in the interactions between the complainant and respondent and ‘contributed towards an acceleration of unacceptable behaviour on the part of’ the respondent. The Commissioner is clear that this is not any form of mitigation but rather an ‘important part of the context’.
- 2.13 The Commissioner continued that the respondent’s conduct could reasonably be described as ‘offensive, intimidating, malicious or insulting behaviour’ as per the Bullying and Harassment Policy. The Commissioner did not uphold the allegation of bullying as while she found that there was an imbalance of power, there was no evidence of an abuse or misuse of that power which is necessary for a finding of bullying.
- 2.14 The Commissioner concluded her Memorandum on 30 June 2022 and referred the case to the Independent Expert Panel (the Panel) to determine sanction. At this time, the respondent was under investigation for a separate breach of the Bullying and Harassment Policy and it was decided that the two cases should be considered by the Panel at the same time. Unfortunately, there were significant delays in the other case which therefore impacted on this case.
- 2.15 The respondent did not appeal the findings or conclusions of the Commissioner. The consequence is that, as a sub-panel considering sanction, we are bound by the findings and conclusions of the Commissioner.

Determination of sanction

- 2.16 We must now consider the question of sanction in this case. House of Commons Standing Orders Nos. 150A(3)(a) and 150B(1) state that it is the function of the Panel to determine the appropriate sanction in ICGS cases referred to it by the Commissioner and that such cases shall be considered by a sub-panel of the Panel. Sub-panels considering sanction will always bear in mind the Panel’s guiding principles, as set out in Part A of its published guidance and will apply the further principles that:

(1) the sanction should reflect the impact of the conduct on the complainant;

- (2) the sanction should reflect the nature and extent of the misconduct proved;
and
 - (3) where possible, the approach to sanction should incorporate positive steps aimed at improving the culture and behaviour of Members, staff and the wider Parliamentary community.
- 2.17 We asked the respondent to prepare a reflective statement for our consideration before sanction was determined, which he did. We also offered him the opportunity, which he accepted, to attend an oral hearing in order to make submissions on sanction. That hearing was held online on 10 February 2023.
- 2.18 We also invited the complainant to submit a statement setting out the impact of the respondent's actions on them which he did. They also provided a private personal statement giving further details of the adverse impact of the respondent's conduct.
- 2.19 We take into account the impact statement from the complainant, the respondent's reflective statement and their submissions to us at the oral hearing. We have also read carefully the evidence in the case and the Commissioner's Memorandum.
- 2.20 We will now look at the conduct which has been proved, the impact it has had upon the complainant and the aggravating and mitigating factors.

The proved conduct

- 2.21 We have already set out above the findings and conclusions of the Commissioner. The Commissioner concluded that the respondent's behaviour constituted harassment under the Bullying and Harassment Policy, but not bullying as there was no evidence of an abuse or misuse of power.

The impact on the complainant

- 2.22 The Commissioner noted that someone in the complainant's position, a recently appointed parliamentary assistant to an MP, being subject to the conduct proven would reasonably experience this conduct as constituting harassment under the Bullying and Harassment Policy. In addition, such a complainant would understandably experience this behaviour as shocking and challenging, with lasting consequences, not least because it occurred in the complainant's

place of work and in front of work colleagues.

Aggravating factors

2.23 The Commissioner determined that the following were aggravating factors in this case:

‘The significant disparity of power between Mr Coyle, as a MP, and the complainant, as a junior member of staff; and

the outburst by Mr Coyle was of an extreme nature using expletives and ‘personally attacking’ the complainant verbally’.

2.24 We agree that both of these elements are aggravating factors. We emphasise that there is a considerable difference between swearing in general and swearing directly at an individual in anger.

2.25 We also note that the respondent failed to take sufficient action in response to warnings from bar staff and another MP. The respondent, therefore, was made aware of the problematic nature of his conduct but continued in any event.

2.26 The respondent had voluntarily consumed such an excessive amount of alcohol that he would have known this would impair his judgment and affect his behaviour.

Mitigating factors

2.27 The Commissioner considered the following to be mitigating factors:

‘Mr Coyle although does not accept his behaviour reached the threshold of the Bullying and Harassment Policy, accepted that his behaviour was unacceptable; and

Mr Coyle is willing to apologise to the complainant for his conduct’.

2.28 The first mitigating factor to consider is whether the respondent acknowledges the breach of the Policy. The Commissioner notes that the respondent acknowledges that his behaviour was unacceptable. The respondent accepts that he used the wording alleged or something similar, commenting that the swearing was ‘pretty typical of me and of people in the bar’. Both the respondent and complainant were voluntarily engaged in a robust debate. Nonetheless, the respondent accepts that the language ‘went too far’, the volume was ‘too loud’

and it was 'not acceptable'.

