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**SELECT COMMITTEE ON  
STANDARDS IN PUBLIC LIFE**

First Report

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*Ordered by The House of Commons to be printed  
6th July 1995*

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HC637-Standards in Public Life

HOUSE OF COMMONS

SESSION 1994-95

**SELECT COMMITTEE ON  
STANDARDS IN PUBLIC LIFE**

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KENYA NATIONAL ASSEMBLY

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*Tuesday 6th June 1995*

Standards in Public Life,—*Ordered*, That a Select Committee of eleven Members be appointed to consider the First Report of the Committee on Standards in Public Life (Cm. 2850) 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;

That the Committee shall report as soon as possible and shall in any event make an interim report not later than Friday 7th July;

That five be the Quorum of the Committee;

That the Committee have power to send for persons, papers and records; to sit notwithstanding any adjournment of the House; and to report from time to time;

That the Committee have power to appoint specialist advisers either to supply information which is not readily available or to elucidate matters of complexity within the Committee's order of reference.—(*Mr. Simon Burns.*)

*Tuesday 13th June 1995*

Standards in Public Life,—*Ordered*, That Mr Quentin Davies, Mr Iain Duncan Smith, Mr John Evans, Sir Archibald Hamilton, Sir Terence Higgins, Sir Geoffrey Johnson Smith, Mr Robert MacLennan, Mr John Morris, Mr Tony Newton, Mr Stanley Orme and Mrs Ann Taylor be members of the Select Committee on Standards in Public Life.—(*Mr Derek Conway.*)

Mr Tony Newton was elected Chairman on 15th June 1995.



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*Handwritten in red ink:*  
Thompson  
COP

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## FIRST REPORT

**The Select Committee on Standards in Public Life has agreed to the following Report:**

### OBJECTIVES AND PURPOSE OF THE REPORT

1. The Prime Minister announced the setting up of the Committee on Standards in Public Life (the Nolan Committee) in the House of Commons on Tuesday 25 October 1994 with the following terms of reference:

*“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.*

*For these purposes, public life should include Ministers, civil servants and advisers, Members of Parliament and UK Members of the European Parliament, members and senior officers of all non-departmental public bodies and of national health service bodies, non-ministerial office holders, members and other senior officers of other bodies discharging publicly-funded functions, and elected members and senior officers of local authorities.”<sup>1</sup>*

2. The first Report of the Nolan Committee, covering Members of Parliament, ex-Ministers' business appointments and quangos was published on 12 May 1995. It was the subject of a debate in the House on 18 May 1995.

3. The House has *not* yet agreed to the conclusions of the Nolan Report, even in general terms. The debate on 18 May took place on the adjournment, and a wide range of views was expressed. We were appointed on 13 June with specific instructions 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 the recommendations relating thereto might be clarified and implemented and to recommend specific Resolutions for decision by the House”. We were also asked to “report as soon as possible”, and in any event to “make an interim report not later than Friday 7 July” (a non-sitting day).

4. Between Thursday 15 June and Thursday 6 July we met on 14 occasions, out of a possible 14 sitting days.

5. It would have been totally impractical to take evidence in the normal way in the three weeks available to us. We did, however, receive a memorandum from the Clerk of the House on the procedural and practical implications of the Nolan recommendations.<sup>2</sup>

6. This is an *interim* Report, which was what the House instructed us to produce by 7 July. We propose to make a further Report to the House before the Committee's life expires at the end of the Session. In that Report, we will review any further progress made towards resolving the outstanding issues and we will make a recommendation to the House as to whether it would be sensible to re-appoint this Committee in the new Session.

### THE PARLIAMENTARY COMMISSIONER FOR STANDARDS

#### *Nolan recommendation:*

*“The House should appoint a person of independent standing, who should have a degree of tenure and not be a career member of the House of Commons staff, as Parliamentary Commissioner for Standards.”*

7. Although this proposal is described by Nolan under the heading “on procedure” and it comes at the end of the list of recommendations, we regard it as fundamental, and one on which the House must take a decision at an early stage since it will determine the whole ethos of the House's future rules and procedures on conduct, and in practical terms will affect the timing of many changes.

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<sup>1</sup> Hansard 25 October 1994, col. 758.

<sup>2</sup> Evidence, p.1.

8. This particular recommendation is clearly controversial. A good deal of opposition to it was voiced in the debate on 18 May, although there was also considerable support for the principle of introducing an independent element into the House's procedures relating to conduct and standards. We note that similarly divergent views were expressed about the proposed appointment of the Registrar in the 1974 Report of the Select Committee on Members' Interests (Declaration)<sup>1</sup>.

9. Nolan, whether intentionally or not, is extremely vague on how the House should proceed if it wishes to go down this path, merely saying under the heading "specific recommendations", that the House should make an appointment. Earlier under "general recommendations" the phrase "by analogy with the Comptroller and Auditor General" is used. This analogy is not, in fact, wholly appropriate, since the Comptroller and Auditor General, although an Officer of the House, is not appointed by the House. He is appointed by the Crown, by letters patent, on the recommendation of the Prime Minister after consultation with the Chairman of the Public Accounts Committee. Similarly, the Parliamentary Commissioner for Administration, another Officer of the House, with whose duties the proposed Parliamentary Commissioner for Standards has been rather loosely compared, is also appointed by letters patent.

10. Even if the House wished to follow through the analogy with the Comptroller and Auditor General in appointing the Commissioner this would require legislation. Both Nolan and the Clerk of the House in his evidence drew attention to the possibility that at some later stage it might be desirable to introduce such legislation, on the lines of the National Audit Act and the Parliamentary Commissioner Act, to cover the functions and duties of the Commissioner. We accept that this is not a matter to be considered now, though the House might wish to return to it in the light of practical experience at some future time.

11. The Clerk of the House indicated in his memorandum that a possible way forward at this stage might be for a recommendation to be made to the Speaker and/or the House of Commons Commission after a recruitment exercise based on open advertisement assisted by a management consultancy. Such a process has been used for other senior House posts, such as the Director of Finance and Administration and the Director of Catering Services.

12. We think this is probably the most sensible approach. The Clerk of the House indicated that it "is doubtful if any specific authority is needed from the House for the appointment to be made" in this manner. That may be procedurally correct, but we would regard it as unacceptable. This proposed appointment would be unique and not in the same category as, for example, the Director of Catering Services. In particular, the Commissioner will be in a position of trust and responsibility which demands a high degree of confidence in him or her on the part of Members. The House will therefore expect to be involved in the final decision and will need to be satisfied on a whole list of practical points before ratifying a recommended appointment. These points include (in no particular order of importance): the job description, salary and grading, supporting staff, accommodation, security of tenure (specifically referred to by Nolan), length of appointment, whether the appointment would be full-time or part-time, and the likely commencement date of the successful candidate.

13. Before coming to conclusions on the principle of establishing a Parliamentary Commissioner for Standards, the House will wish to have some guidance on the terms of reference of the post.

14. We recommend that the principal duties of the Parliamentary Commissioner for Standards should be:

- Maintaining and monitoring the operation of the Register of Members' Interests.
- Providing advice on a confidential basis to individual Members and to the proposed Select Committee on Standards and Privileges (the Committee)<sup>2</sup> about the interpretation of the Code of Conduct<sup>3</sup> and about questions of propriety.
- Preparing guidance and providing induction courses for new Members on matters of conduct, propriety and ethics.
- Monitoring the operation of the Code and, where appropriate, proposing possible modifications of it to the Committee.
- Receiving and investigating complaints about the conduct of Members (whether

<sup>1</sup> HC (1974-75) 102, page xi, para. 33.

<sup>2</sup> See paragraphs 27 to 41.

<sup>3</sup> See paragraphs 42 to 48.



**related directly to alleged breaches of the Code or not) and reporting his findings to the Committee through the Sub-Committee appointed for that purpose.**

15. The Commissioner will operate under the general powers of the Committee, but it will be his responsibility<sup>1</sup> on a day to day basis to conduct investigations into complaints against Members. Any powers to compel the attendance of Members before the Commissioner will be exercisable only by the Committee acting on a request from the Commissioner.

16. We agree with the Clerk of the House, in his memorandum,<sup>2</sup> that an initial two or three year full-time contract for the Commissioner might be appropriate, with the possibility of subsequent renewal on a part-time basis. However, a decision on this matter cannot be made in isolation from the level of support staff available to the Commissioner.

17. Of particular concern, not just in relation to this recommendation of Nolan, but to the timing of many of the others, must be the likely starting date of the successful candidate for the post. The Clerk of the House thought that it might be possible to have the new Parliamentary Commissioner approved by the end of October 1995, after which there could be a delay until the appointee divested himself of any existing responsibilities. Every effort should be made to achieve this target.

18. Our conclusion is that the House should deal with the recommendation on the appointment of a Parliamentary Commissioner for Standards in two stages. The first would be for a simple motion to be moved in the following terms:

**“That the appointment of a Parliamentary Commissioner for Standards be set in hand under arrangements to be made by Madam Speaker on the advice of the House of Commons Commission and in accordance with the recommendations of the Select Committee on Standards in Public Life”.**

19. Such a motion would enable Members to express a view on the general principle. On the assumption that the motion was carried, the recruitment process would then be carried out along the lines suggested by the Clerk of the House.

20. If and when a suitable candidate were recommended by the Speaker and the Commission, a report would be produced by the Commission giving not just the name of the successful candidate but specific answers on the outstanding detailed practical points we have set out in paragraph 12, as well as an outline profile of the proposed person sufficient to enable the House to come to a judgment on whether the relevant qualifications have been met. On the basis of that report, the House would then be asked to approve a motion along the following lines:

**“That AB be appointed Parliamentary Commissioner for Standards on the terms set out in the Report of the House of Commons Commission dated . . .”.**

21. Such a motion would give the House the final say in the appointment, and it would ensure that, having set the process in hand in July as we have suggested, the House was not thereby committing itself at that point without the opportunity of further consideration at this second stage.

22. The House will also expect some guidance from us on the phrase in the Nolan Report to the effect that the Commissioner should be “a person of independent standing who should have a degree of tenure”. There are two aspects to consider: the relationship of the Commissioner to the House; and the relationship of the Commissioner to whatever Committee the House decides upon for the regulation of Members’ conduct.

23. On the question of tenure, there can be no doubt, in the absence of legislation to the contrary, that the House, which will itself have made the initial appointment, must have the ultimate authority to dismiss the Commissioner. We would therefore envisage—though self-evidently, only as a last resort—that the House will have the power to compel dismissal. There is some parallel with the position of the Clerk of the House, whose independence as the senior Officer of the House is safeguarded in that he can only be dismissed by an address of both Houses of Parliament. In the case of the Commissioner an address will not be required, since it will not be a Crown appointment, and unless and until the Commissioner covers both Houses, a single vote by the House of Commons will suffice. **We therefore recommend that the Parliamentary Commissioner for Standards should**

<sup>1</sup> The precise relationship between the Commissioner and the Committee is set out in more detail in Appendix 2.

<sup>2</sup> Evidence, p.14.

**only be removed from office by a substantive resolution of the House along the lines: "That AB be dismissed as Parliamentary Commissioner for Standards".**

24. We deal at greater length in later paragraphs with the relationship of the Commissioner to any new Committee.<sup>1</sup> It is important to stress that there is a delicate balance to maintain here. The Commissioner will be an Officer of the House, not the servant of the Committee. Without statutory authority, however, he can only operate, under the procedures of the House, through the Committee.

25. This point is best illustrated by the Nolan recommendation that the Commissioner should have the same ability to make findings and conclusions public as is enjoyed by the Comptroller and Auditor General and the Parliamentary Commissioner for Administration. As we have already indicated, in the absence of legislation this is procedurally impossible. All the Commissioner's findings and conclusions will have to be made to a Committee, and only a Committee will have the power to publish them.

26. The Committee will determine its own procedures, within the order of reference given to it by the House. We believe that the spirit of what Nolan recommended would be met if the Committee normally published the reports and findings of the Commissioner in full where a prima facie case to answer had been established. This cannot be an absolute rule since this would unacceptably fetter the discretion of the Committee, indeed of any Committee, to decide whether to publish evidence submitted to it. Similarly the Committee must retain the right to add any comments it wishes to make on the Commissioner's findings. We envisage this process taking the form of regular reports to the House from the Committee, to which the Commissioner's findings and conclusions in such cases would be attached as an annex. Where, however, the Commissioner decided that no prima facie case had been established, he would merely report the facts to the Committee. The Committee would inform both the complainant and the Member concerned, but no details of the complaint would be published.

