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The Law and the Conduct of Members of Parliament

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The House of Commons lays claim to a number of 'ancient and undoubted rights and privileges', the most important of which is freedom of speech. Parliamentary privilege is a complex matter … but the rights and privileges of Parliament are acknowledged by the courts. Among the other privileges claimed is the 'exclusive cognisance of proceedings', that is the right to regulate its own proceedings or operation. This means that the House of Commons has the right to regulate the conduct of its Members, including the right to punish MPs who are found to have breached parliamentary privilege or been found in contempt of the House. Such punishment may range from an admonition, through suspension from service of the House (with or without pay), to expulsion in the most serious cases.[1]

I. INTRODUCTION

PARLIAMENT AND ITS Members have long cherished and protected their right to regulate their own conduct, in line with the principle of exclusive cognisance: 'Parliament must have sole control over all aspects of its own affairs: to determine for itself what the procedures shall be, whether there has been a breach of its procedures and what then should happen'.[2] The law therefore has played little part in the regulation of Members' conduct. Criticism of self-regulation has seen it tempered on some occasions over the years, but those occasions have tended to show that recourse to statutory control of Members' conduct has been an infrequent consequence of crises of confidence in self-regulation.

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[1] M Rush, 'The Law Relating to Members' Conduct' in D Oliver and G Drewry (eds), *The Law and Parliament* (London, Butterworths, 1998) 105.

[2] Joint Committee on Parliamentary Privilege, *Report* (1998–99, HL 43–1, HC 214-I) para 37.

The passage of the Parliamentary Standards Act 2009 appeared to mark something of a watershed in the move from self-regulation to external regulation. Under the Act members of the House of Commons ceded the regulation of their expenses (and subsequently the determination of their salaries and pensions) to an independent statutory body, the Independent Parliamentary Standards Authority or IPSA, and a specific offence was created of 'providing false or misleading information for allowance claims'.[3] The circumstances leading to the establishment of IPSA are covered in more detail below.

The establishment of IPSA was not, however, the first time that Members had relinquished or reduced the extent of self-regulation over their own affairs and put that regulation on a statutory footing. In 1868, the Parliamentary Elections Act replaced the existing parliamentary procedure for dealing with contested elections with a system in which judges tried such cases.[4] But in common with other such occasions, this too was the result of a specific crisis and was the subject of criticism from a minority of Members that the Commons was abdicating its ancient rights.

Previous responses to concerns in the 1990s (discussed below) about the inability of Members to regulate themselves had led to more formalised but still non-statutory procedures and the appointment of an independent (but non-statutory) Parliamentary Commissioner for Standards in the House of Commons. The Commissioner is appointed by the House, investigates complaints about Members' conduct and reports his or her findings to the Committee on Standards and Privileges (the Committee on Standards from 7 January 2013),[5] but the Committee, not the Commissioner, makes recommendations to the House about punishments; and the House, not the courts, takes the final decision.

The Committee on Standards in Public Life (CSPL) was established in 1994 under the chairmanship of a senior judge, Lord Nolan. It was established as an independent committee by the then Prime Minister, John Major, initially to deal with concerns about unethical conduct amongst MPs, including accepting financial incentives for tabling parliamentary questions (the 'cash for questions' affair), and issues over procedures for appointment to public bodies. In response to its first report of 1995,[6] the House of Commons appointed a Select Committee on Standards in Public Life to consider the implications of the report for the House, which in turn published two reports. In July 1995 the House approved the creation of a Code of Conduct for Members and in November of the same year appointed an independent officer the Parliamentary Commissioner for Standards (PCS), to investigate allegations that Members have breached the Code of Conduct (see section IV below).

[3] Parliamentary Standards Act 2009, s 10.

[4] Parliamentary Elections Act 1868. Similar provisions to those it introduced were used in 2010, when Phil Woolas was found guilty of an illegal election practice under the Representation of the People Act 1983 and his seat was declared vacant. See below for further consideration of this case.

[5] See the section on lay members of the Committee on Standards in ch 7.

[6] Committee on Standards in Public Life, *Standards in Public Life* (Cm 2850-I, 1995).

Commons privileges extend to freedom from arrest in civil matters.[7] *Erskine May* recites the history of the privilege,[8] and later provides this brief summary:

> The principle upon which the privilege of freedom from arrest is based is the absolute priority of the attendance by Members of both Houses. However, it has never been allowed to interfere with the administration of criminal justice or emergency legislation.[9]

As discussed in the preceding chapter, this privilege has never been held to extend to criminal matters, as was clearly shown by the successful prosecution under the Theft Act 1968 of a number of Members (in both Houses) over fraudulent expense claims following the expenses scandal of 2009 (see section VII for further consideration of this case).

Unlike MPs, members of the House of Lords have retained control over all of their House's internal affairs. The House of Lords Act 1999 provides for 92 hereditary peers to sit in the House of Lords (90 elected by the House and two hereditary office-holders). In accordance with the Act, the Standing Orders of the House of Lords provide for by-elections to replace any hereditary peer who dies.[10] Any person succeeding to or claiming a peerage must apply to the Lord Chancellor for inclusion in the Roll of the Peerage; if they also wish to appear in the register of hereditary peers wishing to stand in by-elections to the House of Lords, the application is formally made by petitioning the House of Lords, and it could be referred to its Committee for Privileges and Conduct.[11] The House of Lords inserted a provision into the Parliamentary Standards Bill 2008–09 that ensured that 'Nothing in this Act shall affect the House of Lords'.[12] In 2009, after allegations were made that four members of the House of Lords had been prepared to accept fees to propose amendments to Bills, the Lords Privileges Committee resisted the advice of the then Attorney-General that the Lords had no power to suspend its members, in favour of advice from a former Lord Chancellor, Lord Mackay of Clashfern, that the House did possess such a power.[13] The House of Lords agreed with the Committee's conclusions on 20 May 2009, and subsequently used the powers to suspend members who had breached the code (see section VIII below).[14] The Lords has followed the Commons in appointing a Commissioner for Standards, responsible for the independent and impartial investigation of alleged

[7] See discussion in ch 1.

[8] *Erskine May's Parliamentary Practice*, 24th edn (London, Butterworths, 2011) 209–15.

[9] Ibid 243.

[10] House of Lords Act 1999, s 2(2), (4); House of Lords, *The Standing Orders of the House of Lords Relating to Public Business* (HL 2012–13, 105) Standing Order No 10.

[11] *Erskine May* (n 8) 182–83.

[12] Parliamentary Standards Act 2009, s 2(1). The amendment was moved by the Leader of the House of Lords, Baroness Royall of Blaisdon, at report stage, HL Deb 20 July 2009, cols 1415–17; see also debate at Committee Stage, HL Deb 14 July 2009, cols 1046–61.

[13] House of Lords Privileges Committee, *The Powers of the House in Respect of its Members* (HL 2008–09, 87).

[14] HL Deb 20 May 2009, cols 1394–1418.

breaches of the House of Lords Code of Conduct. The first Commissioner, Paul Kernaghan, took up his appointment in 2010.

The Parliamentary Commissioner for Standards (in the Commons) and the House of Lords Commissioner for Standards are both officers of their respective Houses. Both positions are non-statutory; they are appointed by resolution of the respective Houses of Parliament.

II. ELECTORAL MATTERS

A. The Background: Determination of Election Disputes by the House of Commons

Until 1770, disputed elections were determined on the floor of the House of Commons, in accordance with party strengths.[15] In 1770, a Bill was introduced by George Grenville to confine the determination of contested elections to a committee. He proposed that 25 Members' names should be chosen by lot, with both petitioner and respondent able to strike off six names, leaving a committee of 13 to try the petition. His Bill passed and, in 1774, this arrangement was made permanent.[16] *Erskine May* notes that:

> The enterprise was not wholly successful and in 1839 a further statute established a new system, on different principles, increasing the responsibility of individual Members, and leaving little to the workings of chance. These principles subsisted in general until 1868, when the jurisdiction of the House in controverted elections was passed by law to the courts.[17]

B. Transfer of Jurisdiction over Election Disputes to the Courts

Now, by section 123 of the Representation of the People Act 1983 (RPA 1983), the trial of controverted elections is entrusted to judges (selected from the judiciary in the appropriate part of the United Kingdom). A recent review by the Electoral Commission noted that 'The law dates from 1868, for its wording is almost an exact copy of the relevant provisions of the Parliamentary Elections Act 1868'.[18] *Erskine May* states that 'This in no way supersedes the jurisdiction of the House, in determining questions affecting the seats of its own Members, not arising out of controverted elections'.[19]

[15] *Erskine May* (n 8) 29 fn.

[16] C O'Leary, *The Elimination of Corrupt Practices in British Elections 1868–1911* (London, Oxford University Press, 1962) 12.

[17] *Erskine May* (n 8) 29 fn.

[18] Electoral Commission, *Challenging Elections in the UK* (2012) 2, citing Prof Bob Watt, *UK Election Law: A Critical Examination* (London, Glass House Press, 2006).

[19] *Erskine May* (n 8) 30.