- 2.29 We also note that subsequent to the Commissioner's report, the respondent now accepts the findings of the Commissioner that there was a breach of the Bullying and Harassment Policy.
- 2.30 The second factor relates to whether there is evidence of genuine remorse. The respondent expresses regret regarding his behaviour and has publicly commented that he is sorry for the hurt and adverse impacts caused by his behaviour.
- 2.31 The third relevant factor is whether a respondent has taken steps to address their behaviour. The respondent has taken significant steps to address his behaviour. He has informed us that he has stopped drinking alcohol. This has taken considerable courage and determination.
- 2.32 We also note the considerable impact of the lengthy investigative process on the respondent's wellbeing.

Sanction

- 2.33 This case involves the repeated, high-volume swearing and shouting at a junior member of Parliamentary staff, by an established MP, in their place of work, and in front of many work colleagues. Such abusive conduct, silencing the whole bar and continuing despite interventions to stop the behaviour, will have been shocking and intimidating for any complainant, particularly a junior member of staff.
- 2.34 This behaviour undoubtedly created what the Bullying and Harassment Policy refers to as an intimidating, hostile, humiliating and offensive environment for the complainant, thereby constituting harassment.
- 2.35 Robust debate is one thing. But any form of conduct on the parliamentary estate involving heavy drinking, as well as aggressive shouting and swearing, is quite another. It is entirely unacceptable, and more common than it should be.
- 2.36 Not only does this case raise questions over the extent of aggressive and abusive behaviour in a place of work, but also about such behaviour in Parliament where the highest standards of conduct should be in evidence and upheld.

- 2.37 Indeed, it was exactly this sort of conduct that was highlighted in the independent inquiry report of Dame Laura Cox DBE, *The Bullying and Harassment of House of Commons Staff*, who noted that shouting and swearing at staff was reported as a regular occurrence and referred to the possible role of ready access to alcohol across the Parliamentary estate.¹
- 2.38 This is a case with aggravating factors including abusive and intimidating conduct specifically directed at a junior member of staff. It is also a case that impacts on the reputation of Parliament as a whole. Again, we are mindful of the comments of Dame Laura Cox DBE that unacceptable behaviour by some 'inflicts damage on everyone and undermines the legitimacy and authority of the House of Commons. Parliament is diminished.'²
- 2.39 This case also involves mitigation as the respondent has taken action to reduce the likelihood of this behaviour recurring, specifically informing us that he has stopped drinking alcohol.
- 2.40 We recommend that the respondent is suspended from the service of the House for two sitting days and that neither day should be a Friday or a day when the respondent has already been suspended from the service of the House for any reason.**
- 2.41 We also determine that the respondent should make a full and unreserved apology on the floor of the House by means of a personal statement. With the leave of the Speaker, the text of that apology should be agreed by the Chair of the Panel.**

¹ Dame Laura Cox DBE, *The Bullying and Harassment of House of Commons Staff: Independent Inquiry Report*, 15 October 2018, paras 148 and 153.

² *Ibid* p 4.

Case 2: Appeal against the decision of the Commissioner

Case BH 22/1005 (date of incident 1 February 2022): Memorandum of decision dated 5 December 2022

Decision of sub-panel dated 23 January 2023

Sub-panel members: Professor Clare McGlynn KC (Hon) (chair), Sir Peter Thornton KC and Dr Matthew Vickers

Background

- 3.1 The complainant is a journalist, a member of the Parliamentary press gallery and passholder. The respondent has been the Member of Parliament for Bermondsey and Old Southwark since 7 May 2015.
- 3.2 The complainant submitted his complaint to the Independent Complaints and Grievance Scheme (ICGS) helpline on 9 February 2022 on the grounds that the respondent had breached the Bullying and Harassment Policy, having first raised the matter with the Speaker on 2 February 2022. The complainant published a “personal statement” setting out his version of events on his then employer’s news website, Insider, on 10 February 2022.
- 3.3 Following an initial assessment by an independent investigator appointed by the ICGS, a full assessment was begun on 25 April 2022. The first independent investigator appointed by the ICGS submitted their draft full assessment report to the Parliamentary Commissioner for Standards (the Commissioner) on 29 June 2022.
- 3.4 The Commissioner decided that the first investigation had “failed to meet the [ICGS]’ own quality assurance standards, [and] the quality was such that I was unable to rely on the investigation to make a safe, informed, evidence-based decision”. She therefore requested that a second investigator be appointed. That investigator, appointed on 7 July 2022, had access to the evidence collected by the first, but not their report or recommendations. The second investigator’s finalised full assessment report was submitted on 11 November 2022.
- 3.5 Based on the evidence collected, the Commissioner found that Mr Coyle had breached the Bullying and Harassment Policy and the Behaviour Code and

upheld both allegations that formed the complaint (see below). The Commissioner determined that the behaviour of Mr Coyle met the test for harassment but did not satisfy the test for bullying. The Commissioner then referred the case to the Independent Expert Panel (the Panel) to determine sanction on 5 December 2022. The respondent submitted an appeal against the Commissioner's decision on 5 January 2023. The complainant did not appeal.