#### PARLIAMENTARY MACHINERY FOR CONSIDERING COMPLAINTS

##### *Nolan Recommendation:*

*"A sub-committee of the Committee of Privileges should be established to take forward individual cases recommended by the Commissioner for further consideration".*

27. This is another recommendation of Nolan described under the heading "on procedure" but, as with the appointment of the Parliamentary Commissioner for Standards, we regard it for a number of reasons as one for early consideration by the House. There is already some dissatisfaction, in the House and outside, with the present machinery for considering complaints about conduct, whether of Members, or of others. There is a need for the Commissioner, if appointed, to have any new machinery in place and working by the time he arrives. Most important, Parliamentary life must go on pending the arrival and full operation of the Commissioner, which we have already indicated is unlikely to happen for some time.

28. Equally, if the House were to reject the Nolan recommendation for the new Commissioner, the proposed changes in Committee structure and procedures could still be carried forward, if the House wished, using existing staff.

29. Recent events, with which the House is familiar, have brought into focus the anomalies and potential overlap caused by having both a Committee of Privileges and a Select Committee on Members' Interests. They have also heightened dissatisfaction with the relevant investigatory procedures.

30. The Committee of Privileges has been in existence, with one short break, since the seventeenth century. Its procedure and powers are governed by Standing Order No 121, but, unlike any other Select Committee it has no terms of reference. In practice it only meets to consider specific complaints against individuals or organisations (though only rarely Members) which have been referred to it by the House. It has no power to appoint advisers, it can only meet when the House is in session, and by convention it has met in private, even when taking evidence. This convention has of course been the subject of recent controversy.

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<sup>1</sup> See Appendix 2.

31. By contrast, the Select Committee on Members' Interests has only been in existence since 1976, following the adoption of the recommendations of an ad hoc Select Committee on Members' Interests (Declaration).<sup>1</sup> It has very specific terms of reference set out in Standing Order No 128, which enable it to consider general matters relating to the declaration and registration of interests as well as individual complaints. Unlike the Committee of Privileges it can meet when the House is not sitting.

32. The Nolan report implied, in addition to the specific recommendation for a sub-committee of the Committee of Privileges, that the Select Committee on Members' Interests might be abolished, with its functions subsumed by the Parliamentary Commissioner for Standards and the Committee of Privileges. But it made no firm recommendation to this effect.

33. In view of the dissatisfaction with the current arrangements expressed not only by Lord Nolan, but by many others including Members themselves, we consider that the House should use this opportunity to envisage the possibility of a more radical re-structuring than that recommended by Nolan, which in any case is procedurally awkward. To leave the question of the future existence of the Select Committee on Members' Interests open in the way implied by Nolan seems to be both unnecessary and the source of potential uncertainty and confusion.

34. On the other hand, the Clerk of the House's suggestion of a new Committee on Standards, coupled with the retention of the Privileges Committee as an appellate body, seems to us to perpetuate all the disadvantages of the present fragmented system without offering any clear benefit in return.

35. On balance, therefore, we believe that the spirit of what is recommended by Nolan, as well as what appears to be the feeling of the House, would best be achieved by the abolition of both the Committee of Privileges and the Select Committee on Members' Interests, and by the establishment of a new Select Committee on Standards and Privileges which would subsume the investigatory functions of both existing Committees and in addition would exercise a continuing advisory and monitoring role on standards of Parliamentary conduct.

36. The long history of the Committee of Privileges is not in itself a justification for maintaining its separate existence unquestioningly. The basic privileges of the House remain vital, and we certainly do not seek to question them, but it is right to examine how they can most effectively be maintained and how breaches of privilege, whether by Members or by others, can best be investigated and dealt with. We consider that the creation of a single new Committee would be the most sensible way of achieving that objective.

37. Detailed discussions and consultation will be necessary to determine the precise terms of the Standing Order creating such a Committee. We have not had the time to carry this out before making this interim Report. Nor indeed would we have thought it right to do so before the House had agreed to the general lines of our proposal.

38. Nevertheless, we set out in an Appendix to this Report<sup>2</sup> what we see as the main desirable features of the new Committee's order of reference, as well as some of the criteria which in our judgment ought to govern its method of operation. We have been particularly concerned to suggest ways in which the principles of natural justice can be upheld in a system which, whilst not affording the full protection of a court of law, is nonetheless more quasi-judicial in character than the House has been used to hitherto.

39. It would be feasible for the House, if it so wishes, to begin the process of establishing the new Committee in July. An appropriate resolution to be considered then might be:

**"That, with effect from the beginning of the next Session, a new Select Committee on Standards and Privileges be established to take over the existing functions of the Committee of Privileges and the Select Committee on Members' Interests and to consider complaints concerning Members' conduct referred to it by the Parliamentary Commissioner for Standards".**

40. If that resolution is agreed to, we recommend that the Clerk of the House should prepare the necessary amendments to Standing Orders, with a view to a specific proposal being put to

<sup>1</sup> HC (1974-75), 102.

<sup>2</sup> See Appendix 2.

**the House in the overspill period, so that the new Committee can come into operation from the beginning of the new Session.**

41. It might be appropriate to leave open the possibility of allowing the Committee of Privileges and the Select Committee on Members' Interests to run on into the new Session, in tandem with the new Committee, in order to enable them to complete consideration of any individual cases already before them. So far as any general matters are concerned, provision should be made for the relevant papers and evidence, if any, to be referred to the successor Committee. The wording of the Standing Order establishing the new Committee will need to take account of this possibility.

#### A CODE OF CONDUCT FOR MEMBERS OF PARLIAMENT

##### *Nolan recommendation:*

*"The House should draw up a Code of Conduct setting out the broad principles which should guide the conduct of Members; this should be restated in every new Parliament".*

42. Nolan lays great stress on Codes of Conduct, not just for the House, but for Ministers, the Civil Service and quangos. Indeed, a draft set of ethical principles (the Seven Principles of Public Life) is set out at the beginning of page 14 of his Report "for the benefit of all who serve the public in any way".

43. A draft Code of Conduct for the House is set out on page 39 of the Nolan Report. Nolan commends this to the House, but accepts that "in line with best practice in the private sector, such a Code is more efficient if the institution to which it is to apply draws it up and is committed to it".

44. We have not had time to examine Nolan's draft Code in detail, still less to prepare our own version, nor indeed do we consider it appropriate that we should do so at this stage before the House has taken a decision in principle. Our concern is solely to make recommendations to the House on how this matter can best be carried forward if the House so decides.

45. In the debate on 18 May<sup>1</sup> Mrs Ann Taylor suggested that the Clerk of the House should be asked to draft a Code of Conduct reflecting the principles set out in Erskine May, which could then be discussed, amended and adopted by the House. We agree that it is entirely appropriate that the Clerk of the House, the House's senior permanent Officer, should be given this task. His draft Code should not, however, be submitted directly to the House; indeed there would be considerable constitutional and procedural problems in such a course. A Code of Conduct for the House is totally within the remit of the proposed new Select Committee on Standards and Privileges. That Committee would be able not only to put a proposed Code of Conduct to the House for approval as soon as practicable, but to keep it under review. It would have the power and the duty to suggest additions or revisions to the Code whenever it thought appropriate, based on experience and advice from the Clerk of the House and the proposed Parliamentary Commissioner for Standards.

46. As a general proposition, we believe that the Code will be more acceptable to the House, and more easily enforceable, if it consists of a series of broad and readily understood principles defining acceptable standards of conduct, rather than a detailed set of rules designed to cater for every possible eventuality. The Code would then of course need to be supported by more detailed rules on particular aspects of conduct, for example along the lines of those already familiar to Members in relation to the registration of interests.

47. It could be a little time after the new Committee is set up before it can begin work. If the House is anxious for the new Code of Conduct to be prepared as soon as possible, we ourselves could begin this task, assuming that the House has agreed the principle. Whichever Committee is given the task of preparing the final Code, the Clerk of the House can begin work during the summer recess. **We recommend accordingly.**

<sup>1</sup> Official Report, c.501.

48. An appropriate resolution for the House to agree if it wishes to initiate this process would be:

**“That this House endorses the principle of a Code of Conduct and instructs the appropriate Select Committee to prepare such a draft Code for approval as soon as possible, taking into account the suggestions of the Nolan Committee and any relevant overseas analogues.”<sup>1</sup>**

#### GUIDANCE TO MEMBERS

##### *Nolan recommendation:*

*“Members should be reminded more frequently of their obligations to register and disclose interests, and that registration does not remove the need for declaration and better guidance should be given, especially on first arrival in the House.”*

49. This is clearly an administrative matter not requiring a specific resolution, and falling eventually within the responsibilities of the proposed Parliamentary Commissioner for Standards. The Clerk of the House drew attention in his memorandum to the existing guidance given to new Members since 1993, but also pointed out that the attempts to provide induction courses after a general election had not been wholly successful. By the time of the next Parliament, with the influx of many new Members, the Commissioner should be fully operational and this should be one of his top priorities. Any new rules regarding declaration and registration should be explained clearly to all Members, as should the Code of Conduct, when approved.

50. **We recommend that the Clerk of the House and the Registrar of Members’ Interests should set in hand the preparation of new written guidance to be given to all Members explaining the rules for registration and declaration of interests and the Code of Conduct, if and when it has been agreed by the House. We also recommend that the guidance should be accompanied by a form, to be signed and returned by Members to the Registrar, or to the Commissioner once he is in post, stating that the recipient has read the document.**

#### BRIBERY OF MEMBERS OF PARLIAMENT

##### *Nolan recommendation:*

*“The Government should now take steps to clarify the law relating to the bribery of, or the receipt of a bribe by, a Member of Parliament.”*

51. This recommendation is in a different category to the other recommendations of the Nolan Committee relating to Members, in that it is addressed to the Government and not to the House. We accept that the initiative lies with the Government, and we also agree with Nolan that the position needs to be clarified.

52. The issue is a complex one, as is clear from the evidence given to the Committee of Privileges by the former Clerk of the House and the Attorney General.<sup>2</sup> Nolan suggested that clarification of the law might usefully be combined with consideration of the statute law on bribery recommended by the Salmon Committee in 1976, and that this might be undertaken by the Law Commission. **We agree and recommend that the Government should ask the Law Commission to undertake an immediate review of the common and statute law relating to bribery, with specific reference to Members of Parliament. The review should concentrate in particular on the degree of doubt which exists about the effectiveness of the common law in dealing with bribery cases involving Members and the practical problems, if any, which arise from this.**

<sup>1</sup> See also paragraph 76.

<sup>2</sup> Essentially the problem has lain in the fact that Members of Parliament have not been deemed to fall within the statutory definition of “office-holder”, as it applies, for example, to local councillors. Until recently this lacuna had been thought to leave Members exempt from legal process for alleged bribery in relation to their Parliamentary duties. However, in 1992, charges were brought against a Member alleging offences of bribery by him and others under the common law; the case against the Member ended with an acquittal. In his evidence to the Privileges Committee the Attorney General stated that the position at common law was “not settled” by this case.

## THE PRINCIPLE OF PAID OUTSIDE INTERESTS

*Nolan recommendation:*

*"Members of Parliament should remain free to have paid employment unrelated to their role as MPs".*

53. This recommendation simply supports the status quo, and no further action is therefore required.

## CONFLICTS OF INTEREST (STANDING COMMITTEES)

*Nolan recommendation:*

*"The rules and guidance on avoiding conflict of interest should be extended to cover the whole range of business pertaining to Parliament, and particular attention should be paid to Standing Committees."*

54. This recommendation is very much a matter for the appropriate Select Committee and for the Parliamentary Commissioner for Standards to consider. There are a number of extremely difficult practical issues, which are set out in the Clerk of the House's memorandum.<sup>1</sup> Further time is needed to clarify them. We hope that this matter will be speedily addressed.

## DECLARATION OF INTERESTS (ORDER PAPER)

55. Neither in the list of general conclusions nor in the list of individual recommendations does the Nolan Report put forward specific proposals for declaration, as opposed to registration, of interests. However, in the text on page 37, paragraph 83 there is a proposal for interests to be declared by means of appropriate symbols on the Order Paper, in relation to all Parliamentary proceedings.

56. This is a matter on which the House, if it so wishes, can take action without delay, and which does not depend on the establishment of the Parliamentary Commissioner for Standards. The 1974 Committee considered this issue in great detail<sup>2</sup> and specific recommendations were put forward in Annexes to the Report.<sup>3</sup> The House did not adopt them at that time, on the grounds that they were cumbersome and unnecessary, although recently, following further consideration by the Select Committee on Members' Interests, it has required by resolution the proposer (though not other signatories) of an Early Day Motion to indicate a relevant interest by means of a letter "R".