Cornelius O'Leary has reviewed the background to the introduction of the legislation in 1868. He notes the extent of electoral fraud in the 1865 election: *The Times* reported that 'The testimony is unanimous that in the General Election of 1865 there was more profuse and corrupt expenditure than was ever known before'. Fifty petitions were lodged, 35 came up for trial, 13 Members were unseated, and four of the successful cases led to Royal Commissions.[20] The Committee on the 1866 Reform Bill was given an instruction that 'they have power to make provision for the better prevention of bribery and corruption at Elections'.[21] However, the Government fell in the same year and no progress was made on the Bill. Under the new Conservative Government a Bill was introduced in 1867 containing provisions for tribunals consisting of eminent lawyers to hear petitions relating to controverted elections. The Bill was referred to a select committee, which recommended judicial hearings. However, the Bill was withdrawn. In 1868, new legislation was introduced by Prime Minister Disraeli. During its passage some Members raised concerns about the loss of the House's rights. O'Leary reports that Disraeli faced a backbench revolt of 'modest proportions', comprising 'backbenchers who objected in principle to the Commons abdicating their rights and allowing an outside body to "brand with infamy" their members'.[22] In the debate, Alexander Mitchell, Member for Berwick upon Tweed, argued that he 'was convinced that the retention by the House of its own jurisdiction and the right of determining who were its Members was essential to its dignity and independence'.[23] Despite this opposition the legislation was enacted as the Parliamentary Elections Act 1868.

i. Criminal Offences in Election Campaigns

In 1999, Fiona Jones was convicted in a *criminal* court of election expenses fraud during the 1997 General Election. Her conviction was overturned on appeal, and it was subsequently ruled that she could resume her seat, which had remained vacant. Following that case, the Political Parties, Elections and Referendums Act 2000 amended the RPA 1983 so that if an MP is found guilty of electoral offences through a criminal prosecution (ie not as a result of an electoral petition) there is a three-month suspension before the seat is vacated to allow for an appeal.[24]

ii. Election Court: The Phil Woolas case

In a more recent case, Phil Woolas was returned as the Member for Oldham East and Saddleworth at the 2010 General Election. However, his Liberal Democrat

[20] O'Leary, *The Elimination of Corrupt Practices in British Elections 1868–1911* (n 16) 28.
[21] Ibid 31–32; HC Deb 28 May 1868, cols 1320–47.
[22] Ibid 32–40; HC Deb 16 March 1868, cols 296–321.
[23] HC Deb 16 March 1868, col 296.
[24] For further background, see House of Commons Library Standard Note, *Election Petition: Oldham East and Saddleworth*, SN/PC/5751, December 2010.

opponent, Elwyn Watkins, presented an election petition alleging that Mr Woolas had made a number of false statements about him in election pamphlets.

In accordance with section 123 of the RPA 1983, the case was held before an Election Court consisting of two judges, Mr Justice Teare and Mr Justice Griffith Williams. They handed down a joint judgment of the court and found Mr Woolas guilty of some of the allegations; their judgment was given on 5 November 2010.[25]

Amongst other things, they considered the burden and standard of proof to be applied. They held that the petitioner

> has the burden of proving the respondent is guilty of the alleged illegal practice and that, although these proceedings are civil in their nature, the standard of proof is not on the balance of probabilities but is the criminal law standard of proof beyond reasonable doubt.[26]

They concluded that Mr Woolas had made 'statements of fact in relation to the personal character or conduct of the Petitioner which he had no reasonable grounds for believing were true and did not believe were true'. Accordingly, they ruled that his election was void pursuant to section 159 of the RPA 1983 because Mr Woolas was personally guilty of an illegal practice.

On 8 November 2010, the Speaker informed the House of Commons of the court's decision. The Speaker confirmed that 'in accordance with section 160(4) of Act, Mr Phil Woolas has been reported personally guilty of an illegal practice and must vacate his seat from the date of the report, 5 November 2010'.[27]

The changes to the RPA 1983, following the Fiona Jones case, introduced a three-month suspension before the seat is vacated to allow for an appeal, following a *criminal* conviction. But it was not clear whether the decision of an Election Court hearing a parliamentary election petition could be subject to judicial review. Mr Woolas's first application for a judicial review was rejected by a single judge at the High Court on 8 November 2010:

> Judge Mr Justice Silber said it was 'not amenable to judicial review because it is a decision of High Court judges sitting in their capacity as High Court judges'. He said it was 'settled law' that the decisions of High Court judges sitting in their capacity as High Court judges 'cannot be subject of applications for judicial review'. But he said Mr Woolas could apply to the Court of Appeal.[28]

The renewed application for permission for judicial review was held before the High Court on 16–17 November 2010. The Court concluded that it could hear a judicial review because the judges who heard the election petition, although High Court judges, were not sitting in that capacity; and also that 'it would not be

[25] *Watkins v Woolas* [2010] EWHC 2702 (QB).
[26] Ibid [48].
[27] HC Deb 8 November 2010, col 1.
[28] BBC Online, 'Woolas makes fresh effort to overturn ban from politics' www.bbc.co.uk/news/uk-politics-11708723 (London, 8 November 2010).

right that an error of law could not be corrected by the High Court'.[29] They also concluded that Woolas was entitled to have one of the findings made against him set aside but that this did not affect the other two matters which were deemed to be 'not of a trivial nature', since they amounted to 'a serious personal attack on a candidate by saying he condoned violence by extremists and refused to condemn those who advocated violence'.[30] Following this judgment and Mr Woolas's decision not to appeal, the Speaker confirmed that the seat had been vacated since 5 November 2010.[31]

Although the responsibility for determining contested elections was transferred to the courts long ago, it is worth considering whether the House of Commons would have reached a different conclusion in the Woolas case. There was some sympathy for him among other MPs[32] and among some commentators: *The Times* commented that 'The suggestion that erroneous campaign statements should be open to juridical interpretation is a thorough danger to the process of free speech'.[33] But, after the initial judgment, John Rentoul, chief political commentator of *The Independent on Sunday*, described the law as 'a limited and specific law, designed as a fail-safe for extreme cases'.[34]

Following the judgment, it was suggested that the precedent that had been established meant that future candidates might be more wary about making inaccurate personal allegations against opponents in the knowledge that even if they won the election, their victory could be taken from them.[35]

III. THE DECLARATION AND REGISTER OF MEMBERS' INTERESTS

The House of Commons' formal requirement for Members to register their interests dates from 1974. However, there were conventions before then that Members of both Houses should declare pecuniary interests in debates.[36] Later editions of *Erskine May* explain that 'So far as voting in the House or a committee is

[29] *R (Woolas) v The Parliamentary Election Court and others* [2010] EWHC 3169 (Admin) [55]–[56].

[30] [2010] EWHC 3169 (Admin) [125]–[126].

[31] HC Deb 6 December 2010, col 1.

[32] See, eg, *Financial Times*, 'Labour Allies Rally behind Woolas' (London, 9 November 2010).

[33] *The Times*, 'The MP Phil Woolas made misleading claims about his political opponent during a general election campaign. That does not mean that this is a matter for the judges' (London, 6 November 2010).

[34] *Independent*, 'Lies, Damned Lies and Phil Woolas' (London, 11 November 2010).

[35] BBC Online, 'Phil Woolas Says Legal Fight has Hit "End of the Road"' www.bbc.co.uk/news/uk-politics-11904630 (London, 3 December 2010).

[36] In the Commons, there was a rule that 'no Member who has a direct pecuniary interest in a question shall be allowed to vote upon it: but in order to operate as a disqualification, this interest must be immediate and personal, and not merely of a remote or general character'. The 1971 edition of *Erskine May* stated that 'In addition to the arrangements governing the votes of Members with a personal pecuniary interest, there is a convention in both Houses that peers and Members should declare such an interest in debate. This is a custom of comparatively recent origin, being more in the nature of courtesy, or prudent precaution, in case the peer or Member concerned should be suspected

concerned, and for this purpose only, the recording of an interest in the Register of Members' Financial Interests is by itself regarded as sufficient disclosure'.[37]

In 1974, the House agreed:

> That, in any debate or proceeding of the House or its committees or transactions or communications which a Member may have with other Members or with Ministers or servants of the Crown, he shall disclose any relevant pecuniary interest or benefit of whatever nature, whether direct or indirect, that he may have had, may have or may be expecting to have.[38]

And:

> That every Member of the House of Commons shall furnish to a Registrar of Members' Interests such particulars of his registrable interests as shall be required, and shall notify to the Registrar any alterations which may occur therein, and the Registrar shall cause these particulars to be entered in a Register of Members' Interests which shall be available for inspection by the public.[39]

The House also agreed that a select committee should be appointed to consider arrangements to be made as a result of these decisions.[40] The Select Committee on Members' Interests (Declaration) was appointed on 7 November 1974 and reported to the House on 12 December 1974.[41] The Committee identified 'Nine specific classes of pecuniary interest or other benefit'. It published proposed guidelines for the Registrar and proposed terms of reference for a permanent Select Committee on Members' Interests to rule on whether particular interests should be registered and for hearing complaints. The Committee also considered the way in which declarations of interests should be made.