The complaint

3.6 The complaint was investigated as two separate allegations, and described by the Commissioner as follows:

Allegation 1

On Tuesday 1 February, the complainant, [...] arrived at Strangers' Bar on the Parliamentary Estate sometime between 20.30 and 20.44. [The complainant] got himself a drink and was speaking with two other journalists [...] when the respondent, Neil Coyle MP, approached the group sometime after 21.00. The group (including [the respondent]) began to discuss [named MP], a Labour MP who was reported to have received donations from an individual who it was alleged was working with the Chinese Communist Party. [The respondent] suggested [named MP] was being paid by "Fu Manchu" (a fictional Chinese 'supervillain'). [The complainant] explained to Mr Coyle that he is half-Chinese. Mr Coyle replied he could tell from how [the complainant] looked that he'd "been giving Renminbi to [named MP]". Renminbi is the Chinese currency.

Allegation 2

Later, on Tuesday 1 February 2022, as [the complainant] and his colleagues were leaving Strangers' Bar at approximately 23.00, [the complainant's] colleagues turned to wave goodbye to fellow journalists and others still in the bar. [The complainant] also turned and saw [the respondent], wishing to defuse the situation that had arisen earlier in the evening (see allegation 1), [the complainant] waved goodbye to [the respondent]. In response [the respondent] allegedly put two fingers up in a V gesture (palm facing inward) to [the complainant] as he was leaving.

The Bullying and Harassment Policy

3.7 Parliament's Bullying & Harassment Policy defines bullying as:

2.3 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.

2.4 Like harassment, bullying can take the form of physical, verbal and nonverbal conduct. 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. Whether conduct constitutes bullying will depend on both the perception of the person experiencing the conduct and whether it is reasonable for that person to have perceived the conduct as bullying.

2.5 Elements 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; [...]

3.8 Harassment is defined as:

2.6 [...] any unwanted conduct that has the purpose or effect of violating a person's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for them. All harassment, regardless of whether or not it relates to a protected characteristic, is covered by this policy. [...]

2.8 Harassment may be persistent or an isolated incident and can be manifest, hidden or insidious. It may take place in person, by telephone or in writing, including emails, texts or online communications, including social media.

2.9 Harassment can be intentional or unintentional. It can occur where A engages in conduct which has the effect of violating B's dignity or creating an

intimidating, hostile, degrading or offensive environment for B, even if A didn't intend this. Whether conduct constitutes harassment will depend on both B's perception and whether it is reasonable for B to have perceived A's conduct in that way.

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

2.11 Examples of harassment, other than sexual harassment, may include, but are not limited to: [...]

Mocking, mimicking, belittling or making jokes and comments about a person (or a group stereotype);

Use of unacceptable or inappropriate language or racial or other stereotypes (regardless of whether the complainant is in fact a member of the group stereotyped);

The Commissioner's decision

3.9 The second independent investigator's finalised full assessment report was submitted to the Commissioner on 11 November 2022. The investigator recommended that both allegations were proven, and that the respondent's conduct constituted both bullying and harassment under the ICGS policies. He therefore recommended that the complaint be upheld.

3.10 Having reviewed the second investigator's report, and the evidence collected during the investigation, the Commissioner's decision differed from the opinion of the second investigator in respect of the bullying element of both allegations. She decided that there was no abuse or misuse of power involved in the behaviour of the respondent and concluded that Mr Coyle:

[...] breached the harassment element of the Bullying & Harassment Policy. I have made this decision as the findings of fact do not support a finding of an abuse of power which is an essential component of the bullying definition.

3.11 She also found that the respondent's behaviour was a breach of the Behaviour Code.

3.12 She therefore upheld the complaint. The Commissioner decided that given:

This complaint has attracted media attention, [...] it is my view that for reasons of maintaining public confidence in the Scheme and Parliament, and as I do not have any powers of publication, this matter should be referred to the Independent Expert Panel to consider.

The respondent's appeal

3.13 The respondent submitted his appeal on 5 January 2023. He appealed on the following grounds:

the investigation was materially flawed in a way that affected the decision of the Commissioner; and

the process followed by the Commissioner was procedurally flawed or her decision was unreasonable.

3.14 Specifically, the respondent appealed the following headline points. In his words:

Poor quality of investigation

[...] that the initial investigation did not meet the standards required. However, its fundamental failures – acknowledged by the ICGS and Commissioner – affected the entire process.