57. There are no significant practical difficulties in implementing these proposals without delay. The resolution of 12 June 1975, which in effect declined to give effect to the 1974 Committee's proposals, stated:—

- (i) Any interest declared in a copy of the register of Members' Interests shall be regarded as sufficient disclosure for the purpose of taking part in any Division of the House or in any of its Committees.
- (ii) The term 'proceeding' shall be deemed not to include the giving of any written notice, or the asking of a supplementary Question".

58. We think it right to maintain the present position for Divisions and for supplementary Questions. As the Clerk of the House pointed out, any symbol for Divisions would have to be retrospective, and would be extremely cumbersome to administer. The oral declaration of interests in a supplementary Question would retard a process which the Speaker has frequently stated is already too slow, and we do not believe it to be either necessary or desirable.

59. Different considerations apply to those activities of Members which appear in written form, namely oral and written Questions, Early Day Motions and amendments to Bills. The House should be invited to take forward the process it has already adopted for the sponsor of an Early Day Motion by requiring all Members who table a Question, written or oral, or an amendment to a Bill, whether in Standing Committee or in the House, or who add their names to an Early Day Motion or amendment

<sup>1</sup> Evidence pp.4 and 5.

<sup>2</sup> HC (1974-75) 102, pp. xii to xv.

<sup>3</sup> *Ibid*, pp. xxi-xxii.

to it, to indicate a relevant interest. The appropriate resolution for the House to consider in order to give effect to this proposal would be:

**“That, with effect from the beginning of next Session, the Resolution of 12 June 1975 relating to Members’ Interests (Declaration) (No. 2) shall be amended by leaving out the words ‘the giving of any written notice or’”.**

60. This resolution is necessarily somewhat technical, but the Table Office would prepare a guidance note for Members to explain its exact effect. If the new rules were intended to come into effect in time for the new Session, it would be desirable, because of the preparations the Table Office would need to make, if the necessary Motion could be put to the House in July.

#### OPERATION OF THE REGISTER

##### *Nolan recommendations:*

*“The Register should continue broadly in its present form and should be published annually. However the detailed entry requirements should be improved to give a clear description of the nature and scope of the interests declared”.*

*“Updating of the Register should be immediate. The current updated version should be made more widely available electronically”.*

61. We see a clear distinction in the Nolan recommendations between what is essentially an improvement in the form of the Register and what is simply a matter of updating it and increasing its availability.

62. So far as the former is concerned, the principle of injecting further transparency into the Register, particularly through greater standardisation and consistency of entries, is unobjectionable.

63. We agree with Nolan that the Register:

*“should give a clear picture of the nature of the interest in question, and in particular of the nature of any activity that the Member is undertaking for payment, in order that a possible conflict of interest can be readily discerned.”<sup>1</sup>*

64. However, the precise implementation of this objective will depend to a great extent on what is eventually decided about such issues as the kinds of outside activity which might be banned altogether and the extent of any new disclosure requirement in relation to contracts and sums received.<sup>2</sup> Nevertheless, there may be measures in this direction which could be taken in the meantime.

65. Updating and increasing the availability of the Register, on the other hand, is an administrative matter, initially for the Registrar, and subsequently for the Parliamentary Commissioner for Standards. The Clerk of the House gave details in his memorandum of steps already being taken by the Registrar in this regard.<sup>3</sup>

**66. We recommend that the Registrar of Members’ Interests, and ultimately the Commissioner, should continue to seek ways both of enhancing and accelerating the process of updating the Register and of making it more widely available, whether through the Parliamentary data and video network or otherwise.**

#### THE 1947 RESOLUTION

##### *Nolan recommendation:*

*“The House of Commons should restate the 1947 resolution which places an absolute ban on Members entering into contracts or agreements which in any way restrict their freedom to act and speak as they wish, or which require them to act in Parliament as representatives of outside bodies.”*

<sup>1</sup> Nolan Report, para. 65.

<sup>2</sup> See paras. 77 to 86.

<sup>3</sup> Evidence, p.13.

67. The 1947 Resolution reads as follows:

“That it is inconsistent with the dignity of the House, with the duty of a Member to his constituency, and with the maintenance of the privilege of freedom of speech, for any Member of the House to enter into any contractual agreement with an outside body, controlling or limiting the Member’s complete independence and freedom of action in Parliament or stipulating that he shall act in any way as the representative of such outside body in regard to any matters to be transacted in Parliament; the duty of a Member being to his constituency and to the country as a whole, rather than to any particular section thereof”.

68. In his memorandum, the Clerk of the House described<sup>1</sup> the relatively narrow origins of the Resolution, which was intended to reaffirm that any attempt by an outside organisation to influence improperly one of its officers who was also a member of the House was a contempt.

69. The Nolan recommendation is simple, both procedurally and in practical terms. It merely asks the House to re-affirm the existing rules, since the 1947 resolution has never been rescinded and remains binding on Members.

70. However, in deciding what course of action to adopt in July, the House will wish to consider what the Nolan Report itself says on this matter. We draw particular attention to the statement in paragraph 29 on page 25 that “this resolution, which appears at first sight clear and unequivocal, contains within itself the seeds of the current problem”. These words are then amplified in subsequent paragraphs, which refer in particular to the potential conflict of interest involved in relationships with clients through consultancies.

71. In making this statement, Nolan acknowledges that the original intentions behind the 1947 Resolution—admirably clear and concise in their own terms—have been clouded and eroded by the assumption, which has developed since the creation of the Register of Interests, that any activity declared is acceptable. This sentiment is echoed by the Clerk of the House in his Memorandum,<sup>1</sup> where he states in paragraph 7: “an unamended re-statement of the (1947) Resolution by the House might simply continue to be interpreted narrowly or might itself cause confusion. A longer term task will be to establish a Code of Conduct for Members. It might be best to frame a new Resolution at that time which is to the same purpose as the 1947 Resolution but is more precisely related to the principal concerns of the Nolan Committee and to the exact wording of that code.”

72. One form of words which has been put to us for consideration as a possible re-worked version of the 1947 Resolution is as follows:

“That it is inconsistent with the dignity of the House, with the duty of a Member to his constituency, and with the maintenance of the privilege of freedom of speech, for any Member of the House to make any speech in the House or in any Committee thereof, bring forward or sponsor any Bill or Motion or any amendment thereto, or ask any Parliamentary Question, or to refrain from doing any of those things, for a fee, payment, retainer or reward, direct or indirect, which he has received, is receiving or expects to receive.”

73. This formulation is based on the recommendation of the 1969 Select Committee on Members’ Interests (Declaration),<sup>2</sup> but it specifies more clearly what is meant by action in Parliament in this context. To this extent, the suggested wording can be viewed as going beyond the Nolan recommendation, although in doing so it might be seen as helping to tackle the underlying problem of the current lack of a clear definition of unacceptable behaviour by Members in relation to the promotion of outside interests.

74. A variation on this approach would draw together the Nolan recommendations on both consultancies (with which we deal later) and the 1947 Resolution, and would seek to define those activities regarded as unacceptable, based on the distinction between advocacy and advice. A possible Resolution to this effect would be:

“That this House believes that advocacy undertaken by Members for remuneration on behalf of others should be prohibited; that for this purpose the following would fall within the definition of advocacy: the tabling of written questions, early day Motions, and amendments to legislation; that speeches in the House or its Committees should continue to be subject to the existing rules on declaration of interests, that all other services should be considered as

<sup>1</sup> Evidence, p.3.

<sup>2</sup> “the Strauss Committee”.



advisory and as such would fall within the scope of the 1947 Resolution; and that in consequence it would not be necessary for estimates or monetary value covering these or other matters to be declared in the Register of Member' interests."

75. These are matters for later consideration by the appropriate Committee. For the immediate future, we agree that a simple re-statement of the 1947 Resolution now would risk pre-empting subsequent decisions by the House both on the rules concerning interests and on the establishment of the Code of Conduct. We also accept, for the same reason, that it would not be sensible to attempt to deal with the Nolan recommendations on the 1947 Resolution and the Code of Conduct separately, since they are to a great extent inter-related.

76. We therefore recommend that the resolution we have already proposed in relation to the Code<sup>1</sup> should be extended by adding at the end the words:

**“; and whilst re-stating its commitment to the objectives of the 1947 Resolution, accepts the need to review its wording in the context of the work to be undertaken on the draft Code.”**

#### CONSULTANCIES AND DISCLOSURES IN THE REGISTER

##### *Nolan Recommendations:*

##### (a) On Consultancies

*“The House should set in hand without delay a broader consideration of the merits of Parliamentary consultancies generally, taking account of the financial and political funding implications of change.”*

*“The House should prohibit Members from entering into any agreements in connection with their role as Parliamentarians to undertake services for or on behalf of organisations which provide paid Parliamentary services to multiple clients or from maintaining any direct or active connections with firms, or parts of larger firms, which provide such Parliamentary services”*

##### (b) On Disclosure

*“From the beginning of the 1995–96 Session (expected in November) Members should be required to deposit in full with the Registrar any contracts relating to the provision of services in their capacity as Members, and such contracts should be available for public inspection”*

*“From the same time, Members should be required to declare in the Register their annual remuneration, or estimated annual remuneration, in respect of such agreements. It would be acceptable if this were done in bands, eg. under £1,000; £1,000—£5,000; £5,000—£10,000; then in £5,000 bands. An estimate of the monetary value of benefits in kind, including support services, should also be made”.*

*“Members should be advised in their own interests that all employment agreements which do not have to be deposited should contain terms, or be supported by an exchange of letters, which make it clear that no activities relating to Parliament are involved”*

77. Although these Nolan recommendations adopt different approaches and different timescales, the issues involved are in fact very closely related and therefore need to be addressed together. We see no logic in attempting to produce definitive resolutions on some matters before other issues, which must be clarified first, have been dealt with.

78. A number of key terms used in the Nolan proposals have not yet been defined—a task made more difficult by Nolan's use of subtly different expressions covering apparently the same point in different recommendations. It is not clear, for example, whether “the provisions of services in their capacity as Members”, “activities in Parliament” and “Parliamentary services” are intended to be synonymous, and their meaning is in any case not specified. Other terms which would have to be defined more closely before a workable proposal could be put to the House are “firms” (whether, for instance, partnerships are covered) and “agreements” (whether only a legally binding contract is included and whether only written agreements are covered).

<sup>1</sup> See para 48.

79. Other uncertainties surround questions such as:

- the extent to which the proposals are intended, and should, cover only multi-client organisations involved in activities which Nolan describes as “lobbying” and, if so, how this is to be defined;
- whether there is any logical case for exempting from the scope of any new rules firms with single clients, thus leaving a Member free to advise a number of firms individually but not to advise a firm which has them as its clients;
- the effect of the proposed restrictions on bodies such as trade associations, charitable organisation and pressure groups.

80. We believe that Members who have existing agreements entered into in good faith, and in conformity with the rules as they currently exist, would be put in a wholly unreasonable position if the Nolan proposals were implemented before these practical problems had been resolved.

81. Other important factors arise. The proposal to ban any agreement “to undertake services for or on behalf of organisations which provide paid Parliamentary services to multiple clients or to maintain any direct or active connection with firms, or parts of larger firms, which provide such Parliamentary services” is acknowledged by the Nolan Report itself to raise difficult issues for those Members whose background is in the legal, accountancy or other professions, and who maintain a continuing connection with their firm or partnership. The suggestion in the Nolan Report is that such a connection should not be retained “unless arrangements can be made to separate completely the Member’s interest in the firm from that part of its work” (ie the offering of Parliamentary services). But it is far from clear what in practice might be regarded as fulfilling such a requirement.

82. Similarly, the Nolan recommendations relating to disclosure in the Register would appear, on the face of it, to entail the depositing, with an indication of the amount of payment involved, of every contract entered into by a Member undertaking in that capacity a television or radio interview, or writing an article for a newspaper or journal. We doubt that this is what Nolan intended but it is another issue which must be clarified.

83. We believe that we would have failed to carry out the instructions given to us by the House (which referred both to *clarification* and implementation of the Nolan proposals) if we had put forward in this Report resolutions which did not deal with these issues and which left unaddressed the very uncertainties and practical problems which aroused widespread concern when the Nolan report was first published. Indeed, such a course would merely replace the uncertainty referred to in the Nolan Report with fresh uncertainty.

84. We were asked by the House to produce an *interim* report by 7th July; this clearly implies that the House did not expect us to come up with fully worked out proposals on every aspect of the Nolan recommendations. We have sat almost continuously since we were appointed on 13th June. In that very short space of time, we have made substantial progress—probably more than the House could realistically have expected—towards completing our task. We have put forward recommendations to the House on the appointment of the Parliamentary Commissioner for Standards and the establishment of the new Select Committee, two of the three cornerstones of the Nolan proposals. In addition, we have reached conclusions, either in the form of suggested immediate action or of further examination, on a number of subsidiary matters.