The report was debated and the House broadly accepted the conclusions and recommendations of the Committee.[42] A minority of Members, notably Enoch Powell, never accepted the principle of a register and effective enforcement action was rarely taken.[43]

The Register of Members' Interests has remained, although changes have been made to it over time. For instance, in 2009, it became the Register of Members' *Financial* Interests, after the House agreed with government proposals to require Members to provide more details on directorships, remunerated employment

of unavowed motives' (*Erskine May*, *Parliamentary Practice*, 18th edn (London, Butterworths, 1971) 398, 402–03).

[37] *Erskine May* (n 8) 83. The Register of Members' Interests was renamed the Register of Financial Interests from 1 July 2009.

[38] HC Deb 22 May 1974, cols 537–38.

[39] Ibid, cols 538–43.

[40] Ibid, cols 543–44.

[41] Select Committee on Members' Interests (Declaration), *Report* (HC 1974–75, 102).

[42] *Erskine May* (n 8) 421; HC Deb 12 June 1975, cols 735–804.

[43] See O Gay and P Leopold (eds), *Conduct Unbecoming* (London, Study of Parliament Group/Politicos, 2004).

and clients.[44] In 2008, the House agreed that Members should register details of family members employed through the Staffing Allowance that was at the time administered by the House.[45]

IV. THE COMMITTEE ON STANDARDS IN PUBLIC LIFE AND A CODE OF CONDUCT FOR MEMBERS OF PARLIAMENT

The questions of how Members' conduct should be regulated, and by whom, became contentious in the 1990s. 'Cash for questions',[46] allegations of impropriety, former ministers acquiring private sector jobs after leaving office and the 'arms to Iraq affair',[47] all 'contributed to a general atmosphere of what became known as "sleaze"—that corruption and questionable behaviour generally had become increasingly common in British political life'.[48] Parliamentary self-regulation was seen to have failed, as the Committee on Members' Interests could not enforce the parliamentary resolutions on interests.

In October 1994, the then Prime Minister, John Major, responded by asking a senior judge, Lord Nolan, to chair the newly created and independent of Parliament and Government, Committee on Standards in Public Life:

> To examine current concerns about standards of conduct of all holders of public office, including arrangements relating to financial and commercial activities, and make recommendations as to any changes in present arrangements which might be required to ensure the highest standards of propriety in public life.[49]

The Committee reported in May 1995 and, in the summary of its report, argued that 'the general principles of conduct which underpin public life need to be restated'. So accordingly, the Committee identified seven principles of public life: selflessness, integrity, objectivity, accountability, openness, honesty and leadership. It also recommended that all public bodies should draw up codes of conduct incorporating these principles; and that internal systems for maintaining standards should be supported by independent scrutiny. It addressed specific recommendations to Members of Parliament on holding paid outside interests; it set out a draft Code of Conduct for Members; it recommended that the Commons should continue to be responsible for enforcing its own rules but that the House 'should appoint as Parliamentary Commissioner for Standards, a person of independent standing who will take over responsibility for maintaining the Register of Members'

[44] HC Deb 30 April 2009, cols 1063–132.

[45] HC Deb 27 March 2008, cols 382–94. The requirement has continued following the transfer of responsibility for Members' expenses, including staffing budgets, to IPSA.

[46] Committee of Privileges, *Complaint Concerning an Article in the 'Sunday Times' of 10 July 1994 relating to the Conduct of Members* (HC 1994–95, 351).

[47] *Report of the Inquiry into the Export of Defence Equipment and Dual-Use Goods to Iraq and Related Prosecutions* (HC 1995–96, 115).

[48] Rush, 'The Law Relating to Members' Conduct' (n 1) 106.

[49] HC Deb 25 October 1994, col 757.

Interests; for advice and guidance to MPs on matters of conduct; for advising on the Code of Conduct and for investigating allegations of misconduct'.[50]

Erskine May recorded the House's response to the Nolan Committee:

> In June 1995, the House appointed a Select Committee on Standards in Public Life 'to consider the First Report of the Committee on Standards in Public Life so far as it relates to the rules and procedures of the House; to advise on how its recommendations relating thereto might be clarified and implemented; and to recommend specific resolutions for decision by the House.
>
> The Select Committee's two Reports were debated on 19 July and 6 November 1995, respectively, and a number of resolutions were approved to implement recommendations of the Nolan report as subsequently endorsed by the committee.[51]

The House agreed, among other things, that a Parliamentary Commissioner for Standards should be appointed; to establish a Committee of Standards and Privileges in place of the Committee on Privileges and the Committee on Members' Interests; and to the drawing up of a Code of Conduct for Members. The Code of Conduct and Guide to the Rules relating to the Conduct of Members were originally published as the third report of the Committee on Standards and Privileges and approved by the House in July 1996.[52]

The Code of Conduct and Guide to the Rules are regularly reviewed by the Parliamentary Commissioner for Standards. The PCS's reviews are considered by the Committee on Standards and Privileges. If it then recommends that the Code or Rules should be revised, proposals are brought before the House. If the House agrees, the amended Code and Rules are republished.

A. The Parliamentary Commissioner for Standards

The office of Parliamentary Commissioner for Standards was created following the first report of the (Nolan) CSPL in 1995. The first PCS, Sir Gordon Downey, was appointed by the House following an appointment procedure made under arrangements approved by the Speaker on the advice of the House of Commons Commission, as recommended by the Committee.[53] His status as a former Comptroller and Auditor General (C&AG) and the designation of the PCS as an Officer of the House assisted the recognition of this new post as a prestigious office. However, unlike the C&AG, the Commissioner's role is non-statutory.

The main responsibilities of the Parliamentary Commissioner for Standards have changed over time. They are set out in Standing Order No 150 of the House of

[50] Committee on Standards in Public Life, *Standards in Public Life* (n 6) ch 2 and Summary.
[51] *Erskine May's Parliamentary Practice*, 22nd edn (London, Butterworths, 1997) 419.
[52] Committee on Standards and Privileges, *The Code of Conduct and the Guide to the Rules Relating to the Conduct of Members* (HC 1995–96, 604); HC Deb 24 July 1996, cols 392–407.
[53] HC Deb 6 November 1995, cols 683–99.

Commons (since 7 January 2013, references in the Standing Order to Committee on Standards and Privileges should be read as being to the Committee on Standards):

(a) to maintain the Register of Members' Financial Interests and any other registers of interest established by the House, and to make such arrangements for the compilation, maintenance and accessibility of those registers as are approved by the Committee on Standards and Privileges or an appropriate sub-committee thereof;
(b) to provide advice confidentially to Members and other persons or bodies subject to registration on matters relating to the registration of individual interests;
(c) to advise the Committee on Standards and Privileges, its sub-committees and individual Members on the interpretation of any code of conduct to which the House has agreed and on questions of propriety;
(d) to monitor the operation of such code and registers, and to make recommendations thereon to the Committee on Standards and Privileges or an appropriate sub-committee thereof; and
(e) to investigate, if he thinks fit, specific matters which have come to his attention relating to the conduct of Members and to report to the Committee on Standards and Privileges or to an appropriate sub-committee thereof, unless the provisions of paragraph (4) apply.[54]

A list of the Parliamentary Commissioners for Standards appointed by the House of Commons is given in Table 1.

Table 1: Parliamentary Commissioners for Standards

House	Period of Office	Date of appointment by the House
Sir Gordon Downey	15 November 1995 for three years	6 November 1995[55]
Elizabeth Filkin	February 1999–14 February 2002	17 November 1998[56]
Sir Philip Mawer	March 2002–31 December 2007	13 February 2002[57]
John Lyon	1 January 2008–31 December 2012	15 November 2007[58]
Kathryn Hudson	1 January 2013–31 December 2017	12 September 2012[59]

The eighth report from the (Wicks) CSPL commented on the ambiguous nature of the office in terms of its operational independence.[60] It recommended

[54] House of Commons, *Standing Orders of the House of Commons—Public Business 2012* (HC 2012–13, 614) Standing Order No 150(2).
[55] HC Deb 6 November 1995, cols 683–99.
[56] HC Deb 17 November 1998, cols 808–24.
[57] Sir Philip Mawer was originally appointed for three years from March 2002 (HC Deb 13 February 2002, cols 224–69). His appointment was extended to 25 June 2008 (HC Deb 26 June 2003, col 1258). However, on 28 June 2007, the Speaker announced that Sir Philip wished to step down on 31 December 2007 (HC Deb 28 June 2007, col 473).
[58] HC Deb 15 November 1998, cols 861–68.
[59] HC Deb 9 September 2012, cols 382–87. Details of the appointment process for Kathryn Hudson are set out in House of Common Commission, *Parliamentary Commissioner for Standards: Nomination of Candidate* (HC 2012–13, 539).
[60] Committee on Standards in Public Life, *Standards of Conduct in the House of Commons* (Cm 5663, 2002).