Lack of promptness

[That] the delays and lack of timekeeping represent a procedural and material flaw in the investigation, preventing the Commissioner from reaching fair, robust and reasonable conclusions.

Failure to interview witnesses

[...] that many potential witnesses have never been interviewed, [which] represents a significant breach of the procedural requirements. Other potential witnesses named in interviews have not been approached.

Failure to meet investigation requirements

The first Investigator did not receive agreement from me [to agree to the written record of interviews] and I made this clear to the second Investigator during the Factual Accuracy Checks stage of the process.

Failure to undertake a full Factual Accuracy Checks process

I used the [Factual Accuracy Checks] stage to raise concerns [...]. All of these material and procedural concerns were dismissed by the Investigator. As a result, I believe the investigation is procedurally and materially flawed and the Commissioner's decision made unreliable.

Failure to consider 'other relevant evidence'

[That there was a failure to comply with] the basic requirement of the ICGS policy to consider any 'relevant evidence' and use the Factual Accuracy Checks stage properly to prevent basic – but serious – errors being carried forward.

Breach of confidentiality

Fair consideration of the complaint has not been possible given the huge media coverage and use of the complainant's article to 'refresh' memories before interviews by witnesses, especially given the immense delays to both investigations.

Failure to consider all probabilities

The failure to put the 'misheard' possibility to witnesses is a material and procedural flaw. The Investigator seems to have felt obliged to align findings with only one version of events (that of the complainant) to the extent no alternative was put to the limited witnesses.

- 3.15 The Panel does not re-investigate the allegations during an appeal, nor does it take fresh decisions on the basis of the investigation. The role of the Panel in an appeal is to review the decisions taken by the Commissioner. Appeals to the Panel are a two-stage process: (1) acceptance that there are grounds for appeal, and (2) where there are such grounds, the appeal itself.

Consideration of acceptance of grounds for appeal

- 3.16 The sub-panel met to determine whether to accept the grounds for appeal submitted by the respondent.
- 3.17 In making this appeal, the respondent raised a number of issues, listed below using the respondent's phrasing and terminology.
- 3.18 The sub-panel decided that the evidence presented by the respondent in his appeal was sufficient to conclude that there were grounds for an appeal and that the test at this first stage of the appeal process had been met.

Consideration of appeal

- 3.19 Having accepted the appeal, the sub-panel proceeded to consider the substantive matters raised. The panel examined each of the issues raised by the respondent in turn.

'Poor quality of investigation'

- 3.20 The respondent claims that the 'setting aside' of the first investigation was 'not meaningful'. He suggests that in relying 'almost entirely' on the first investigator's work, in not interviewing further witnesses and in not ensuring transcripts were agreed, the second investigation was materially flawed.
- 3.21 It is entirely appropriate that the Commissioner has power to set aside an investigation on the basis that it was not of sufficient quality. The exercise of this power cannot in and of itself mean that a second investigation is flawed. We note that the second investigator had access to the evidence gathered during the original investigation but did not have sight of the first investigator's draft final assessment or recommendations. It is appropriate that the second investigator is able to access all materials collected in each case, and then proceed to conduct a new investigation, to the required standard.
- 3.22 We note that the second investigator identified new lines of inquiry, and re-interviewed key parties and witnesses. We are satisfied, from the material available to us, that it was reasonable for the Commissioner to conclude that the second investigation was of a sufficient standard and the poor quality of the first investigation did not materially affect the second investigation.
- 3.23 The issues concerning interviewing further witnesses, agreeing transcripts

and delays in the process are also raised further in other elements of the appeal which we consider below.

'The lack of promptness'

- 3.24 The respondent outlines the timeline of the investigatory process and identifies that the process, as a whole, has taken nearly a year thus far. The respondent suggests that the 'lengthy delays' contributed to 'inaccurate recollections'. The respondent states that the delays represent a 'procedural and material flaw in the investigation, preventing the Commissioner from reaching fair, robust and reasonable conclusions'.
- 3.25 We note that the ICGS policy states that the aim is to investigate complaints promptly and we concur with the Commissioner's statement that 'unnecessary delays are unacceptable and undermine the credibility' of the ICGS.
- 3.26 It is not satisfactory that some months passed from the time of the first report of the complaint to the ICGS, to the first investigator interviewing key parties and witnesses.
- 3.27 The Commissioner carefully considered the delays in this case, noting that the quality of investigations must not be 'compromised for speed' and that she was 'confident that the delay has not materially affected the evidence, or the outcome in this matter'.
- 3.28 As we note above, it is important that, where necessary, a second investigation is undertaken where there are flaws in the first investigation. Such a step will inevitably lead to a longer process, but it may be a necessary step in some cases to ensure that all investigations are fair and effective.
- 3.29 Having reviewed the material and timeline in this case, we find that the Commissioner's approach was reasonable and that the delays did not materially affect the quality of evidence or investigation. We note, in particular, that witnesses carefully identified where their recollections were not clear for whatever reason, including the passage of time.