85. We believe the right course now would be for us to proceed to tackle speedily the matters which we have identified as requiring further detailed study, in particular consultancies and disclosures in the Register. We have the power to sit when the House is adjourned and we intend to make a further Report to the House as a matter of urgency, if possible by the end of the current Session.

86. **We therefore recommend that the following motion be tabled for the debate in July:**

**“That this House endorses the need for an examination of the recommendations of the Nolan Committee on Standards in Public Life relating to consultancies (including multi-client consultancies) and disclosures in the Register; and instructs the Select Committee on Standards in Public Life to conduct such an examination and to seek to bring forward proposals on these matters by the end of the current Session.”**

## MATTERS FOR DECISION BY THE HOUSE IN JULY

87. At the end of this Report, in Appendix 1, we set out a series of specific resolutions on which the House can be asked to make decisions in July. They fall into three distinct categories.

88. Resolutions 1 and 2, on the Parliamentary Commissioner for Standards and the Select Committee on Standards and Privileges, are concerned with the machinery for carrying forward the Nolan recommendations. Although they are only concerned with administrative arrangements, they are in our view crucial if the House decides that it wishes to put into effect the broad thinking behind the Nolan Report.

89. Resolutions 3 to 5 relate to specific policy matters on which Nolan made recommendations, namely a Code of Conduct, additional procedures for declaration of interests, and a study of the merits of Parliamentary consultancies and disclosures in the Register.

90. Resolution 6 encapsulates the various recommendations we have made in the Report which are largely concerned with further administrative action and study. If the House agrees to this resolution, the necessary work can be carried forward without delay to prevent loss of momentum, and to enable further progress to be made in the overspill or in the new Session.

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**APPENDIX 1**

## SPECIFIC RESOLUTIONS FOR DECISION BY THE HOUSE

1. *Parliamentary Commissioner for Standards*

**That the appointment of a Parliamentary Commissioner for Standards be set in hand under arrangements to be made by Madam Speaker on the advice of the House of Commons Commission and in accordance with the recommendations of the Select Committee on Standards in Public Life.**

2. *Select Committee on Standards and Privileges*

**That, with effect from the beginning of the next Session, a new Select Committee on Standards and Privileges should be established to take over the existing functions of the Committee of Privileges and the Select Committee on Members' Interests and to consider complaints concerning Members' conduct referred to it by the Parliamentary Commissioner for Standards.**

3. *Code of Conduct*

**That this House endorses the principle of a Code of Conduct, and instructs the appropriate Select Committee to prepare such a draft Code for approval as soon as possible, taking into account the suggestions of the Nolan Committee and any relevant overseas analogues; and whilst restating its commitment to the objectives of the 1947 Resolution, accepts the need to review its wording in the context of the work to be undertaken on the draft Code.**

4. *Declaration of Interests*

**That, with effect from the beginning of the next Session, the resolution of 12 June 1975 relating to Members' Interests (Declaration) (No. 2) be amended by leaving out the words "the giving of any written notice or".**

### 5. *Consultancies and Disclosures in the Register*

**That this House endorses the need for an examination of the recommendations of the Nolan Committee on Standards in Public Life relating to consultancies (including multi-client consultancies) and disclosures in the Register; and instructs the Select Committee on Standards in Public Life to conduct such an examination and to seek to bring forward proposals on these matters by the end of the current Session.**

### 6. *Standards in Public Life (General recommendations)*

**That this House agrees with the recommendations contained in the First Report from the Select Committee on Standards in Public Life (HC 637).**

(The actual Motion tabled for consideration by the House under this heading will need to identify more closely, for example by a paragraph reference, the recommendations contained in our Report).

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## APPENDIX 2

### THE COMMITTEE ON STANDARDS AND PRIVILEGES

#### a) *Powers, Functions and Relationship with the Commissioner*

1. The remit of the new Committee (which should have a significantly smaller membership than the 17 of the existing Privileges Committee) would cover three main types of case:

- (i) those of a traditional privilege kind currently dealt with by the Privileges Committee and usually involving non-Members;
- (ii) those involving the declaration and registration of Members' interests, currently considered by the Select Committee on Members' Interests; and
- (iii) those arising from complaints about Members' conduct more generally, particularly alleged breaches of the proposed new Code of Conduct.

2. In addition, the Committee would have a general responsibility to oversee the work of the Commissioner, to monitor the operation of the Code of Conduct, and to consider any modifications which might seem necessary from time to time.

3. Cases in the first category, that is to say traditional privilege matters, would be referred to the new Committee by the House, on a motion, with the Speaker continuing to act as an initial filter to weed out vexatious, trivial, or otherwise unsubstantiated complaints. Cases in the second and third categories would reach the Committee via the Commissioner in the manner described below.<sup>1</sup>

4. The new Committee should have the power to appoint one of more Sub-Committees, one of which would be empowered:—

- (i) to receive reports from the Commissioner in cases where he or she had decided that there was no *prima facie* case to answer; the Sub-Committee would not be expected to question the Commissioner's findings in such cases.
- (ii) to receive and consider reports from the Commissioner in cases where he or she had accepted that there was a *prima facie* case to answer and had reached an agreed course of action with the Member or Members concerned. A course of action could range from an apology to a penalty. Where the imposition of a penalty required the authority of the House, such as a period of suspension, the Sub-Committee would refer the case to the full Committee, which would make a formal recommendation to the House. In a case where the agreed course of action did not require the endorsement of the House, the Sub-Committee's decision on the Commissioner's report would be final.

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<sup>1</sup> A diagram illustrating the route followed by complaints is at Appendix 3.

5. Where a *prima facie* case had been accepted by the Commissioner, but no agreement had been reached with the Member or Members concerned on a course of action, the case would automatically be referred to the full Committee, which would adjudicate and, where a penalty was deemed appropriate, make a recommendation to the House. If the full Committee decided upon action falling short of a penalty, but which nonetheless required the co-operation of the Member or Members involved (such as an apology or an undertaking about future conduct), any Order to that effect should have the same force as an Order of the House.

6. A Member who challenged the Commissioner's findings, either as regards the facts or the judgement, would have a right to have his case referred to the full Committee as set out under para (5) above.

7. *Although it is implicit in the preceding paragraphs, it must be clearly emphasised that the authority to impose any penal sanctions would remain with the House, even in cases where the Member in question did not challenge the recommendation.*

8. Both in its own right and in order to buttress the role of the Commissioner, the Committee would need the standard powers to send for persons, papers and records. In addition, however, the power to send for persons will have to be extended, in a way not available to any existing Select Committee, to cover Members. The work of both the Commissioner and the Committee would be unacceptably hampered if in those cases—no doubt rare—of non co-operation by a Member, the Committee had to go to the House to seek appropriate enforcement action. These powers would be exercised by and in the name of the Committee—they would not be delegated to the Commissioner. Such a delegation of powers would, in any case, almost certainly require legislation.

9. The Committee might wish to consider using its power to appoint Sub-Committees to establish a separate Sub-Committee to deal specifically with traditional privilege cases.

10. The Committee should have the normal power to sit notwithstanding any adjournment of the House.

#### *b) Modus Operandi*

##### *Deliberation*

11. The Committee (and any of its Sub-Committees) should maintain the long standing practice of deliberating only in private.

##### *Evidence in Private or Public*

12. It could be argued that there should be a presumption in favour of taking evidence in public, with the Committee—or Sub-Committee—retaining the right to decide in specific circumstances, particularly involving the cross-examination of witnesses in individual conduct or privilege cases, whether considerations of practicality, confidentiality or observance of the House's *sub judice* rule, required a meeting to be held in private.

13. An alternative approach is that because of the need to protect individuals' rights, and in the interests of natural justice, taking evidence in public would normally be difficult to justify, although in some circumstances a Member who was the subject of a complaint might prefer to give his evidence in public. In such a case, provided there was no risk of breaching the House's *sub judice* rule, the Committee or Sub-Committee would normally be expected to accede to such a request.

14. These must be matters for the new Committee to determine for itself as it accumulates experience.

##### *Power to exclude Broadcasters from Public Meetings*

15. In the special circumstances of the proposed new Committee there is a case for allowing it a discretion to preclude the televising or sound broadcasting of particular proceedings held in public. This would be a power which the House has hitherto granted only to Private Bill and Hybrid Bill Committees.<sup>1</sup> It could only be justified in relation to the new Committee on the grounds that the

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<sup>1</sup> In the case of these Committees there is a blanket prohibition on the broadcasting of their proceedings.

broadcasting of the examination of witnesses—particularly in the form of brief and unrepresentative extracts on news programmes—would risk giving wide and immediate publicity, under the protection of Parliamentary privilege, to serious allegations against individual Members (or others). These might subsequently prove to be wholly unfounded, but the manner of their publication would allow no effective remedy.

16. On the other hand, it has to be recognised that to curtail the freedom of broadcasters in this way would create an anomaly, as the House has no power, in the absence of legislation akin to the Contempt of Court Act, to control or restrict the reporting by the press of proceedings to which they have been admitted. Moreover, any power to prevent the broadcasting of public Committee meetings would have to be exercised reasonably since if such a decision were taken at very short notice, the broadcasters could, through no fault of their own, incur nugatory expenditure on preparations for transmission. Nevertheless, we believe that such a power should be included in the Committee's proposed orders of reference, in order to enable the House to express a view on it.

*The Role of the Attorney General.*

17. The Committee, or any Sub-Committee, should be able to invite the Attorney General to assist them in their deliberations and evidence-taking (including cross-examination), but it would not be necessary for the Attorney to be formally appointed to the Committee for this purpose. (There is a precedent, in the form of the Select Committee on Conduct of Members in the mid 1970s, for the Attorney, although not appointed to the Committee, to be able to take part in proceedings, while not being able to vote). The Attorney's role in this respect would not, however, preclude the Committee from seeking other specialist legal advice, if it wished, although such specialist advisers would not be able to take part in any public proceedings of the Committee.

*The right to be accompanied by Advisers.*

18. Members who are the subject of a complaint should have the right to be accompanied by an adviser at every stage of a case (ie both before the Commissioner and before the Sub-Committee and/or full Committee). Subject to the specific exemption described in paragraph 21 below, the role of such an adviser must be confined to the giving of advice, passing of notes etc., and he would not be entitled to speak unless formally invited by the Committee or Sub-Committee to attend as a witness.

19. A special power was given to the 1976 Select Committee on Conduct of Members "to hear Counsel to such an extent as they think fit". Under this arrangement a Member whose conduct was being examined was able, if he wished, *and if the Committee agreed*, to be accompanied by a barrister and a solicitor while giving his evidence. The barrister was able not only to answer questions on behalf of the Member concerned but could himself also ask the Member questions and make statements on his behalf. The barrister was, not, however, permitted to ask questions of other witnesses.<sup>1</sup> We do not think it necessary for the new Committee to have this power from the start, although it would of course be possible for it to make a Special Report to the House at any time requesting that its order of reference be amended accordingly.

*Other measures to protect natural justice.*

20. In the interests of natural justice, the Member whose conduct is under investigation should have the right to attend any meeting of the Committee at which other witnesses relevant to the case are giving evidence and to cross-examine them. The Member concerned would not, however, be able to take part in the deliberations of the Committee and would have to withdraw as soon as the relevant oral evidence had been completed.

21. In traditional Privilege cases, where Members are not usually involved, it would be important to ensure that the "accused" was not treated any less favourably than a Member in a conduct case. An equivalent right should therefore be extended to a non-Member accused of a breach of privilege to be accompanied by an adviser, subject to the same conditions as are set out in paragraph 17 above in relation to cases taken up by the Commissioner.

22. The position of those under investigation in both conduct and Privilege cases would be further safeguarded by the right to see written evidence from other witnesses. There is also a precedent for

<sup>1</sup> This power was exercised in the case of John Cordle, MP.

non-Members<sup>1</sup> being allowed to sit in on evidence heard in private from witnesses relevant to their case. This would allow, for example, the complainant in a conduct case to hear the relevant Member's evidence and would also allow the Member's adviser to be present when the complainant was being examined. In a privilege case involving a non-Member, the person who was the subject of the complaint could also avail himself of this facility.

23. A Member who is the subject of a complaint should have the formal right to submit a written statement to the Committee or Sub-Committee, rebutting or challenging any findings of the Commissioner.