a longer fixed-term, non-renewable term of office for the Commissioner. These recommendations were considered by the Committee on Standards and Privileges and the House of Commons Commission. Their responses to Wicks, while promising greater transparency and clarity about the relationship between the PCS and the Committee, indicated some differences of opinion.[61] The parliamentary authorities argued that statute would be necessary to ensure the model of an independent office-holder in the manner described by Wicks.[62]

The House accepted significant changes to the appointment and dismissal process for the PCS in amendments to Standing Order No 150 on 26 June 2003, at the end of the debate on the Wicks Report and the responses to it from the House of Commons Commission and the Committee on Standards and Privileges. The main changes were:

— all future appointments of Commissioners would be for a term of five years, non-renewable;
— the term of the current Commissioner would be extended for a five-year period until June 2008;
— the Commissioner may only be dismissed following a motion before the House, where the Committee of Standards and Privileges has reported (with reasons) that he cannot carry out his functions or is unfit for the office.
— the Standards and Privileges Committee would no longer have a government majority, but would consist of five government and five opposition members, chaired by an opposition spokesman (selection will remain with the whips);
— no Parliamentary Private Secretary would be appointed to the Committee; and
— the Commissioner would publish an annual report giving details of the budget for the office.[63]

The Commissioner's independence is limited by his/her relationship with the Standards and Privileges Committee. He/she makes recommendations, but it is for the Committee to specify the penalty, which the House endorses. The model appears successful, as the disciplinary machinery is still 'owned' by the Commons, rather than being entirely external. However, the CSPL report into Members' allowances in 2009 decided that for public credibility, there should be three lay (non-MPs) added to the parliamentary committee.[64] These have now been added,

[61] House of Commons Commission, *Response to the Eighth Report of the Committee on Standards in Public Life: Standards of Conduct in the House of Commons* (HC 2002–03, 422; Committee on Standards and Privileges, *Eighth Report of the Committee on Standards in Public Life: 'Standards of Conduct in the House of Commons'* (HC 2002–03, 403).

[62] Committee on Standards and Privileges, *Eighth Report of the Committee on Standards in Public Life: 'Standards of Conduct in the House of Commons'* (n 61) paras 79–82.

[63] The position of PPSs on the Committee is dealt with more fully later in this chapter. There were other changes to Standing Order No 149 relating to the investigation process, covered in ch 5.

[64] See the section on lay members of the Committee on Standards in ch 7.

following an open recruitment process. The lay members cannot vote, but if they disagree with the conclusions of the Standards Committee, they may add their own comments in the report of the Committee.[65]

V. PARTY FUNDING AND DONATIONS AND LOANS TO MEMBERS

As noted above, the terms of reference of the CSPL did not originally include party funding generally. In 1997, however, in the wake of the Labour Government's decision to exempt Formula One from the tobacco sponsorship ban and the receipt of a donation from Formula One by the Labour Party, the new Prime Minister came under pressure to reform the rules on donating funds to political parties and to holders of elected office.[66] In November 1997 Tony Blair wrote to the then chair of the CSPL, Lord Nolan, formally inviting the Committee to undertake such a study, adding to the Committee's existing terms of reference the following:

> To review issues in relation to the funding of political parties, and to make recommendations as to changes in present arrangements.[67]

The subsequent CSPL report was published in October 1998. Among other things, the report called for clear rules on public disclosure of donations; a ban on foreign donations; a ban on anonymous donations; limits on campaign expenditure; and the creation of an Election Commission to police political donations.[68] The House of Commons debated the report on 9 November 1998.[69] The Government welcomed the report and issued a White Paper including a draft Bill in July 1999,[70] incorporating most of the CSPL's recommendations on donations and the creation of the Electoral Commission.

The Political Parties, Elections and Referendums Bill was introduced on 21 December 1999. It included provisions that required political parties and certain individuals to register donations with the Electoral Commission that was also provided for in the legislation. The Explanatory Notes to the Bill highlighted the following relating to individual party members:

> 122. One effect of these provisions is to require that donations made to a holder of an elective office, which are disclosed in a register of members' interests, will also be subject

[65] See House of Commons Library Standard Note, *The Code of Conduct for Members—Recent Changes*, SN/PC/5127, 22 January 2013.

[66] K Ewing, 'The Disclosure of Political Donations in Britain' in K Ewing and S Issacharoff (eds), *Party Funding and Campaign Financing in International Perspective* (Oxford, Hart, 2006) 58–59.

[67] Letter from Prime Minister, 12 November 1997, and confirmed in HC Deb 12 November 1997, col 899.

[68] Committee on Standards in Public Life, *The Funding of Political Parties in the United Kingdom* (Cm 4057, 1998).

[69] HC Deb 9 November 1998, cols 47–116.

[70] Home Office, *The Funding of Political Parties in the United Kingdom: the Government's Proposals for Legislation in Response to the Fifth Report of the Committee on Standards in Public Life* (Cm 4413, 1999).

> to the reporting requirements set out in Schedule 6 [this became Schedule 7 of the act]. This will mean some overlapping of registers of members' interests and the Electoral Commission's register of disclosable donations. But the controls on donations to MPs and others will not in any way circumscribe the ability of the House of Commons or the devolved legislatures to regulate the interests and conduct of their members.[71]

A. Dual Reporting of Interests

Following the introduction of rules on the registration of donations they received, Members were initially alarmed at the extent to which benefits had now to be registered with the Electoral Commission, which used different criteria from the Registrar of Members' Interests. Negotiations began to remedy the discrepancies and to ease the consequent administrative burden. In 2006, the Committee on Standards and Privileges set out the problems that dual reporting caused Members in a report on the *Electoral Administration Bill: Simplification of Donation Reporting Requirements*:

> Members of the House are required, in the interests of transparency and accountability, to make public details of certain financial support they (or in some circumstances their constituency associations) receive. The House requires details of sponsorship above certain thresholds to be reported to the Registrar of Members' Interests for inclusion in the Register of Members' Interests. Members are also one of the categories of holder of 'relevant elective office' for the purposes of the Political Parties, Elections and Referendums Act 2000 (PPERA), and are therefore subject to the separate requirements set out in Schedule 7 of that Act for reporting certain controlled donations (as defined in that Schedule) to the Electoral Commission. While the two sets of reporting requirements have substantial elements in common, there are significant differences of detail.[72]

The Committee reported that in an earlier report it had 'expressed the view that a single system of notification, operating under the authority of the Parliamentary Commissioner for Standards, to enable Members to discharge both the House's and PPERA's requirements through a single declaration, would be better'.[73] It also noted that both the Government and the Electoral Commission supported its proposals. Because there was not a complete overlap between the reporting requirements of the Electoral Commission and the House, the Committee noted that the amendments to the reporting requirements of the Electoral Commission would not be brought into force until the requirements of the Register of Members' Interests had been changed.[74]

[71] *Explanatory Notes* 28–29.
[72] Committee on Standards and Privileges, *Electoral Administration Bill: Simplification of Donation Reporting Requirements* (HC 2005–06, 807) para 1.
[73] Ibid, para 2.
[74] Ibid, para 9.

Section 59 of the Electoral Administration Act 2006 removed the requirement for Members personally to report recordable donations to the Electoral Commission. It provided for the Electoral Commission to obtain the information it needs for its registers from information supplied by Members to the Registrar of Members' Interests.[75]

In July 2008 and February 2009, the Committee on Standards and Privileges reported on the changes that would be required to the Register of Members' Interests.[76] The House approved the Committee's proposals on 9 February 2009.[77] Following the House's decision, which meant that the requirements to register in the House matched those in the legislation, the relevant provisions of the Electoral Administration Act 2006 were then brought into force from 1 July 2009.[78]

VI. MEMBERS' EXPENSES AND IPSA

On 8 May 2009, *The Daily Telegraph* began publishing a series of articles on Members' expenses claims that continued for several weeks,[79] and eventually led to the creation of an independent statutory body for the administration of Members' expenses.[80] This was the culmination of a series of events relating to Members' expenses dating back several years, starting with a request under the Freedom of Information (FOI) Act 2000 for information relating to certain Members' expenses claims and including a number of attempts to reform Members' expenses which were only partially implemented. Following recommendations from the Public Administration Select Committee, the Freedom of Information Bill was amended during its passage to include the Commons and Lords on the list of public bodies subject to FOI in 2000. There were absolute exemptions for parliamentary privilege and for confidential advice. A certificate from the Speaker would ensure that the exemptions could not be challenged by the Information Commissioner or the courts. However the Commons authorities did not expect that the administration of expenses for MPs would fall within these exemptions and Members were advised from the early 2000s that further transparency on allowances would be required.

The Freedom of Information (Amendment) Bill 2006–07 was introduced by David Maclean, a member of the House of Commons Commission. It sought to

[75] Electoral Administration Act 2006, s 59.

[76] Committee on Standards and Privileges, *Ending Dual Reporting of Donations: Interim Report* (HC 2007–08, 989); Committee on Standards and Privileges, *Dual Reporting and Revised Guide to the Rules* (HC 2008–09, 208).

[77] HC Deb 9 February 2009, cols 1114–32.

[78] Electoral Administration Act 2006 (Commencement No 8 and Transitional Provision) Order 2009, SI 2009/1509.