'Failure to interview witnesses'

- 3.30 The respondent claims that there were witnesses identified by the respondent and others who were not interviewed as part of the investigation, including

other MPs potentially present in the bar that evening and the bar staff. The respondent claims that in failing to interview these further potential witnesses, the investigation was ‘procedurally and materially flawed’ affecting the Commissioner’s decision.

- 3.31 In undertaking an investigation, the investigator exercises their professional judgment in determining appropriate lines of inquiry, including identifying witnesses to interview. In doing so, the investigator is not required to interview all those identified by parties or other witnesses to the investigation. There will always need to be limits placed on the scope of an investigation based on the relevance of further inquiries and in order to ensure a timely investigation.
- 3.32 Although he was not required to, the second investigator provided the respondent with reasons regarding the interview process and the Commissioner, in reviewing the investigation process, considered that the approach taken was reasonable and appropriate.
- 3.33 We consider that the Commissioner’s approach to reviewing the investigation, and the scope of the second investigation, was reasonable.

‘Failure to meet investigation requirements’

- 3.34 The Commissioner stated in her Decision Memorandum that both ‘investigators obtained the agreement of each witness to the written records of their interviews’. The respondent states that this is not correct and that the transcript of his first interview was not agreed. This is confirmed by the second investigator who noted that the transcript of the first interview was sent to the respondent but that he did not respond. The respondent states that at the time the transcript was sent to him, he did not respond because it was a difficult period for him personally.
- 3.35 The respondent suggests that this failure to have an agreed transcript of the first interview constitutes a material and procedural flaw in the investigation.
- 3.36 We note that the transcript of the first interview was not confirmed by the respondent and the reasons for the lack of response from the respondent. While it is appropriate for all transcripts to be agreed, it must be possible to continue with investigations in the absence of responses from the parties to requests to approve transcripts.

3.37 We also note that the second investigator did undertake a second interview with the respondent. There was, therefore, an opportunity for the respondent to raise any issues that may have been missing from the original transcript or indeed any other relevant matters.

3.38 As a second investigation was undertaken, and this included a second interview with the respondent, we do not think that the lack of agreement on the first transcript constitutes a material flaw in the investigation.

'Failure to undertake a full Factual Accuracy Check Process'

3.39 The respondent states that the Factual Accuracy Check (FAC) process was 'underused' by the second investigator. The respondent had raised concerns during the FAC process regarding delays, failure to agree the first interview transcript and other matters. The FAC report details the issues raised by the respondent, responds to each of the matters in detail and identifies where changes have been made to the report or not. The respondent, therefore, benefited from a detailed consideration of each of his claims.

3.40 The FAC process is, as its name suggests, an opportunity to check the factual accuracy of the details included in the draft report. The FAC process did result in some specific changes to the final report, following the respondent's submissions.

3.41 We consider it appropriate that the FAC process maintains a focus on factual issues. In this case, the respondent benefitted from a detailed assessment and responses to the claims he raised.

3.42 We do not consider therefore that the nature of the FAC process in this case constitutes a material flaw in the investigation or procedural flaw in the whole process.

'The failure to consider 'other relevant evidence''

3.43 The respondent suggests that the combination of 'multiple witnesses' not being interviewed, neither investigator making a physical visit to Stranger's bar and what he considers to be the consequent misinterpretation of the evidence constitute a material flaw in the investigation.

3.44 As noted above, we consider that the approach of the Commissioner to reviewing the second investigation, including the scope of the investigation

in terms of which potential witnesses were interviewed, was reasonable.

3.45 We also do not consider that a physical visit to Stranger's bar was necessary. The respondent raises this issue in relation to the second allegation, namely that he made a particular hand gesture at the complainant. The respondent's claim is that he could not see the exit door from where he was sitting, and that the complainant stated that the respondent made the gesture when the complainant was 'at the door' (as per the complainant's second interview). The Commissioner stated that the respondent's account that he could not see the complainant by the 'door' is 'irrelevant' as the complainant 'did not state that he was at the door at the time of the gesture'.

3.46 The complainant did state, in his second interview, that he was 'at the door' in relation to allegation 2. He also reported in his first interview that the gesture was made as he was 'departing'. A witness standing next to the complainant reported that the gesture was made 'as we were leaving'.

3.47 We consider the differences between 'at the door', 'as we were leaving' and on 'departing' are all turns of phrase to refer to the gesture being made when the complainant and witness were broadly speaking exiting the bar area. We consider, therefore, that the approach of the second investigator and the Commissioner was reasonable and do not constitute a material flaw in the investigatory process or a procedural flaw undermining the Commissioner's decision.