24. A Member who is the subject of investigation should also have the right to request the sidelining of any written evidence submitted by him. In deciding whether to accede to such a request, the Committee or Sub-Committee would be required to weigh carefully the respective demands of fairness to the Member concerned, on the one hand, and the public interest in openness on the other.

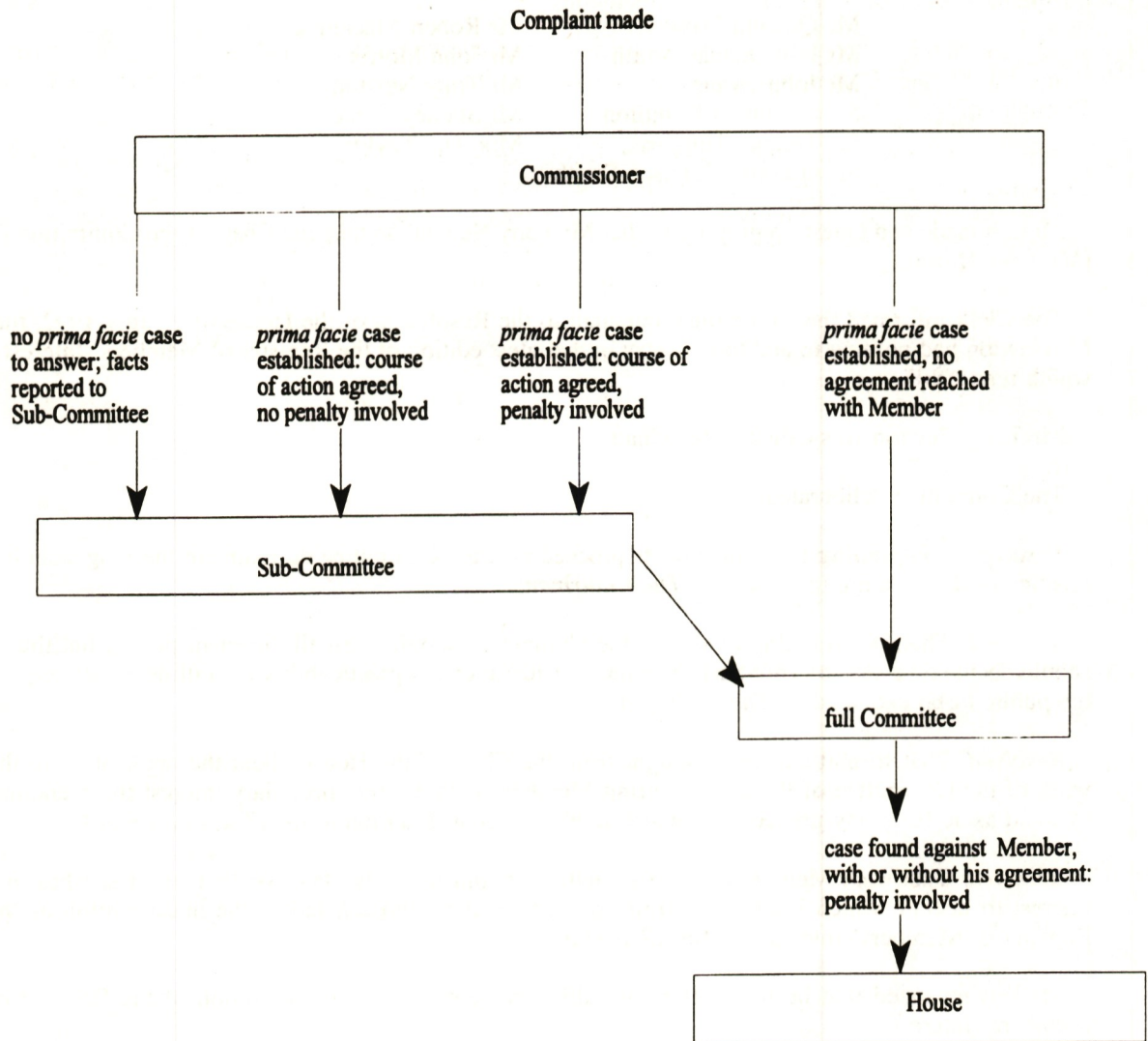
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<sup>1</sup> The practice of the House allows Members to attend private meetings of Select Committees to which they have not been appointed. However, under a Standing Order passed on 20th April 1995, Select Committees have the power to order the exclusion of a Member whose presence is deemed to be obstructive.

APPENDIX 3

DIAGRAM ILLUSTRATING ROUTE FOLLOWED BY CASES INVOLVING MEMBERS' CONDUCT





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## PROCEEDINGS OF THE COMMITTEE

THURSDAY, 15 JUNE 1995

Members present:

Mr Quentin Davies	Mr Robert MacLennan
Mr Iain Duncan Smith	Mr John Morris
Mr John Evans	Mr Tony Newton
Sir Archibald Hamilton	Mr Stanley Orme
Sir Terence Higgins	Mrs Ann Taylor
Sir Geoffrey Johnson Smith	

Motion made and Question proposed, That Mr Tony Newton do take the Chair of the Committee.—  
(*Mr John Morris.*)

The Clerk informed the Committee, pursuant to the Resolution of the House of 13 July 1992, that Mr Newton had nothing to add to his entry in the latest edition of the Register of Members' Interests, which read "Nil".

Mr Tony Newton was called to the Chair.

The Committee deliberated.

*Resolved*, That, during the course of its proceedings, the Committee do maintain the long standing practice of deliberating in private.—(*The Chairman.*)

*Resolved*, That, when taking evidence, the Committee should normally meet in public, but that it should decide on a case by case basis whether considerations of practicability or confidentiality require the public to be excluded.—(*The Chairman.*)

*Resolved*, That formal advice be sought from the Clerk of the House about the application to the work of the Committee of the rule requiring Members with a direct pecuniary interest in an enquiry to stand aside from any proceedings which might affect such an interest.—(*The Chairman.*)

*Resolved*, That each Member of the Committee should formally state whether he or she has any interest to declare which is different from, or additional to, those listed in the latest edition of the Register of Members' Interests.—(*The Chairman.*)

Mr Davies stated that he had nothing to add to his entry in the latest edition of the Register of Members' Interests.

Mr Duncan Smith stated that he had nothing to add to his entry in the latest edition of the Register of Members' Interests.

Mr Evans stated that he had nothing to add to his entry in the latest edition of the Register of Members' Interests.

Sir Archibald Hamilton stated that he had nothing to add to his entry in the latest edition of the Register of Members' Interests.

Sir Terence Higgins stated that he had nothing to add to his entry in the latest edition of the Register of Members' Interests.

Sir Geoffrey Johnson Smith stated that he had nothing to add to his entry in the latest edition of the Register of Members' Interests.

Mr. MacLennan stated that he had nothing to add to his entry in the latest edition of the Register of Members' Interests.

Mr Morris stated that he had nothing to add to his entry in the latest edition of the Register of Members' Interests.

Mr Orme stated that he had nothing to add to his entry in the latest edition of the Register of Members' Interests.

Mrs Taylor stated that she had nothing to add to her entry in the latest edition of the Register of Members' Interests.

The Committee deliberated further.

[Adjourned till Monday 19 June at half past Seven o'clock.]

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MONDAY 19 JUNE 1995

Members present:

Mr Tony Newton, in the Chair

Mr Quentin Davies	Sir Geoffrey Johnson Smith
Mr Iain Duncan Smith	Mr Robert MacLennan
Mr John Evans	Mr John Morris
Sir Archibald Hamilton	Mr Stanley Orme
Sir Terence Higgins	Mrs Ann Taylor

The Committee deliberated.

*Resolved*, That the Committee takes note of the letter dated 19 June 1995 from the Speaker to the Chairman of the Committee about the application of the rules governing Members' Interests to the work of the Committee.—(*The Chairman.*)

[Adjourned till tomorrow at half past Nine o'clock.]

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TUESDAY 20 JUNE 1995

Members present:

Mr Tony Newton, in the Chair

Mr Quentin Davies	Sir Geoffrey Johnson Smith
Mr Iain Duncan Smith	Mr Robert MacLennan
Mr John Evans	Mr John Morris
Sir Archibald Hamilton	Mr Stanley Orme
Sir Terence Higgins	Mrs Ann Taylor

The Committee deliberated.

[Adjourned till tomorrow at half past Ten o'clock.]

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WEDNESDAY 21 JUNE 1995

Members present:

Mr Tony Newton, in the Chair

Mr Quentin Davies	Sir Geoffrey Johnson Smith
Mr Iain Duncan Smith	Mr Robert Maclennan
Mr John Evans	Mr John Morris
Sir Archibald Hamilton	Mr Stanley Orme
Sir Terence Higgins	Mrs Ann Taylor

The Committee deliberated.

[Adjourned till tomorrow at half past Five o'clock.]

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THURSDAY 22 JUNE 1995

Members present:

Mr Tony Newton, in the Chair

Mr Quentin Davies	Sir Geoffrey Johnson Smith
Mr Iain Duncan Smith	Mr Robert Maclennan
Mr John Evans	Mr John Morris
Sir Archibald Hamilton	Mr Stanley Orme
Sir Terence Higgins	Mrs Ann Taylor

The Committee deliberated.

[Adjourned till Monday next at Five o'clock.]

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MONDAY 26 JUNE 1995

Members present:

Mr Tony Newton, in the Chair

Mr Quentin Davies	Sir Geoffrey Johnson Smith
Mr Iain Duncan Smith	Mr Robert Maclennan
Mr John Evans	Mr John Morris
Sir Archibald Hamilton	Mr Stanley Orme
Sir Terence Higgins	Mrs Ann Taylor

The Committee deliberated.

[Adjourned till tomorrow at Four o'clock.]

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TUESDAY 27 JUNE 1995

Members present:

Mr Tony Newton, in the Chair

Mr Quentin Davies	Sir Geoffrey Johnson Smith
Mr Iain Duncan Smith	Mr Robert Maclennan
Mr John Evans	Mr John Morris
Sir Archibald Hamilton	Mr Stanley Orme
Sir Terence Higgins	Mrs Ann Taylor

The Committee deliberated.

[Adjourned till tomorrow at half past Ten o'clock.]

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WEDNESDAY 28 JUNE 1995

Members present:

Mr Tony Newton, in the Chair

Mr Quentin Davies	Sir Geoffrey Johnson Smith
Mr Iain Duncan Smith	Mr Robert Maclennan
Mr John Evans	Mr John Morris
Sir Archibald Hamilton	Mr Stanley Orme
Sir Terence Higgins	Mrs Ann Taylor

The Committee deliberated.

[Adjourned till tomorrow at half past Five o'clock.]

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THURSDAY 29 JUNE 1995

Members present:

Mr Tony Newton, in the Chair

Mr Quentin Davies	Sir Geoffrey Johnson Smith
Mr Iain Duncan Smith	Mr Robert Maclennan
Mr John Evans	Mr Stanley Orme
Sir Archibald Hamilton	Mrs Ann Taylor
Sir Terence Higgins	

The Committee deliberated.

[Adjourned till Monday at Eleven o'clock.]

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MONDAY 3 JULY 1995

Members present:

Mr Tony Newton, in the Chair

Mr Quentin Davies	Sir Geoffrey Johnson Smith
Mr Iain Duncan Smith	Mr Robert Maclennan
Mr John Evans	Mr John Morris
Sir Archibald Hamilton	Mr Stanley Orme
Sir Terence Higgins	Mrs Ann Taylor

The Committee deliberated.

[Adjourned till tomorrow at half past Ten o'clock.]

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TUESDAY 4 JULY 1995

Members present:

Mr Tony Newton, in the Chair

Mr Quentin Davies	Sir Geoffrey Johnson Smith
Mr Iain Duncan Smith	Mr Robert Maclennan
Mr John Evans	Mr John Morris
Sir Archibald Hamilton	Mr Stanley Orme
Sir Terence Higgins	Mrs Ann Taylor

The Committee deliberated.

[Adjourned till tomorrow at half past Ten o'clock.]

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WEDNESDAY 5 JULY 1995

Members present:

Mr Tony Newton, in the Chair

Mr Quentin Davies	Sir Geoffrey Johnson Smith
Mr Iain Duncan Smith	Mr Robert Maclennan
Mr John Evans	Mr John Morris
Sir Archibald Hamilton	Mr Stanley Orme
Sir Terence Higgins	Mrs Ann Taylor

The Committee deliberated.

[Adjourned till this day at Five o'clock.]

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WEDNESDAY 5 JULY 1995

Members present:

Mr Tony Newton, in the Chair

Mr Quentin Davies	Sir Geoffrey Johnson Smith
Mr Iain Duncan Smith	Mr Robert MacLennan
Mr John Evans	Mr John Morris
Sir Archibald Hamilton	Mr Stanley Orme
Sir Terence Higgins	Mrs Ann Taylor

The Committee deliberated.