[79] The story of the *Daily Telegraph's* obtaining the information and its publication is told in R Winnett and G Rayner, *No Expenses Spared* (London, Bantam Press, 2009).

[80] The establishment of IPSA is discussed further below and in ch 6, section IV.

create a new exemption from FOI for communications between MPs and public authorities; and to exempt both Houses of Parliament from the FOI Act. It was controversial as the House of Commons authorities would no longer be required to disclose information about Members' allowances. The Bill completed its passage through the Commons but made no progress in the House of Lords.

A. Arrangements in the House of Commons in Relation to Members' Allowances

Whilst the House of Commons was responsible for Members' allowances, it appointed the Members Estimate Committee (MEC) to codify and keep under review the provisions of the resolutions of the House relating to expenditure charged to the Members Estimate.[81] The MEC appointed the Members Estimate Audit Committee (MEAC) to support the House's Accounting Officer in discharging his responsibilities under the Members Estimate, particularly in maintaining an effective system of internal control.

The MEAC commented in its annual report of 2008–09 that it had 'been concerned about the matter of auditing of Members' expenses and allowances, and has discussed the need for appropriate governance, audit and assurance on a number of occasions', since its creation in 2004.[82] The MEAC report highlighted a paper prepared by its external members in December 2004, which had called for a review of the rules and had argued that 'a proper system of audit, going behind Members' signatures, should be introduced (taking the form of random checks) to verify the propriety of their use of the money so expended'. In February 2005, the Speaker told the MEAC that the MEC was 'not minded' to pursue such external verification.[83]

Recommendations on Members' allowances from the Senior Salaries Review Body (SSRB) were published in January 2008.[84] The House of Commons referred the SSRB's recommendations to the MEC.[85] But even before that committee could begin its work, the Committee on Standards and Privileges found that Derek

[81] The MEC, which has the same membership as the House of Commons Commission, was established in 2004 under Standing Order No 152D to provide oversight of the House of Commons Members Estimate. The scope of the Members Estimate was significantly reduced following the 2010 general election when responsibility for the administration of Members' salaries, expenses claims, travel and certain other costs were transferred to the Independent Parliamentary Standards Authority (IPSA).

[82] House of Commons: Members, *Annual Report, Resource Accounts and Audit Committee Annual Report 2008–09* (HC 2008–09, 955) 45–50, para 15.

[83] Ibid, paras 16–17.

[84] Review Body on Senior Salaries, *Review of Parliamentary Pay, Pensions and Allowances 2007*, Report No 64 (Cm 7270–1, 2008).

[85] HC Deb 24 January 2008, col 1720.

Conway, Member for Old Bexley and Sidcup, had 'misused the Staffing Allowance' in 'paying his son over-generously'.[86]

It was in the context of growing interest in, and concern about, the system for reimbursing Members' expenses that the MEC undertook its review. In a debate in January 2008 Members had expressed 'deep concerns about Members' allowances'.[87] The MEC's review of allowances, published in June 2008, referred to its 'commitment to restoring the reputation of the House by providing better assurance for the taxpayer that money is properly spent'.[88] The report set out detailed recommendations for change: on audit and assurance, including external audit of Members' claims and a receipt threshold set at zero; claims for furniture and household were no longer to be accepted; a reduction in the maximum that could be claimed for overnight allowances; and reductions in the amount outer London MPs could claim for overnight expenses.[89] However, its main recommendations were rejected by the House on division on 3 July 2008.[90] On 16 July 2008, the House agreed to ask the Advisory Panel on Members' Allowances (APMA) to rewrite the Green Book (the guide to and rules on Members' allowances).[91]

However, the APMA only had the authority to advise the MEC. At its meeting on 21 July 2008, the MEC confirmed that 'any changes to the Green Book brought forward by the Advisory Panel on Members Allowances would have to be considered by the MEC before implementation'.[92]

Whilst the APMA was considering revisions to the Green Book, the MEC asked the Members Estimate Audit Committee to make proposals on the future role of the National Audit Office as the external auditor of the House of Commons and the House of Commons' own Internal Audit service in providing audit and assurance of spending on the Members' allowances'.[93] The APMA completed its work and a revised Green Book and the MEC's proposals for the auditing of Members' expenses claims were published together in January 2009 by the MEC.[94] The House approved the MEC's report and the new rules came into force on 1 April 2009.[95]

[86] Committee on Standards and Privileges, *Conduct of Mr Derek Conway* (HC 2007–08 280) para 31.
[87] HC Deb 4 February 2008, col 659.
[88] Members Estimate Committee, *Review of Members' Allowances* (HC 2007–08, 578).
[89] Ibid, Conclusions and recommendations.
[90] Votes and Proceedings, 3 July 2008, item 18; for a discussion of the MEC Review and the background to it, see House of Commons Library Research Paper, *Members' Allowances*, RP 09/60, 25 June 2009.
[91] HC Deb 16 July 2008, cols 314–15.
[92] House of Commons Commission, *Formal Minutes*, 21 July 2008.
[93] Members Estimate Committee, *Revised Green Book and Audit of Members' Allowances* (HC 2008–09, 142) Annex 3, para 1.
[94] Members Estimate Committee, *Revised Green Book and Audit of Members' Allowances* (n 93).
[95] HC Deb 22 January 2009, cols 969–70; House of Commons, *The Green Book: A Guide to Members' Allowances* (March 2009).

B. The MPs' Expenses Scandal 2009

In the early months of 2009, a number of stories about Members' expenses claims were published in the press (prior to *The Daily Telegraph's* more extensive publication of details of Members' expenses). Two of these newspaper stories triggered investigations by the Parliamentary Commissioner for Standards, which were considered by the Committee on Standards and Privileges.[96]

The CSPL, which had considered investigating Members expenses in the past, exchanged letters with the Prime Minister in March 2009. On 23 March it announced that it would 'be undertaking a wide-ranging review of MPs' allowances' later that year.[97]

The Prime Minister wrote to the Committee again on 30 March 2009, after it had announced its inquiry. He asked the CSPL to 'look to both start and conclude the Review earlier than previously indicated to allow us to make progress on this issue as soon as practical', stating again that he would 'welcome your consideration of MPs' allowances'.[98] On 31 March 2009, the CSPL issued another press notice, stating that it would bring forward its inquiry.[99] The CSPL's report was published in November 2009,[100] by which time further changes had been made to way in which Members' expenses were reimbursed.

First, in April 2009, the Government announced its intention to make changes to the allowances system that could 'be enacted sooner' than any recommendations made by the CSPL. It then tabled a series of motions in the House of Commons to give effect to the changes. In addition to a formal written ministerial statement, Gordon Brown, the Prime Minister, outlined the proposals in a video posted on the Downing Street website. The Government proposed among other things a flat-rate daily allowance to replace the Personal Additional Accommodation Expenditure (the 'second home' allowance); that MPs' staff should become direct employees of the House of Commons; and that receipts would be required to support all expense claims. It also made proposals on Members' financial interests—suggesting that Members report what they earned, who paid them, for what and how many hours were worked.[101] When the motions were tabled on 27 April 2009, they did not include proposals for a flat-rate allowance, following the hostile reaction to the initial proposals.

[96] Committee on Standards and Privileges, *Jacqui Smith* (HC 2008–09, 974); *Mr Tony McNulty* (HC 2008–09, 1070).

[97] Committee on Standards in Public Life, 'Committee on Standards in Public Life to Look at MPs' Allowances' (press notice, 23 March 2009).

[98] The Prime Minister, 'MPs' Allowances' (30 March 2009).

[99] Committee on Standards in Public Life, 'Committee on Standards in Public Life to Bring Forward Review of MPs' Allowances' (press notice, 31 March 2009).

[100] Committee on Standards in Public Life, *MPs' Expenses and Allowances: Supporting Parliament, Safeguarding the Taxpayer (Twelfth Report)* (Cm 7724, 2009).

[101] HC Deb 21 April 2009, cols 10WS–11WS.