Breach of confidentiality

3.48 The respondent identifies the complainant's breach of confidentiality as meaning that a fair consideration of the case has not been possible.

3.49 The complainant made a report to the ICGS on 9 February 2022 and was informed of the confidentiality requirements associated with the ICGS process. The day after making the report, on 10 January 2022, he issued a public statement through his employer's news website, relaying his allegations in full. This resulted in significant press coverage of the matter, with headlines about the respondent being accused of racism, leading to subsequent abuse and harassment of the respondent. The respondent did not respond to these claims or allegations in the media, other than to note his regret at certain admitted actions and changes to his lifestyle including

stopping drinking alcohol.

- 3.50 The witnesses interviewed for this investigation, including the two witnesses who were part of the conversation with the respondent, which is the subject of the first allegation, had both read the media article before being interviewed.
- 3.51 A breach of confidentiality is a serious matter that is considered as part of any sanctioning process. Also, the Commissioner rightly states that ‘breaches of confidentiality, no matter how minor, not only risk prejudicing a fair investigation, but result in unnecessary press interest and speculation into a matter that is under investigation’.
- 3.52 We note that the second investigator and the Commissioner considered this issue carefully. They noted that the witnesses were aware of the media article, but also that they were clear where they did not have a recollection of specific conversations and their accounts of the events do differ to some extent from the complainant’s and his media report. Therefore, the Commissioner determined that the breach of confidentiality did not adversely affect the second investigation or the independence of the witness evidence.
- 3.53 We consider that while the breach of confidentiality is egregious, it was reasonable for the Commissioner to conclude that the breach of confidentiality did not materially affect the investigation or her decision-making process.

‘Failure to consider all probabilities’

- 3.54 The respondent claims that the second investigator did not consider to a sufficient extent that the complainant may have misheard the respondent in relation to the first allegation. The respondent claims that this constitutes a procedural flaw in the investigation and that there was insufficient evidence to reach a decision on the ‘balance of probabilities’.
- 3.55 The Commissioner considered this issue in detail, including the complainant’s statement that he considered that the respondent’s alleged comments were racist. The Commissioner stated that she preferred the evidence of the complainant on the basis of the complainant’s ‘comprehensive recollection’, the evidence of the two witnesses who were part of the discussion that evening who both reported the complainant being

‘shocked and upset’ after the conversation and the ‘contemporaneous messages’ the complainant sent to his friends.

- 3.56 The sub-panel considers that a thorough examination of the respondent and complainant’s claims have been made and the Commissioner undertook a careful weighing of the evidence, applying the test of the balance of probabilities. We consider that the approach of the Commissioner was reasonable and therefore do not consider this element of the respondent’s claim to constitute a material flaw in the investigation or a procedural flaw influencing the Commissioner’s decision.

Conclusion

- 3.57 **For the reasons given above, the sub-panel dismisses the appeal.**

Case 2: Decision on sanction

Decision on sanction following referral by the Parliamentary Commissioner for Standards for case BH 22/1005 (date of incident 1 February 2022): Memorandum of decision dated 5 December 2022

Decision of sub-panel dated 17 February 2023¹

Sub-panel members: Professor Clare McGlynn KC (Hon) (chair), Sir Peter Thornton KC and Dr Matthew Vickers

Determination of sanction

4.1 We must now consider the question of sanction in this case. House of Commons Standing Orders Nos. 150A(3)(a) and 150B(1) state that it is the function of the Panel to determine the appropriate sanction in ICGS cases referred to it by the Commissioner and that such cases shall be considered by a sub-panel of the Panel. Sub-panels considering sanction will always bear in mind the Panel's guiding principles, as set out in its published guidance, and will apply the further principles that:

- (1) The sanction should reflect the impact of the conduct on the complainant;
- (2) the sanction should reflect the nature and extent of the misconduct proved; and
- (3) where possible, the approach to sanction should incorporate positive steps aimed at improving the culture and behaviour of Members, staff and the wider Parliamentary community.

4.2 We asked the respondent to prepare a reflective statement for our consideration before sanction was determined which he provided. We also offered him the opportunity, which he accepted, to attend an oral hearing in order to make submissions on sanction. That hearing was held online on 10 February 2023. We also invited the complainant to submit a statement setting out the impact of the respondent's actions on him, which he did prior to the oral hearing.

4.3 We take into account the written statement from the complainant, the respondent's reflective statement and his submissions to us at the oral

¹ The wording of the decision was amended on 27 February 2023 to reflect a breach of confidentiality by the respondent.

hearing. We have also carefully reviewed the evidence in the case and the Commissioner's Memorandum. We examined the conduct which has been proved, the impact it has had upon the complainant and the aggravating and mitigating factors.