[Adjourned till tomorrow at half past Five o'clock.

THURSDAY 6 JULY 1995

Members present:

Mr Tony Newton, in the Chair

Mr. Quentin Davies	Sir Geoffrey Johnson Smith
Mr. Iain Duncan Smith	Mr. Robert MacLennan
Mr. John Evans	Mr. John Morris
Sir Archibald Hamilton	Mr. Stanley Orme
Sir Terence Higgins	Mrs. Ann Taylor

The Committee deliberated.

Draft Report proposed by the Chairman, brought up and read,

*Ordered*, that the Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 76 read and agreed to.

Motion made and Question put, That paragraphs 77 to 86 be left out and that the following paragraphs be inserted:

“DISCLOSURES IN THE REGISTER OF CONTRACTS AND AMOUNTS RECEIVED

*Nolan recommendations:*

*“From the beginning of the 1995–96 session (expected in November) Members should be required to deposit in full with the Register any contracts relating to the provision of services in their capacity as Members, and such contracts should be available for public inspection”*

*“From the same time, Members should be required to declare in the Register their annual remuneration, or estimated annual remuneration, in respect of such agreements. It would be acceptable if this were done in bands, eg. under £1,000; £1,000—£5,000; £5,000—£10,000; then in £5,000 bands. An estimate of the monetary value of benefits in kind, including support services, should also be made”.*

1. These recommendations are amongst the most controversial in the entire Nolan Report, as the debate on 18 May revealed. If agreed to, they could be operated under the existing Committee structure without waiting for the arrival of the Parliamentary Commissioner for Standards. Nolan has specifically recommended that these extensions to the Register should come into force from the beginning of next session. The House ought therefore to be asked to make a decision in the July debate.

2. Our consideration of this issue—invariably compressed by the deadline set by the House—has centred around two competing arguments. The first is that the degree of transparency recommended by Nolan is essential if public anxieties about standards of conduct are to be allayed. The second is that any attempt to impose excessively onerous disclosure requirements on Members could lead to attempts to avoid the requirement to register. It is therefore not surprising that strong feelings are aroused on both sides of the argument. As with some other Nolan Committee Recommendations, it has proved unrealistic to seek, before the 7th July, to reach an agreed recommendation to put to the House.

3. The key objective in our view is to ensure that the House is in a position to decide between the Nolan proposal, involving immediate implementation, on the one hand and a more cautious approach, recognising the need for further detailed work on definitions and practicalities, on the other. We therefore *recommend* that two propositions should be put before the House for debate in July.

*Option (a):*

**“that from the beginning of the next Session Members should be required to deposit in full with the Parliamentary Commissioner for Standards any contracts relating to the provision of services in their capacity as Members; that such contracts should be available for public inspection; that from the same time Members should be required to declare in the Register their annual remuneration in respect of such agreements; that the use of bands of up to £1,000 and thereafter every £5,000 be treated as an acceptable way of complying with this requirement; and that an estimate of the monetary value of benefits in kind, including support services, should also be included”**

*Option (b)*

**“That this House accepts the principle that contracts relating to the provision of services by Members acting in that capacity should be deposited in full in the Register of Members’ Interests and be available for public inspection, and that the annual remuneration from such contracts, including estimates of the monetary value of benefits in kind should be declared in the Register; and instructs the appropriate Select Committee to prepare detailed rules to give effect to this resolution, taking account of the need for clear and workable definitions of the term “contracts” and of the case for requiring all such agreements to be put in writing.”**

EMPLOYMENT AGREEMENTS NOT COVERED BY THE DISCLOSURE REQUIREMENTS

4. *Nolan recommendation:*

*“Members should be advised in their own interests that all employment agreements which do not have to be deposited should contain terms, or be supported by an exchange of letters, which make it clear that no activities relating to Parliament are involved.”*

5. This recommendation is directly consequential upon the preceding one, since it depends on there being separate categories of employment agreements which either do or do not require to be deposited. The advice referred to could be subsumed within the more general guidance to be given to Members and, as such, its implementation does not require a separate Resolution of the House.

6. We recommend that steps be taken to advise Members that all employment agreements which do not have to be deposited under the terms of any Resolution relating to new disclosure requirements for the Register should contain terms, or be supported by an exchange of letters, which make it clear that no activities relating to Parliament are involved. Such advice should make clear that this recommendation must not be treated as a means of evading the obligation placed on Members, if the new disclosure requirement is agreed to by the House, to comply with their duty to deposit contracts and amounts received for services genuinely involving activities relating to Parliament.

## CONSULTANCIES

*Nolan Recommendations:*

*“The House should prohibit Members from entering into any agreements in connection with their role as Parliamentarians to undertake services for or on behalf of organisations which provide paid Parliamentary services to multiple clients or from maintaining any direct or active connections with firms, or parts of larger firms, which provide such Parliamentary services.”*

*“The House should set in hand without delay a broader consideration of the merits of Parliamentary consultancies generally, taking account of the financial and political funding implications of change.”*

7. These two recommendations relate to the complex and controversial question of consultancies. Apart from the proposed Parliamentary Commissioner for Standards they have aroused more argument in the House than any other part of the Nolan report.

8. Although these two issues are clearly linked, Nolan has proposed totally different courses of action. While consultancies in general are recognised to be an area requiring a good deal of further scrutiny by both Houses (and indeed by the Nolan Committee itself) the question of consultancy agreements with multi-client firms is seen by Nolan as sufficiently clear cut to justify an immediate ban. Our task is to decide what proposals to suggest to the House for further action in July.

*(a) Consultancies (General)*

9. On general consultancies the procedural position, as opposed to any long-term recommendation on the merits of the issues, is quite simple, since Nolan has merely recommended that the House should commission a further study of this matter. It can be argued that our appointment has met this demand, as this particular matter clearly falls within our terms of reference.

10. However it would also be squarely within the terms of reference of the proposed new Committee on Standards and Privileges. If necessary the House itself should determine which is the more appropriate body for such an inquiry. We would simply observe that the timetable of the detailed study which will be needed is likely to extend well into the next Session—and thus beyond the life of this Committee—unless it is re-appointed in November.

11. We recommend that the following Motion should be put to the House in July:—

**“That this House endorses the need for an examination without delay of the merits of parliamentary consultancies generally, taking account of the financial and political funding implications of change; and instructs the appropriate Select Committee to conduct such an inquiry and report as soon as possible”.**

*(b) Multiple Client Consultancies*

12. The issue of Members entering into agreements with multiple client consultancies is highly contentious; our deliberations have indicated two main possible approaches to the Nolan Report's conclusions on this subject:

- to adopt the Nolan Committee's recommendation for an immediate ban on new agreements, while acknowledging the need to allow a reasonable period for Members' existing arrangements to run their course.
- to accept the case for a detailed investigation of the desirability of Members entering into such agreements, while acknowledging the need for any resulting recommendations to include clear definitions of the key terms used in the Nolan Committee's report.

13. Essentially, the difference of view is between those who regard the Nolan recommendation as sufficiently clear cut to enable it to be implemented straight away, leaving any technical problems to be resolved in the light of experience, and those who regard the definitional difficulties as being so serious as to preclude any decision in principle for the time being.

14. We have not been able, in the very short time available to us, to attempt to reconcile these two views, nor is it clear to us that such an outcome is attainable. We therefore believe that the House



should make a choice between the two approaches, or, if it wishes, agree, by way of amendment, to an alternative course of action. We think that the House can best be enabled to reach a decision on this matter if the following propositions are placed before it during the debate to be held in July:-

*Option (a)*

**“That, with effect from the beginning of the next Session, no Member shall enter into any agreement in connection with his role as a Parliamentarian to undertake services for or on behalf of organisations which provide paid Parliamentary services to multiple clients, or maintain any direct or active connection with firms, or parts of larger firms, which provide such Parliamentary services; and that any Member who has such an existing agreement shall divest himself of it by no later than the end of this Parliament.”**

*Option (b)*

**“That this House instructs the appropriate Select Committee to examine and report without delay on the desirability or otherwise of Members entering into agreements in connection with their role as Parliamentarians to undertake services for or on behalf of organisations which provide paid Parliamentary services to multiple clients or maintaining any direct or active connections with firms, or parts of larger firms, which provide such Parliamentary services; believes that any resulting recommendations for action should include clear and workable definitions both of the types of organisation to be included within the term multiple client consultancies and the kinds of activities which fall within the scope of Parliamentary services.”**

15. To this latter proposition could be added if the House wished, the following rider:

“and in the meantime urges Members to refrain from entering into any new agreements which appear to them to fall within the category described in this Resolution.”

*Conclusions*

16. There is broad agreement on the establishment of a Parliamentary Commissioner for Standards, the appointment of a new Select Committee on Standards and Privileges, the preparation of a draft Code of Conduct for Members, guidance to Members, the principle of outside interests, declaration of interests on the Order Paper, improvements to the format of the Register, as well as on the need for further examination of the issues of conflicts of interest in relation to Standing Committees, the law relating to bribery of Members of Parliament, the 1947 Resolution, and the general principle of consultancies.

17. The main area of disagreement centres on multi-client consultancies and the disclosure in the Register of contracts and amounts received.

18. We repeat that the need for a more detailed examination of consultancies in general is not in dispute. Indeed, this is in line with the Nolan proposals. However, on the issues of multi-client consultancies and disclosure in the Register of contracts and amounts received, any proposal for action ought to reflect the urgency which the Nolan Committee felt was necessary to deal with these issues. A further detailed study by a Select Committee would not meet this requirement.

19. It has been suggested that these matters should await the outcome of a broader consideration of consultancies in general. However, when the Nolan Committee recommended action on multi-client consultancies by the start of the next parliamentary session (expected in November) it was aware that this target date would almost certainly be in advance of the outcome of such a “broader consideration”. This argument should not therefore be used as a reason for delaying action on either multi-client consultancies or disclosure, and we hope that the House, when it comes to debate the matter, will accept the case for immediate implementation of these particular Nolan proposals. “—(Mrs Ann Taylor.)

The Committee divided.

Ayes 4

Mr John Evans  
Mr John Morris  
Mr Stanley Orme  
Mrs Ann Taylor

Noes 6

Mr Quentin Davies  
Mr Iain Duncan Smith  
Sir Archibald Hamilton  
Sir Terence Higgins  
Sir Geoffrey Johnson Smith  
Mr Robert Maclennan

Paragraph 77 read.

Question put, that the paragraph stand part of the Report.

The Committee divided.

Ayes 5

Mr Quentin Davies  
Mr Iain Duncan Smith  
Sir Archibald Hamilton  
Sir Terence Higgins  
Sir Geoffrey Johnson Smith

Noes 1

Mr Robert Maclennan

Paragraphs 78 to 86 read.

Question put, That the paragraphs stand part of the Report.

The Committee divided.

Ayes 6

Mr Quentin Davies  
Mr Iain Duncan Smith  
Sir Archibald Hamilton  
Sir Terence Higgins  
Sir Geoffrey Johnson Smith  
Mr Robert Maclennan

Noes 4

Mr John Evans  
Mr John Morris  
Mr Stanley Orme  
Mrs Ann Taylor

Paragraphs 87 and 88 read and agreed to.

Paragraphs 89 read, as follows:

“Resolutions 3 to 5 relate to specific policy matters on which Nolan made recommendations, namely a Code of Conduct, additional procedures for declaration of interests, and a study of the merits of Parliamentary consultancies and disclosures in the Register”.

Amendment proposed, in line 3, to leave out the words “the merits of”—(Mr Robert Maclennan.)

Question put, that the Amendment be made.

The Committee divided.

Ayes 4

Mr John Evans  
Mr Robert Maclennan  
Mr John Morris  
Mrs Ann Taylor

Noes 4

Mr Quentin Davies  
Mr Iain Duncan Smith  
Sir Archibald Hamilton  
Sir Geoffrey Johnson Smith

Whereupon the Chairman declared himself with the Noes.

Paragraph agreed to.

Paragraph 90 read and agreed to.

*Ordered*, That the following papers be appended to the Report:

1. Specific Resolutions for Decisions by the House
2. The Committee on Standards and Privileges

3. Diagram illustrating Route followed by Cases involving Member's Conduct.

*Resolved*, That the Report be the First Report of the Committee of the House.

*Ordered*, That the Chairman do make the Report to the House.

*Ordered*, That the Memoranda laid before the Committee be printed.

[Adjourned till a date and time to be fixed by the Chairman.]