During and before the debate, on 30 April, the Government was also criticised for pre-empting the CSPL's inquiry. Although some of the Government motions were amended, the House agreed to increase the number of constituencies defined as London constituencies (and hence reduce the number of Members qualifying for second home allowances). The House also agreed to the proposed changes on the requirement to register financial interests.[102]

Then, following *The Daily Telegraph's* reporting of expenses claims, immediate changes to the rules were made on 19 May 2009, following a meeting of political party leaders, convened by the Speaker. These immediate changes were described as follows:

> We have today agreed a robust set of interim measures which will take effect at once and do not pre-empt any more substantial changes to be put forward by the Kelly committee.
>
> Second homes: there will be no more claims for such items as furniture, household goods, capital improvements, gardening, cleaning and stamp duty. …
>
> Designation of second homes: no changes to be made to designation of second homes in the years 2009–10, with a transparent appeal procedure for exceptional cases.
>
> Capital gains tax: Members selling any property must be completely open with the tax authorities about whether they have claimed additional costs allowance on that property as a second home and are liable for capital gains tax. …
>
> Couples: Members who are married or living together as partners must nominate the same main home, and will be limited to claiming a maximum of one person's accommodation allowance between them.
>
> Mortgages: all those Members claiming reimbursement must confirm that the mortgage continues, that the payments are for interest only, and the amount claimed is accurate. Mortgage interest claims will be capped at £1,250 per month. In the view of the meeting—and subject to the recommendations of the Kelly committee—this maximum figure should be reduced in the longer term. The same cap will apply to rent and hotel accommodation. Some of these measures I am announcing will require a resolution by the House in the near future; others will be put into effect by administrative action.[103]

A revised edition of the Green Book was issued in July 2009.[104]

On 19 May 2009, the Speaker also informed the House that:

> The meeting [of party leaders] also received a paper from the Prime Minister, which was endorsed by the other party leaders, calling for a fundamental reform of allowances—moving from self-regulation to regulation by an independent body.[105]

[102] HC Deb 30 April 2009, cols 1063–142. A fuller description of the Government's proposals and the House's decision can be found in House of Commons Library Standard Note, *Members' Allowances—the Government's Proposals for Reform*, SN/PC/5046, 5 May 2009.

[103] HC Deb 19 May 2009, cols 1421–22.

[104] House of Commons, *The Green Book: A Guide to Members' Allowances*, Revised edn (July 2009).

[105] HC Deb 19 May 2009, col 1422.

C. The Passage of the Parliamentary Standards Act 2009

The Government introduced the Parliamentary Standards Bill on 23 June 2009.[106] It passed quickly through both Houses—although it was considerably amended—and received Royal Assent before the Summer Recess on 21 July 2009.[107]

The Parliamentary Standards Bill, as introduced, provided for the establishment of IPSA and gave it responsibility for paying Members' salaries, determining an allowances scheme and paying allowances. The Bill required IPSA to draw up 'MPs' financial interest rules'; and specified how the rules should be enforced. It provided for a Commissioner for Parliamentary Investigations to conduct investigations and stated that 'No enactment or rule of law which prevents proceedings in Parliament being impeached or questioned in any court or place out of Parliament is to prevent' IPSA or the Commissioner carrying out their functions nor to prevent parliamentary proceedings from being used in evidence (contrary to the usual understanding of Article 9 of the Bill of Rights). It also required the House of Commons to have a Code of Conduct.[108]

At second reading on 29 June 2009, Members expressed a number of concerns about the Bill. They drew attention to concerns the Clerk of the House had raised about the Code of Conduct becoming a statutory requirement and parliamentary proceedings becoming justiciable.[109]

During its passage through the Commons, the two clauses, clause 6 (MPs' Code of Conduct) and clause 10 (Proceedings in Parliament), were removed from the Bill. The requirement on IPSA to prepare rules on financial interests was changed to require it to prepare a Code of Conduct relating to financial interests.[110]

Further changes were made in the House of Lords, including the addition of a provision stating that the Bill did not apply to the House of Lords, and a provision indicating that nothing in the legislation would affect Article 9 of the Bill of Rights 1689. Changes were made to investigation procedures. The Commissioner for Parliamentary Investigations was to investigate payments that were not allowed under the scheme and breaches of the statutory code relating to financial interests. An offence of 'providing false or misleading information for allowance claims' was retained but other offences were removed. A sunset clause was added: unless extended by order, provisions relating to the functions of the Commissioner for Parliamentary Investigations were to expire two years

[106] HC Deb 23 June 2009, col 691.
[107] HC Deb 21 July 2009, col 801.
[108] Parliamentary Standards Bill 2008–09 (Bill 121 of 2008–09).
[109] See, eg, HC Deb 29 June 2009, cols 49, 53, 65–6. The Clerk had given evidence on the Bill to the Justice Committee: Justice Committee, *Constitutional Reform and Renewal: Parliamentary Standards Bill* (HC 2008–09, 791).
[110] Parliamentary Standards Bill 2008–09 (Bill 121 of 2008–09), Parliamentary Standards Bill 2008–09 (HL Bill 60 of 2008–09).

after IPSA assumed responsibility for the statutory code.[111] Thus parliamentary self-regulation over the conduct of Members was preserved, but investigations of misuse of expenses were passed to an external compliance body. This made sense, as the expenses which might be misused were now to be administered—for the first time—by an external statutory body.

Following the CSPL's review of Members' allowances, further changes were made in the Constitutional Reform and Governance Act 2010. Amendments to the Parliamentary Standards Act 2009 gave IPSA responsibility for determining Members' pay. Changes were also made to the compliance regime. IPSA was removed from any involvement in the Commons Code of Conduct for Members, and the Commissioner for Parliamentary Investigations was replaced by a Compliance Officer who:

— reviews decisions on the payment of expenses if requested to by Members; and
— conducts investigations if he believes payments have been made that should not have been.

The Constitutional Reform and Governance Act 2010 added the following provision on the general duties of IPSA:

> 3A General duties of the IPSA
>
> (1) In carrying out its functions the IPSA must have regard to the principle that it should act in a way which is efficient, cost-effective and transparent.
> (2) In carrying out its functions the IPSA must have regard to the principle that members of the House of Commons should be supported in efficiently, cost-effectively and transparently carrying out their Parliamentary functions.[112]

And, the Constitutional Reform and Governance Act 2010 transferred the administration of the Parliamentary Contributory Pension Fund to IPSA.[113] As with the Electoral Commission, Members were initially suspicious of a new external regulatory body. Relationships improved as the 2010 Parliament went on, but for many Members, IPSA remains an unwelcome innovation. The new body was considered to be out of touch with the realities of parliamentary life. New Board members were appointed to IPSA in January 2013, following the expiry of the term of office of the original board (although there was no change in chairmanship). In the debate on the appointments, some Members expressed the hope that the new Board would bring a different approach to its work.[114]

[111] Parliamentary Standards Act 2009 as passed; see also House of Commons Library Standard Note, *The Parliamentary Stages of the Parliamentary Standards Bill*, SN/PC5121, 22 July 2009.
[112] Parliamentary Standards Act 2009, as amended, s 3A.
[113] Constitutional Reform and Governance Act 2010, s 40 and sch 6.
[114] HC Deb 4 December 2012, cols 831–39.

D. Compliance

IPSA appointed an interim Compliance Officer, Alan Lockwood, a former senior military officer, on 4 June 2010.[115] A permanent Compliance Office, Luke March, was appointed on 31 March 2011 but stayed only a few weeks before resigning on 27 July 2011. Peter Davis, a retired police chief superintendent, was appointed as Compliance Officer on 19 December 2011.

The Compliance Officer's remit is defined in statute.[116] It is set out on the Compliance Officer for IPSA's website:

— to conduct an investigation if the Compliance Officer has reason to believe that an MP may have received from IPSA an amount that should not have been allowed under the MPs' Expenses Scheme; and
— to review, at the request of an MP, a determination by IPSA to refuse reimbursement for an expense claim, in whole or in part.

Investigations may be triggered by a complaint from a member of the public about a payment to an MP that is suspected or alleged to be outside the rules of the MPs' Expenses Scheme, or by a request from IPSA or an MP to investigate a payment.

The Compliance Officer may also conduct an investigation on his own initiative, providing he has reason to believe that an MP may have received a payment that should not have been allowed. Reviews are only conducted after the MP has first asked IPSA to reconsider its decision.

Once it is confirmed that a complaint falls with the Compliance Officer's statutory remit, the investigation process begins. The investigation process comprises four stages: (i) Assessment; (ii) Investigation; (iii) Statement of provisional findings; and (iv) Statement of findings.

If the complaint is within the Compliance Officer's remit, an assessment is carried out to consider whether there are sufficient grounds to open an investigation. At the conclusion of the assessment, the Compliance Officer may decide that there is sufficient reason to believe that a claim may have been wrongfully paid to an MP and may open an investigation. If there are insufficient grounds to do so, the complaint is closed down. The Compliance Officer may decide not to open an investigation—even if there are grounds to do so—if it is judged that conducting an investigation would be a disproportionate course of action. At the conclusion of an assessment, the MP, IPSA and the complainant, if applicable, are informed of the Compliance Officer's decision.[117]

[115] IPSA, 'IPSA has Appointed Alan Lockwood to the Post of Interim Compliance Officer' (press release, 4 June 2010).

[116] Parliamentary Standards Act 2009, sch 2, as inserted by the Constitutional Reform and Governance Act 2010, s 26 and sch 3.

[117] Website of the Compliance Officer for IPSA, www.parliamentarycompliance.org.uk.

As at January 2013, the workload has not been onerous, since, although the Compliance Officer has undertaken a number of investigations, he has yet to find against any Member for misuse of allowances. The shadow of the 2009 expenses scandal, and the new regulatory machinery and transparency, appear to have proved effective deterrents.