The proved conduct

4.4 The Commissioner concluded that the respondent's behaviour met the test for harassment and found that he breached the Bullying and Harassment Policy and the Behaviour Code in relation to both allegation 1 and 2.

4.5 As the respondent's appeal against the Commissioner's decision was dismissed, we are bound by the findings and conclusions of the Commissioner.

The impact upon the complainant

4.6 The complainant reports that he was shocked and surprised by the respondent's conduct and experienced it as a racist incident. As a result of the events at issue, the complainant required a period of time away from work and it has left him often uncomfortable in his place of work.

Aggravating factors

4.7 The Commissioner did not set out any aggravating factors in this case.

4.8 The sub-panel noted the following aggravating factors.

'Specific targeting of the complainant'

4.9 The respondent's inappropriate and unacceptable reference to 'Fu Manchu' was followed by further abusive comments directed specifically at the complainant.

'Conduct motivated by or demonstrating hostility based on any of the protected characteristics (or presumed characteristics) of the complainant'

4.10 The harassing conduct relates to comments that are discriminatory, being based on one of the protected characteristics under the Equality Act 2010, namely race and ethnicity.

'failure to respond to relevant warnings or concerns expressed to the respondent by others'

- 4.11 The respondent acted as proven despite being warned the previous evening about the problematic nature of his conduct in the same bar.

'Breach of confidentiality of the complainant by or on behalf of the respondent'

- 4.12 Towards the end of this process, on 26–27 February 2023, the respondent breached the confidentiality of the process. In an apparent attempt to attract favourable publicity for himself, shortly before publication of this decision, he shared confidential details of the case in press interviews. This is a serious breach of confidentiality. As we explain at some length below, any breach of confidentiality risks undermining this disciplinary process.

'Previous complaints about the respondent's behaviour, where relevant to the case in question'

- 4.13 There is a related complaint of harassment, pertaining to events the night before that also took place in Strangers' Bar, namely case BH 22/1004, which has been upheld.

Mitigating factors

- 4.14 The Commissioner noted the following mitigating factors:

'Mr Coyle has accepted that the term "Fu Manchu" was deeply insensitive and has taken action to educate himself through speaking to members of the Chinese community.

Since the complaint was made, [the respondent] has recognised the detrimental impact alcohol has had on his behaviour and has taken action to address this. I would take this opportunity to commend [the respondent] on the positive action he has taken.

The breach of confidentiality by [the complainant] was significant and resulted in widespread negative publicity on [the respondent]. This has had an impact on [the respondent] and his ability to undertake his role.'

- 4.15 We also note the following mitigating circumstances.

'Acknowledgement of the breach and/or self-knowledge'

- 4.16 The respondent fully accepts that his reference to 'Fu Manchu' was

inappropriate, and that the complainant was 'rightly offended' by what he heard. The respondent has stated that the events are a 'source of great shame' for him.

- 4.17 The respondent also accepts the findings of the Commissioner and the decision to uphold each element of the allegations.

'Genuine remorse'

- 4.18 The respondent has publicly apologised for the upset that he caused. He acknowledges that the complainant and others left his company on the night in question genuinely upset by his 'words, attitude and behaviour' and he states that he regrets this 'immensely'.

'Steps taken to address behaviour'

- 4.19 The respondent has taken significant steps to address his behaviour. At the time of the incident, the respondent had been drinking to excess. This was part of a pattern of behaviour of exceptionally high levels of alcohol consumption. Since the incident, the respondent informs us that he has stopped drinking alcohol which has taken considerable courage and determination.
- 4.20 The respondent has undertaken unconscious bias training and Valuing Everyone training, aimed at tackling what he refers to as 'thoughtless discrimination'.
- 4.21 The respondent has taken steps to educate himself on the nature and impact of his problematic comments. For example, he has engaged with members of his constituency who have been impacted by his comments, as well as working with groups and organisations from minoritised ethnic communities to understand better the harmful nature of his comments.

'Breach of confidentiality of the complaint by or behalf of the complainant'

- 4.22 The Commissioner noted that the breach of confidentiality by the complainant was significant. The complainant made a report to the ICGS on 9 February 2022 and was informed of the confidentiality requirements of the ICGS process. The day after making the report, on 10 January 2022, the complainant issued a public and personal statement through his employer's news website, relaying his allegations in full. This resulted in significant press