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**SELECT COMMITTEE ON STANDARDS IN PUBLIC LIFE**
**Memorandum by the Clerk of the House**
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## I. INTRODUCTION

1. This Memorandum is based on the assumption—derived from the Select Committee's order of reference—that the House wishes the Select Committee to give guidance on how the Nolan Committee's recommendations might be implemented, in whole or in part, within a fairly tight time-scale. Some issues may be relatively straightforward, but there are areas—some of them alluded to in this paper—which will very probably require careful further consideration by the select committee or its successor committee before implementation in any form can be achieved.

2. The Select Committee may wish to signal its attitude to Nolan by inviting the House to make early progress by putting before it specific proposals in several areas:

- (1) The regulation of consultancies, with special reference to the 1947 Resolution;
- (2) The rules for the registration of interests, and the arrangements for declaring interests on the Order Paper and the Notice Paper;
- (3) The appointment of a Commissioner for Standards, and related issues, and
- (4) The structure, remit and powers of a re-ordered committee system, which could then be decided in advance of next Session, and brought into operation at that time.

Following this, the Select Committee could hear any further evidence it wished, so that further and more detailed proposals could be made before the end of the Session. It would then be for consideration whether a body something like the present Committee should continue to work for a further limited period or whether the remaining issues should be dealt with following recommendations from the proposed new Committees.

## II. PARLIAMENTARY CONSULTANCIES

3. Regulating paid parliamentary consultancy, particularly where this involved advocating in Parliament the opinions of particular interests, was a principal concern of the Nolan Committee.

### THE 1947 RESOLUTION

4. The Nolan Committee recommends that the House should re-state the Resolution of 15 July 1947:

“That it is inconsistent with the dignity of the House, with the duty of a Member to his constituents, and with the maintenance of the privilege of freedom of speech, for any Member of this House to enter into any contractual agreement with an outside body, controlling or limiting the Member's complete independence and freedom of action in Parliament or stipulating that he shall act in any way as the representative of such outside body in regard to any matters to be transacted in Parliament; the duty of a Member being to his constituents and to the country as a whole, rather than to any particular section thereof.”

Lord Nolan's Committee concludes that this Resolution prohibited Members from entering into an agreement which limited or controlled a Member's freedom of action in the House or which required parliamentary action in the interests of the other party to the agreement. However, the Member remained free to enter into an agreement to advise third parties on parliamentary matters, and voluntarily to act on behalf of the client in Parliament.

5. The Nolan Committee contrasts the terms of the Resolution with the rules for the Registration of Members' Interests first agreed by the House in 1975 and subsequently elaborated which “expressly contemplate that the Member may have received material benefits ‘which might reasonably be thought by others to influence his or her actions, speeches or votes in Parliament’ and which, in the case of consultancy agreements, may involve Members being paid for making representations to government departments on issues which inevitably will normally be concerned with matters to be transacted in Parliament” (paragraph 43). It considers that this left the impression that a consultant who remunerated Members could buy advocacy as well as advice. The Committee concludes that it is “small wonder” that this has given rise to confusion in the minds of Members of Parliament themselves.

6. On the other hand, the Resolution has tended to be interpreted narrowly and applied mainly in contexts similar to the privilege case with which it was originally associated—the allegation that a trade union had sought improperly to influence an officer of the union who was also a Member (Mr

W J Brown) in respect of his parliamentary actions. The Committee of Privileges was then concerned primarily with reasserting that any such action was a contempt of the House. Subsequent Committees of Privileges have repeated the conclusions of that Committee when examining the relationship between a trade union and a sponsored Member.<sup>1</sup> It may be more significant that (as the Nolan Committee mentions at paragraph 40 of its report),<sup>2</sup> the introduction of a Register of Members' Interests, designed to further the disclosure of interests, has tended to create a false impression that any interest is acceptable, if it is registered.

7. The Select Committee may wish to give some thought to whether or not to accept the recommendation of the Nolan Committee as it stands. As the Committee recognises (paragraphs 29 to 34) the Resolution has its limitations, and as I have suggested it cannot entirely be removed from the context in which it was agreed. Neither remuneration nor consultancy are mentioned in the Resolution, no doubt since the House in 1947 had trades unions, associations of constituents and pressure groups principally in mind. Nor is it clear how broadly the prohibition relating to representation should be interpreted. While it is apparent that any contract is prohibited which specifies the parliamentary actions a Member should take on any matters to be transacted in Parliament, another possible interpretation is that any contractual agreement (irrespective of whether or not it includes remuneration) which has as one of its purposes the representation of the views of an organisation in Parliament is equally prohibited. Whatever the conclusion, it will be common ground that ambiguity should be eliminated so far as possible. An unamended restatement of the Resolution by the House might simply continue to be interpreted narrowly or might itself cause confusion. A longer term task (see below) will be to establish a Code of Conduct for Members. It might be best to frame a new Resolution at that time which is to the same purpose as the 1947 Resolution but is more precisely related to the principal concerns of the Nolan Committee and to the exact wording of that Code.

#### MEMBERS AND LOBBYING FIRMS

8. The Nolan Committee recommended at paragraph 55 of their report that the House should immediately prohibit Members "from entering into any agreements in connection with their role as Parliamentarians to undertake services for or on behalf of organisations which provide paid parliamentary services to multiple clients or from maintaining any direct or active connections with firms, or parts of larger firms which provide such Parliamentary services".

9. Defining lobbying firms is very difficult. They may vary considerably in size. Some are part—and not always an easily identifiable part—of multinational public relations companies. Others are small partnerships or even individual enterprises. The services they offer may range from a broad spectrum of public relations advice to specialised lobbying.<sup>3</sup> These problems are perhaps inevitable in an area which is still subject to development. Nevertheless, provided that the Select Committee have in mind the possibility that the Parliamentary Commissioner for Standards should devote attention to the need for clarification and more precise definition, where for example advertising agencies, management consultancies and legal practices<sup>4</sup> are concerned, they may conclude that a Resolution of the House in the terms proposed by the Nolan Committee would until the final text of the Code is settled achieve the broad purpose intended.

<sup>1</sup> Report from the Committee of Privileges, 1946–47 (HC 118), see too, Complaint of a threat to withdraw cash support from Members (Special Report of the Committee of Privileges, 1970–71 (HC 581) and First Report of the Committee, 1971–72 (HC 50); Complaint (withdrawn) relating to a communication by a branch secretary of the National Union of Journalists, HC Deb (1974), Vol 877 cc466; and Complaint concerning a Resolution of the Yorkshire Area Council of the National Union of Mineworkers 1990–91 (HC 420).

<sup>2</sup> This aspect was also commented upon by the Speaker in a statement to the House relating to privilege on 12 July 1994. HC Deb (1993–94), 12 July c 829.

<sup>3</sup> In its Third Report of 1990–91, the Select Committee on Members' Interests proposed a draft register for professional lobbyists based on the following definition:

"Any company (or partnership, or an individual person) engaged in parliamentary or public affairs consultancy or work of a similar kind, and which lobbies Members of Parliament (or their staff) for reward on behalf of clients or which provides information or advisory services to clients to assist them to lobby on their own behalf.

For the purposes of the Register 'lobbying' consists of representations made to any Member of Parliament or to any member of his or her staff on any aspect of Government policy, or on any measure implementing that policy, such as contracts, appointments, loans or grants, or planning decisions, or any item of legislation, or any matter being considered, or which is likely to be considered, by the House of Commons or any Committee of the House."

<sup>4</sup> The business undertaken by some legal firms has altered considerably in recent years, and may sometimes involve parliamentary consultancy. Advocacy in the House by Members of the bar on matters on which they may have acted professionally is prohibited by a Resolution of the House of 2 June 1858 (CJ(1857–59)247).

10. The only ancillary proposal which the Select Committee may wish to consider in this area is that any such Resolution might include a lead-in period sufficient to enable Members to withdraw from existing commitments, but short enough to deter them from entering into new arrangements.

11. The Nolan Committee recommends that the House should set in hand without delay a broader consideration of the merits of parliamentary consultancies generally taking account of the financial and political funding implications of the change. Other than the aspect of registration touched on below (see paragraphs 23 to 26), I am not proposing to make any substantial comment here, on the assumption that the Select Committee or its successor will return to the matter. A final version of the proposed Code of Conduct may have to await the conclusions of any such study.

### III. CONFLICTS OF INTEREST

#### IMPLICATIONS OF THE NOLAN COMMITTEE'S PROPOSALS

12. Under this heading are some of the most "difficult" recommendations of the Nolan Report. In paragraphs 75 to 85 of the Report the Committee makes a series of observations on conflict of interest concluding that "the rules and guidance on avoiding conflict of interest should be expanded . . . to cover the whole range of business pertaining to Parliament, and that particular attention be paid to Standing Committees".

13. The Committee considers that, while disclosure by a Member of his or her pecuniary interests "clearly goes a long way towards reducing the risk of impropriety," there may be situations in which it does not go far enough. The Committee recognises many of the problems. It admits in terms that there is no clear analogy between Members of Parliament, and ministers or local councillors. It does not therefore propose a formal non-participation requirement whenever private and public interests collide or are thought to do so. Moreover, the Committee seems tacitly to accept the view quoted with approval by the Select Committee on Members' Interests in their 1991-92 report, that the practical outcome of such a broad rule might sometimes be to bring the work of the House to a halt.<sup>1</sup>

14. On the other hand, the Committee plainly thinks present arrangements in the House are insufficient. In trying to find new foundations on which to recommend building, it notes that changes accepted in 1992 in Select Committee practice, providing that, in certain circumstances, a Member should not participate or should withdraw from a Committee, show that the House has already recognised that "the public interest could be a factor in determining whether a Member should withdraw." It would be right, the Nolan Committee thinks, to consider extending the application of this principle not to all proceedings but simply to Standing Committees and their legislative work.

15. Before analysing the Committee's prescription, it may be helpful to sketch the House's existing rules about Members' voting where they have a personal pecuniary interest. Although the rules are as old as Mr Speaker Abbot's decision of 1811, they have been continually re-fitted to modern needs within the basic Abbot principles. They apply in the House, in Committee of the whole House and in Standing Committee. Broadly stated, they now mean that a Member—who will have properly registered and declared his or her interest—will not have a vote disallowed if the issue on which the vote is given (and the private interest arises) is a matter of public policy. When disputes arise, they are to be settled by the House after consideration of a motion to disallow a vote. But there is only one case, over a century old and carried by a tiny majority.

16. The Nolan recommendations differ substantially in emphasis from the House's existing rules, preferring the *public interest* in maximising the transparency of Members' actions to the existing stress on the *public policy* underlying the measure to which Members speak (on others' behalf, as well as their own) and on which they may vote.

#### STANDING COMMITTEES

17. Because "there will be circumstances where a bill is sufficiently relevant to a sectional interest to make it against the public interest for Members with a financial interest to serve on [the standing] committee," the Nolan Committee recommends that there should be a presumption against the nomination of such Members by the Committee of Selection. Such a procedural change may seem

<sup>1</sup> HC (1991-92) 326, paragraphs 12 to 15.

relatively modest. It undoubtedly could be achieved very simply, as the next following paragraph shows. But before coming to a conclusion, the Select Committee may wish to weigh certain relevant arguments. Even if the change were made, a Member could participate, as at present, at other stages of a Bill—second reading, report and third reading. Amendments may be as successfully pressed on the government at report as in the Standing Committee. It is not clear why the Standing Committee stage should be singled out for distinctive treatment, unless it is because “a Member who takes part in a Standing Committee on a Bill is one of a small group which shapes this legislation in detail, some of whose amendments may well be accepted by the government.” Is this a sufficiently cogent reason to make such a distinction? Standing Committee membership may—though admittedly it rarely does at present—reach fifty. The purpose of a Standing Committee is at least in part to entrust a Bill to Members who are known to have a connection with the issues under discussion—S.O. No. 86 which governs the selection of Members speaks of “the qualifications of those Members nominated”—and in general Standing Committees are often composed of an appreciable proportion of Members with specialist expertise, perhaps because of a registrable interest such as trade union sponsorship or in the light of personal experience outside the House. The Nolan proposal may bear very hardly on a Member with both an important constituency interest and a personal pecuniary concern with a Bill. The position of Bills—such as the Finance Bill—which are divided between Committee of the whole House and Standing Committee may appear particularly anomalous.

18. If Members feel it is appropriate to limit the membership of Standing Committees as the Nolan Committee proposes, perhaps the best way to do it would be to add at the end of S.O. No. 86 (Nomination of Standing Committees), the words:

“(iii) no Member shall be nominated under this order whose current entry in the Register of Members’ Interests includes any pecuniary interest which in the opinion of the Committee would be significantly affected by the enactment of the Bill.”