VII. INVESTIGATION OF MEMBERS' EXPENSES—QUESTIONS OF JURISDICTION

At their meeting on 19 May 2009, following *The Daily Telegraph's* publication of details of the expense claims of numerous Members, the party leaders agreed that

> All past claims under the former additional costs allowance over the past four years will be examined. This will be carried out by a team with external management; the external manager will be appointed after consultation with the Comptroller and Auditor General. All necessary resources will be made available. The team will look at claims in relation to the rules which existed at that time, and will take account of any issues which arise from that examination which cause them to question the original judgment.[118]

However, the Parliamentary Commissioner for Standards was already investigating some cases as a result of the press coverage on expenses before *The Daily Telegraph* began its campaign. In addition, the police and public prosecutors were also considering whether prosecutions were possible. On 5 June 2009, *The Daily Telegraph* reported a statement from a panel established by Sir Paul Stephenson, the Metropolitan Police Commissioner, and Keir Starmer, the Director of Public Prosecutions:

> A statement issued jointly by the Met and the CPS said: 'Over the past two weeks the joint Metropolitan Police Service and Crown Prosecution Service assessment panel has met on a number of occasions and has considered a large number of allegations about the alleged abuse of expense claims in both the Lords and the Commons and whether any criminal investigations should be launched.
>
> The panel's view is that, unless evidence is available which shows individuals deliberately misled the fees office, it is highly unlikely that there could be a successful prosecution. Many of those complained about appear to have provided accurate information and therefore the MPS will not pursue a criminal investigation into allegations against them.
>
> It is for the Commons and the Lords authorities to decide whether they wish to consider these cases under their internal processes and should information come to light that indicates that either Fees Office has been deliberately misled, then they will be able to make a referral back to the MPS for further consideration.

[118] HC Deb 19 May 2009, col 1422.

> However, there are a small number of allegations where questions remain about the probity of the claims which will require further information before any decisions regarding investigations could be made. We are therefore continuing to liaise with Parliamentary Authorities in the two Houses over the provision of this additional information so the assessment panel can make informed decisions on these remaining allegations.[119]

The review commissioned by the party leaders was undertaken by Sir Thomas Legg, a former Permanent Secretary, who had served as an independent member on the House of Commons Members Estimate Audit Committee (see above). His review reported to the Members Estimate Committee. His terms of reference were agreed on 1 July, and on 23 November 2009, the MEC agreed that

> any sums recommended for repayment by Sir Thomas should be recovered from Members, preferably voluntarily, but if necessary by deduction from pay and allowances on the authority of a resolution of the House. This was, however, subject to Members having the opportunity to show in an independent appeal process any special reasons why it would not be fair or equitable to require them to make the repayments. The Rt Hon Sir Paul Kennedy agreed to conduct the appeal process.[120]

In his review, Sir Thomas Legg set out his terms of reference:

> To conduct an independent review of all claims made by Members of Parliament (except those who have since died) for the Additional Costs Allowance during the financial years 2004–05 to 2007–08;
>
> To examine all payments made on such claims, against the rules and standards in force at the time, and identify any which should not have been made, and any claims which otherwise call for comment;
>
> To allow Members who received such payments or made such claims a fair opportunity to make representations about them;
>
> Subject to any such representations, to recommend where necessary any repayments which Members should make and otherwise to comment as seems appropriate; and
>
> To report as soon as possible to the Members Estimate Committee.

He also noted that, later in July 2009, the MEC extended the terms of reference to cover 2008–09 but also told him to exclude from his review 'any payments under investigation by the Parliamentary Commissioner for Standards before 20 July 2009, or at any stage by the Police'.[121]

Following an inquiry in 2008, the Committee on Standards and Privileges asked its chairman and the PCS to meet with the Commissioner of the Metropolitan Police to 'discuss matters relating to the handling of complaints against Members

[119] *Daily Telegraph*, 'MPs' Expenses: Elliot Morley and David Chaytor Face Police Investigation' (London, 5 June 2009).

[120] Members Estimate Committee, *Review of Past ACA Payments* (HC 2009–10, 348) para 2.

[121] Members Estimate Committee, *Review of Past ACA Payments* (n 120) app 1: Sir Thomas Legg, *ACA Review* 1 February 2010, paras 2 and 4.

which might also raise questions of criminal liability'.[122] It said it was 'concerned to ensure that there should be no misunderstanding between the House and the police on their respective roles in these circumstances, and that any arrangements in place worked effectively in the public interest'.[123] They met on 3 April 2008 and a statement agreed at the meeting was published by the Committee on 30 April 2008. It confirmed that

> other than in the limited context of participation in proceedings in Parliament, Members of Parliament are in no different position in respect of alleged criminal behaviour than any other person. The Chairman reiterated the Committee's belief in the general principle that criminal proceedings against Members, where these are considered appropriate, should take precedence over the House's own disciplinary proceedings. The meeting discussed how the respective parties might coordinate their activities to ensure the effective delivery of this principle.

The agreement also set out how the PCS and the Committee would liaise with the Police.[124]

A. Convictions for Expenses Fraud: the Aftermath

Following the 2010 general election a number of former MPs, one then sitting MP and two members of the House of Lords were convicted on charges of false accounting in respect of the expenses scandal.[125] Full details of the case of *R v Chaytor and others* and subsequent criminal proceedings can be found in chapter three.

The Administration Committee further decided to amend the rules on the provision of passes to former Members, which allow them access to the Parliamentary Estate. Now former Members who have been convicted of a criminal offence and sentenced to a period of imprisonment of a year or more are no longer provided with former Members' passes.[126]

It is of interest to note that the convictions all related to events before the passage of the Parliamentary Standards Act 2009; that the Supreme Court confirmed that 'the extent of parliamentary privilege is ultimately a matter for the courts to determine';[127] and that those responsible for the disciplinary procedures of the

[122] Committee on Standards and Privileges, *The Complaints System and the Criminal Law* (HC 2007–08, 523) para 1.

[123] Ibid.

[124] Committee on Standards and Privileges, *The Complaints System and the Criminal Law* (n 122) app.

[125] David Chaytor, Jim Devine, Elliot Morley Eric Illsley, Lord Hanningfield and Lord Taylor of Warwick.

[126] Committee on Standards and Privileges, *Former Members Sentenced to Imprisonment* (HC 2010–12, 1215) para 4.

[127] [2010] UKSC 52 [16]; N Parpworth, *Constitutional and Administrative Law*, 7th edn (Oxford, Oxford University Press, 2012) 135.

House of Commons had already agreed with the police an approach for dealing with matters that involved alleged criminal behaviour.

VIII. THE HOUSE OF LORDS

The House of Lords was also affected by a number of scandals relating to expenses and also allegations that members of the House of Lords were prepared to accept fees to amend legislation on behalf of clients.

Its response was quite different from that of the House of Commons. It has continued to emphasise its self-regulating nature, and did not have recourse to legislation. As already noted it ensured that, against the then Government's original intentions,[128] it was explicitly excluded from the ambit of IPSA. However, its approach to self-regulation, particularly in the area of Members' conduct, has adapted, with the appointment of a House of Lords Commissioner for Standards.

Members of the House of Lords were formerly able to claim a daily subsistence rate and, for those whose main home was outside London, overnight subsistence was available to cover the costs of overnight accommodation in London (or elsewhere, if on official parliamentary business). In 2009, a number of allegations were made that a small number of peers had designated as their main homes, homes outside London that they seldom used, in order to claim overnight subsistence.

Reviews by the Senior Salaries Review Body and by a House of Lords Leader's Group were followed by a report from the House Committee of the House of Lords.[129] On 20 July 2010 the House of Lords debated resolutions to introduce the new single daily allowance from 1 October 2010, and to agree the report of the House Committee.[130] The flat-rate attendance allowance is set at £150 or £300 for each sitting day they attend the House.

A. Appointment of the House of Lords Commissioner for Standards

The background to appointment of the House of Lords Commissioner for Standards is described in his first annual report:

> In May 2009, the then Leader of the House, Baroness Royall of Blaisdon, announced the appointment of a Leader's Group on the Code of Conduct. The Group was appointed 'to

[128] In a statement on constitutional renewal, on 10 June 2009, Gordon Brown, the Prime Minister, told the House of Commons that 'we propose that the House of Commons—and subsequently the House of Lords—move from the old system of self-regulation to independent, statutory regulation' (HC Deb 10 June 2009, col 796).

[129] House of Lords House Committee, *Financial Support for Members of the House of Lords* (HL 2010–11, 18).

[130] House of Commons Library Standard Note, *Financial Support for Members of the House of Lords*, SN/PC/5246, 23 August 2010.