- coverage of the matter, with news reports about the respondent being accused of racism, leading to subsequent abuse and harassment of the respondent.
- 4.23 The respondent has rightly not responded to these claims or allegations in the media, other than to note his regret at certain actions and changes to his lifestyle including stopping drinking alcohol.
- 4.24 In his evidence during the investigation, the complainant stated that: ‘I am aware and was aware that the article was not compatible with strict confidentiality’. The complainant justified his breach of confidentiality on the basis that, in response to press requests, he ‘took the view that it would be preferable if I could offer a first-hand account of what happened’. He has also said that his job is to ‘write about and expose wrongdoing in the public interest’ and that the public interest in this case is ‘well-established’. The complainant states that after the article was published, he has not further breached the confidentiality requirements of the process.
- 4.25 The Commissioner rightly stated that ‘breaches of confidentiality, no matter how minor, not only risk prejudicing a fair investigation, but result in unnecessary press interest and speculation into a matter that is under investigation’. The Commissioner further stated that she was ‘extremely concerned’ that the complainant appeared to view the confidentiality requirement as ‘optional’.
- 4.26 The egregious breach of confidentiality by the complainant in this case has put at risk the interests of other complainants considering or taking cases through the ICGS. His actions also directly risk the confidentiality of the complainant in the related case.
- 4.27 Complainants generally seek to protect their identity and the nature of their complaint for fear of repercussions and abuse from respondents, the public, media and their workplace, as well as shielding their families, friends and communities from unwanted harassment and attention. We observe that Dame Laura Cox DBE, in her independent inquiry report, *The Bullying and Harassment of House of Commons Staff*, which led to the establishment of the ICGS, noted the ‘acute distress caused to some people by the failure to

maintain confidentiality in the complaints process.²

- 4.28 Accordingly, the ICGS seeks to reassure complainants of the confidentiality of the process. Breaches of confidentiality risk undermining this foundational ICGS principle by encouraging or implicitly condoning breaches in subsequent cases.
- 4.29 The complainant's breach of confidentiality also puts at risk the integrity of investigations and the effectiveness of the ICGS as a whole. Witnesses may not be willing to come forward and give evidence if confidentiality is not protected; or they may not feel able to give a full account; or their evidence may be tainted by the media coverage. This may result in valid claims not being brought, investigated, or sanctioned. The overall effectiveness of the ICGS, therefore, in seeking to tackle bullying, harassment and sexual misconduct, is threatened if breaches of confidentiality become commonplace and result in such significant media attention.
- 4.30 Confidentiality is also necessary to protect MPs from unwarranted press reports which commonly result in abuse and harassment. The respondent in this case has endured a lengthy period of speculation, as well as harassment and abuse, as a result of this breach of confidentiality.
- 4.31 Finally, we would add that in our view it is in the public interest that complaints of bullying, harassment and sexual misconduct are appropriately and effectively investigated through an established process such as the ICGS rather than trial by media. Breaches of confidentiality, in fact, undermine the public interest by making the aims and objectives of the ICGS, to challenge abusive behaviour and bring about cultural change, more difficult to achieve.

'Physical or mental ill-health, or other personal trauma'

- 4.32 We also note the considerable impact of the lengthy investigative process, and serious breach of confidentiality, on the respondent's health and wellbeing.

Sanction decision

- 4.33 Central to this case are comments made by the respondent which were

² Dame Laura Cox DBE, *The Bullying and Harassment of House of Commons Staff: Independent Inquiry Report*, 15 October 2018, para 296.

experienced by the complainant as ‘racist and abusive conduct’. The comments were unacceptable and constitute harassment, as they had the effect of violating the complainant’s dignity and created an ‘intimidating, hostile, degrading, humiliating or offensive environment’. The racist nature of the comments is a serious aggravating factor in this case.

- 4.34 The respondent accepts the outcome of the case and that his conduct was unacceptable. He noted that the complainant was ‘rightly offended’ by the comments. He also acknowledges that his conduct did not meet the high standards rightly expected of elected officials.
- 4.35 The respondent made such comments while under the influence of excessive amounts of alcohol which, while undoubtedly contributing to his behaviour, in no way excuse it, as the respondent rightly accepts. Nonetheless, since the incident, the respondent has taken considerable steps to ensure no repetition of the behaviour, including informing us that he has stopped drinking alcohol.
- 4.36 In addition, he has reached out to members of his constituency, including a range of international and aid organisations, both to apologise for his comments and to educate himself regarding the harmful nature of his actions. This continues anti-racist work over many years with diverse and marginalised groups, including refugees, migrants and asylum seekers.
- 4.37 The lengthy investigation process and breach of confidentiality have had a considerable adverse impact on the well-being of the respondent.
- 4.38 **We recommend that the respondent is suspended from the service of the House for three sitting days, none of which should be a Friday or a day when the respondent has already been suspended from the service of the House for any reason.**
- 4.39 **We also determine that the respondent should make a full and unreserved apology on the floor of the House by means of a personal statement. With the leave of the Speaker, the text of that apology should be agreed by the Chair of the Panel.**