> consider the Code of Conduct and the rules relating to Members' interests, and to make recommendations'. The Group's creation was directly linked to allegations in the media about the conduct of four peers. The allegations were referred to the Sub-Committee on Lords' Interests for investigation, and resulted in the suspension from the service of the House of two of the four members for having breached the Code of Conduct. That episode, allied to other allegations against peers, and a series of allegations affecting members of the House of Commons, combined to significantly impact on public confidence in Parliament and Parliamentarians.
>
> The Leader's Group on the Code of Conduct recommended that the post of Commissioner for Standards be created. The Commissioner would be appointed by the House but be functionally independent. That recommendation was accepted.[131]

The creation of the post of Commissioner for Standards was provided for by the new Code of Conduct, agreed by the House on 30 November 2009,[132] and by the Guide to the Code of Conduct contained in the second report of the Committee for Privileges of 2009–10, which was agreed by the House on 30 March 2010.[133] Both came into force on 18 May 2010, at the start of the 2010–12 Session of Parliament. The first Commissioner for Standards, Paul Kernaghan, was appointed for 'an initial period of three years' by the House of Lords on 2 June 2010.[134]

B. Disciplinary Powers of the House of Lords

In 2009, the House of Lords Committee for Privileges reviewed the House's disciplinary powers and the Sub-Committee on Lords' Interests investigated after allegations were made that four members of the House of Lords had been prepared to accept fees to amend legislation.[135] The Committee for Privileges set out its conclusions on the disciplinary powers of the Lords in a short report:

> 8. We have carefully considered the advice of the Attorney General and Lord Mackay of Clashfern. We are unanimously in agreement with the advice of Lord Mackay, and accordingly invite the House to agree the following conclusions:
>
> — The House possesses, and has possessed since before the 1705 resolution, an inherent power to discipline its Members; the means by which it chooses to exercise this power falls within the regulation by the House of its own procedures.
> — The duty imposed upon Members, by virtue of the writs of summons, to attend Parliament, is subject to various implied conditions, which are reflected in the many rules governing the conduct of Members which have been adopted over time by the House.

[131] House of Lords, *Annual Report 2010–2011 Commissioner for Standards*, Foreword.
[132] HL Deb 30 November 2009, cols 590–48.
[133] HL Deb 30 March 2010, col 1290.
[134] HL Deb 2 June 2010, col 256.
[135] Committee for Privileges, *The Conduct of Lord Moonie, Lord Snape, Lord Truscott and Lord Taylor of Blackburn* (HL 2008–09, 88-I) app 2, para 1.

— The House has no power, by resolution, to require that the writ of summons be withheld from a Member otherwise entitled to receive it; as a result, it is not within the power of the House by resolution to expel a Member permanently.
— The House does possess the power to suspend its Members for a defined period not longer than the remainder of the current Parliament [emphasis in original].[136]

The House of Lords adopted the conclusions of the Committee for Privileges on 20 May 2009. It also considered the Committee for Privileges report on *The Conduct of Lord Moonie, Lord Snape, Lord Truscott and Lord Taylor of Blackburn*. The House agreed with the Committee that Lord Truscott and Lord Taylor of Blackburn had breached the Code of Conduct,[137] and suspended the two Lords for the remainder of the 2008–09 Session.[138]

The powers to suspend were subsequently used again in 2010. On 21 October 2010, the House of Lords considered reports from the Committee for Privileges that concluded that three members of the House of Lords—Lord Paul, Lord Bhatia and Baroness Uddin—had incorrectly designated their main home when making claims for expenses made under the Members' reimbursement scheme. The three members of the House of Lords were suspended.[139]

IX. REFLECTIONS

As we have noted in this chapter, changes in the way in which the conduct of Members of Parliament is regulated have occurred intermittently over the years, usually in response to particular events such as scandals or perceived scandals—such as 'cash for questions' in the 1990s and MPs' expenses in 2009—rather than as part of a grand plan. In that respect, the history of regulating Members' conduct is not that different from the history of constitutional changes in the UK, which have as often as not come about in a piecemeal fashion depending on the contingent political pressures of the day. Changes in the regulation of Members' conduct mirror a wider shift in society away from self-regulation to external (in the City, the end of 'my word is my bond' and the establishment of bodies such as the Financial Services Authority and subsequently the Financial Conduct Authority, in the medical world the growth of lay members on the General Medical Council, etc). Parliament has not been slow in the past to react to scandals or malpractice in other professions by legislating for a greater degree of external regulation, so perhaps it was inevitable that similar issues would confront them as well.

Changes in regulation have been challenged in different ways, and usually on the grounds that they represented an attack on the sovereignty of Parliament—but they tend not to have been prevented. In the 1860s concerns were expressed

[136] Committee for Privileges, *The Powers of the House of Lords in Respect of its Members* (n 13) para 8.
[137] Ibid, para 72, para 89.
[138] HL Deb 20 May 2009, cols 1394–418.
[139] HL Deb 21 October 2010, cols 893–903. *Erskine May* (n 8) 201.

that Parliament was abdicating its rights in allowing the courts to determine the outcome of contested parliamentary elections. In the 1990s, during the debate on the motion to appoint the first Parliamentary Commissioner for Standards, Sir Nicholas Winterton MP argued that the House was giving up some of its independence in making such an appointment:

> I believe that it is the first time in history that this High Court of Parliament will, to all intents and purposes, have an outsider deciding its behaviour—in short, the behaviour of Members of this House. I do not believe that we should agree to that.
>
> Tonight, the House of Commons has committed suicide. The independence of the House is now very much in doubt, as is its authority and influence.[140]

And in the twenty-first century, during the second reading debate on the Parliamentary Standards Bill, Sir Patrick Cormack asked, 'Is it not one thing to have a body that regulates the conduct of elections and another thing entirely to have a body that regulates the conduct of the elected?'[141]

The phrases differ over the decades but the sense was the same: each House of Parliament should regulate itself. But on each occasion, the immediate political and public pressure ('something must be done') ended up taking precedence over the constitutional theory.

The argument against external regulation has not always been made on constitutional grounds, though. On 22 May 1974, when the House of Commons agreed to establish the Register of Members' Interests, some Members argued this was unnecessary. One commented that 'The fact that we are all known to each other is the best safeguard of all against improper conduct. If anyone should unhappily fall by the wayside, the police, the Revenue or this House itself can take the necessary measures'. Another commented: 'I believe that Parliament is too serious a place to be subjected to such treatment. Disclosure also lowers our dignity. Why should the Press try to look through a keyhole at our private interests?'[142] These comments raise two issues which have affected developments in this field: the decline of deference and the increased expectation of transparency in public life, associated with a more intrusive media, subjects to which we return at the end of this chapter.

Despite the overall trend recounted in this chapter, regulation of MPs' conduct still remains something of a mixed economy. IPSA sets the budgets for their expenses and administers their reimbursement. Compliance with its rules is not a matter for the House—although it is, of course, a matter for individual Members—but for a statutory compliance officer and ultimately the courts, through a newly created criminal office introduced by the 2009 Act. IPSA now determines the pay and pensions of MPs, but this is hardly a matter of conduct. On the other hand, the Parliamentary Commissioner for Standards investigates

[140] HC Deb 6 November 1995, col 683.
[141] HC Deb 29 June 2009, col 62.
[142] HC Deb 22 May 1974, col 441, col 484.

alleged breaches of the Code of Conduct, but she is appointed by the House and reports to the Committee on Standards, a committee of the House, which makes final recommendations to the House for decision. The position has changed slightly with the addition of lay members to the Committee, but they do not have a vote. So, ultimately Members still decide collectively how to deal with breaches of the Code of Conduct, in that the House as a whole can overturn recommendations from the Committee on Standards (which can itself decline to accept recommendations from the Commissioner).

In the context of the wider shift in society away from self-regulation to external regulation, it is difficult to see how MPs could uniquely be left unaffected. In the same way, MPs can hardly be expected to be exempt from the long-term shift in society from a default position of secrecy in public life to one of greater transparency. (For instance, it is not that long ago that patients had no automatic right to see their own medical records, the expectation being that doctors would know best.) This has been matched by a move away from previous expectations among the public and politicians of deference towards 'the Establishment' to a position which is at best sceptical. We have perhaps moved from a society where trust was the guarantor of probity to one where transparency is regarded as a better guarantor.

Greater transparency has been aided by the introduction of statutory access to information through the Data Protection Act and especially the Freedom of Information Act. The latter has been used extensively by the media and by campaigning groups. Indeed, in this context it is worth recalling that the initial trigger for the expenses scandal was an FOI request; the large amount of material that was eventually obtained by the *Daily Telegraph* would not have been available to the newspaper had it not been for the fact that the courts had ordered a redacted version of it to be prepared for release, following a series of attempts by the House authorities to prevent its disclosure. The 'cash for questions' case in the 1990s was triggered not by an actual case, but by a 'sting' operation by a newspaper against two MPs. So much for preventing the press looking 'through the keyhole'.

Finally, it is worth wondering what might happen next in this field. The new Committee on Standards, with its lay members, has only just started its work, and it will be interesting to see what difference the external element makes to its work and to public and media perceptions of its effectiveness. IPSA had a somewhat stormy start in 2010. A largely new Board took up office early in 2013 and it remains to be seen how this change might affect relations with Members and how the regulator is seen by the public. Given that the expenses scandal continues to have enormous resonance among the public and the media, it seems unlikely that there will be a serious appetite for bringing the regulation of Members' expenses and salaries back in-house or even to make substantive changes, through amendments to the law, in the way IPSA operates. But Parliament did eventually change the statute governing the Electoral Commission to redress perceived problems in its operation and other regulators or quasi-regulators have been reformed or abolished, such as the Audit Commission and the Standards Board for England. The story is not over yet.