However this is an issue on which the Select Committee may wish to hear further evidence.

#### DECLARATION OF INTERESTS ON THE ORDER PAPER AND ON NOTICE PAPERS

19. The Nolan Committee recommends that when a Member who has a financial interest votes in the House (or presumably in Committee of the whole House) or tables a Question, arrangements should be devised, possibly through the use of symbols on the Order Paper, to make clear that the Member declares, for that purpose, a relevant financial interest. The Select Committee on Members’ Interests in 1991–92 went part of the way towards implementation of such a regime (in regard to the sponsor and first five supporters of Early Day Motions), and reviewed its history on a wider front (HC 326, paras 82–83). They accepted arguments against what is now proposed. The matter was also considered in some detail by the Select Committee on Members’ Interests (Declaration) in 1974–75; its suggestions were not put into practice by the House.<sup>1</sup> Nevertheless, if the Committee wish to extend the present limited arrangement to Questions, Motions and amendments, steps could be taken administratively by the use of symbols to record Members’ own declarations of a registered interest when participating in those proceedings: but in the case of divisions, I cannot presently see how the same end could be achieved, except retrospectively. Unlike Questions, Motions and amendments, to which a symbol may be added at the time of tabling and before anything happens in the House, the publication of division lists takes place *after* the relevant procedural event.

#### A CODE OF CONDUCT

20. The Nolan Committee recommends that a “Code of Conduct” should be drawn up “setting out the broad principles which should guide the conduct of Members, and that this should be restated in every new Parliament” (para. 89). The Committee considers that this will act as an important reminder to Members of their obligations. In fact, in view of the substantial change in practice involved elsewhere the Code may come to have very considerable significance. The Parliamentary Commissioner for Standards will be required to consider complaints in connection with Members’ conduct as well as in relation to alleged failures to register or declare interests. Rules in respect of registration and declaration, including new Rules, may be comparatively clear. As regards behaviour, however, while there are actions which are clearly unacceptable—accepting a bribe for example—in other areas the boundaries are likely to remain much more vague. The Boothby, Allighan, Walkden

<sup>1</sup> HC (1991–92) 326; HC (1974–75) especially Annex 4.



and Poulson cases<sup>1</sup> only indicate how widely varied conduct defined as falling short of what the House has a right to expect may be. New arrangements intended to put an end to public disquiet will need to have a clearly defined authority. As a result, the Code will surely need to have a lot of time and care devoted to its drafting. Giving advice on this will be a prime responsibility of the Commissioner, when appointed.

21. Granted that the draft Code suggested by Nolan is intended to be no more than illustrative of the text the House will eventually adopt, part of it seems at odds with other portions of the report. In particular, I should mention the statement that "where in pursuit of a Member's parliamentary duties, the existence of a personal financial interest is likely to give rise to a conflict with the public interest, the Member has a personal responsibility to resolve that conflict either by disposing of the interest or by standing aside from the public business in question." This seems quite different from and much broader than the proposal mentioned earlier which is limited to Standing Committees. The Nolan Committee elsewhere explicitly recognises that Members with interests properly declared may speak and vote, and that a broad prohibition on local government lines would pose considerable problems for the work of the House. The Select Committee may wish to give an indication of how this apparent conflict should be reconciled.

22. Finally, it is not clear what the precise relationship is intended to be between the Code of Conduct and "the rules and guidance on avoiding conflict of interest . . . to cover the whole range of business pertaining to Parliament" (para. 85). The Nolan Committee is very clear that the House should move away from "*ad hoc*" and unreconciled decisions taken at different times. Nevertheless, a proliferation of guidelines may be liable to cause only more confusion. It might best serve the House's purpose if the final version of the Code were to concentrate on particular guidance to which Members and the Commissioner could turn, rather than attempt a detailed, all-embracing set of provisions.

#### IV. CHANGES IN THE RULES FOR THE REGISTRATION OF INTERESTS

23. There is no doubt little difficulty in principle in accepting the proposals made in paragraph 70 of the Nolan Report about rules for the registration of interests. More detailed comment on implementation of these changes is to be found at Annex A.

24. It is not clear what is intended by the recommendation that the updating of the Register should be carried out immediately. It may mean either that the Member should register a new interest at once, or that the Registrar should amend the Register at once, or both. For Members, removing the present month's grace might prove onerous, or even impracticable. As for the Registrar, he makes entries in the Register as soon as details are received, unless there is any obscurity about the proposed entry which might involve further reference to the Member.

25. It is assumed, though the Nolan Committee does not mention the matter, that the Registers applicable to Members' staff, parliamentary groups, and those members of the press and broadcasting organisations in possession of a House of Commons pass will be the concern of the Commissioner, and that if S.O. No. 128 is amended similar arrangements will appear in the order of reference of any new committee or committees which may be created.

26. The Select Committee may wish to recommend that the House should approve this section of the Nolan Committee's report, perhaps by a declaratory Resolution, while recognising that framing the final version of the rules will require rather longer consideration.

#### V. PROCEDURAL CHANGES AND COMMITTEE STRUCTURE

27. The Nolan Committee's recommendations for setting up a new procedural framework for dealing with issues relating to the conduct of Members on a continuing and systematic basis are closely interrelated and may conveniently be considered together. Essentially, the Committee recommends that all matters relating to Members' conduct, including allegations of failure to register or declare pecuniary interests which are at present made to the Registrar of Members' Interests should be referred to a Parliamentary Commissioner for Standards who should have independent discretion to decide whether or not a complaint merited investigation and who should also have the power to

<sup>1</sup> Fuller details and references are given in the Clerk of the House's memorandum in the published Appendices to the First Report of the Committee of Privileges (1994-95), 351-II, p. 160, and p. 164.

commence an investigation on his or her own initiative. As well as putting in place new procedures, these recommendations will require significant changes to current procedures. The Committee of Privileges, through a Sub-Committee, will (it is proposed) assume new functions and the Select Committee on Members' Interests will have most or all of its functions transferred to the proposed new Sub-Committee.

#### APPOINTMENT OF A PARLIAMENTARY COMMISSIONER FOR STANDARDS

28. A central part in the new structure will be played by the Parliamentary Commissioner for Standards, appointed by the House, who the Committee recommend should be a person of independent standing who should have a degree of tenure and not be a career member of the House's staff. The role of the Commissioner is considered in detail in the paragraphs below relating to procedural changes. As is apparent from the Nolan Committee's report, it is crucial that the appointee should be of high calibre, possessing particularly the qualities of integrity, tact and judgment.

29. If the machinery recommended by the Nolan Committee is to become operative quickly, the House will need the Commissioner to be in post at the earliest possible date, since clearly it is desirable that the appointee should be involved in the setting up of the new processes, with particular reference to the detailed arrangements for his or her own functions. The Nolan Committee, for example, recommends that the Commissioner should be responsible "for advising on the Code of Conduct" (para. 104). This may be intended to mean interpretation of the Code, but it would also be of advantage if the Commissioner had some input into the text of the Code, even if only in the later stages of its elaboration.

30. It may be unrealistic to suggest that in the first instance the Parliamentary Commissioner for Standards should have quite as prestigious a method of appointment as the Comptroller and Auditor General and the Parliamentary Commissioner for Administration, both of whom have their functions founded in Acts of Parliament.<sup>1</sup> Indeed, this is not envisaged in the Nolan report as being appropriate at this stage. A similar means of appointing the Commissioner for Standards may indeed be appropriate in due course after the House has gained more experience of the new arrangements, by which time the House of Lords may also have set up its own machinery. This could conceivably encompass the appointment of a joint Commissioner for Standards to serve both Houses.

31. These considerations argue for an interim solution to the problem of appointing the Commissioner. It may be that the best place for the appointee in the first instance will be in the Speaker's Office. Several Members in the debate on 18 May thought that the Speaker should have some hand in the appointment—indeed one suggested that she herself should take on the functions of the Commissioner. The Speaker could at least be entrusted with the making of the appointment, but would probably wish to consult party leaders before a name was announced. At earlier stages of the selection process she might wish to have the assistance of the House of Commons Commission. A fuller consideration of the appointment process is set out in Annex B.

32. The arrangements outlined in Annex B could be adjusted by Madam Speaker in various ways to take account of views expressed either by the Select Committee or in the House. But at least they constitute a framework, which has proved effective for other parliamentary appointments from outside in the recent past. It is doubtful if any specific authority is needed from the House for the appointment to be made in the manner suggested, but an appropriate Motion could be drafted if the Select Committee wished.

#### PROCEDURAL CHANGES

33. Under the Nolan Committee's recommendations there are four distinct stages which an investigation may go through—

- (i) The first of these is an investigation, in private, by the Commissioner. The Commissioner would have discretion to reject a complaint at once or "following an investigation the Commissioner would again have discretion to dismiss the complaint, to find it proved and agree to a remedy with the Member concerned, or to find a case to answer and refer the complaint to a Committee of the House."

<sup>1</sup> In the case of the C&AG, the Exchequer and Audit Department Act 1866, as modified by the National Audit Act 1983; and in the case of the Parliamentary Commissioner for Administration, by the Parliamentary Commissioner Act 1967.

- (ii) The second stage is investigation by Committee. Nolan's preferred option is a Sub-Committee of the Committee of Privileges "consisting of up to seven very senior Members", sitting in public. This Sub-Committee would investigate *prima facie* cases of misconduct of individual Members (including allegations of failure to register or declare interests) referred to it by the Commissioner. It would appear that the Nolan Committee intends that the majority of cases would in practice be settled by the conclusion of this stage.
- (iii) The Sub-Committee would report to the main Committee which "would have the practical effect of giving the Member the right to appeal to that Committee."
- (iv) The Nolan Committee believes that the fourth stage, debate in the House, would be unusual: "only the most serious cases should need to be considered by the whole House" (para. 104).

34. The Nolan Committee's recommendations are not worked out in detail. If they are to be implemented successfully there are a number of practical problems which need to be resolved.

35. It follows directly from the more general observations of the Nolan Committee that the detailed procedure for dealing with cases of conduct of Members should pay due regard both to the public interest and to natural justice. Not only must it provide the means by which the House can effectively maintain high standards of conduct, but it must also provide safeguards to ensure that those Members whose conduct is under scrutiny are fairly treated.

36. The procedure must also be clear and consistent. While the Nolan Committee believed that the incoming Commissioner should be allowed an appropriate degree of discretion, it will be necessary to provide the House as soon as possible with a clear outline of the procedure by which individual cases will be dealt with. In particular it will be necessary to clarify exactly where responsibilities lie as between the Commissioner, the Committee or Sub-Committee to which he or she reports, the (full) Committee of Privileges, and the House.

#### STAGE 1: INVESTIGATION BY THE COMMISSIONER

37. In the absence of a statute similar to the statutes which set out in detail the powers and duties of the Comptroller and Auditor General and the Parliamentary Commissioner for Administration, the Commissioner for Standards will need guidelines agreed by the House which will have a similar purpose. Not all these guidelines need to be finalised immediately and some areas of detail might well be left for the appropriate Committee or Sub-Committee to determine in consultation with the Commissioner when appointed. However, if only to ensure satisfactory continuity, it would seem desirable to establish at the outset guidelines similar in character to those agreed by the House in 1975 for the Registrar of Members' Interests and which are contained in a restated form in Annex 3 to the First Report of the Select Committee on Members' Interests of Session 1991-92.<sup>1</sup> Such guidelines will, however, need to take account of the fact that *all* complaints relating to conduct of Members, not only those relating to the failure to register or declare pecuniary interests will be made to the Commissioner. There seems to be no good reason at this stage to change the existing procedure in respect of that class of complaints which is now made to the Registrar, whose functions can simply be transferred to the Commissioner. However, all other complaints relating to privilege which may include complaints relating to the conduct of individual Members not concerned with the registration or declaration of interests are made by letter to the Speaker under a procedure agreed in 1978.<sup>2</sup> All complaints relating to Members' conduct will need to be excluded from this procedure and an alternative procedure devised analogous to that which applies to complaints in respect of Members' Interests.

38. The Commissioner's inquiries will clearly be quite different in character to the very limited inquiries made by the Registrar of Members' Interests before referring a complaint to the Select Committee on Members' Interests. Whilst some investigations will be short and easily disposed of, others will be more complex and will, on a less formal basis, cover some of the ground that would now be dealt with at a formal hearing of a Select Committee. At the end of these inquiries the Nolan Committee envisages that the Commissioner should be able to make his or her findings and conclusions public. In these circumstances it might be appropriate, perhaps at the discretion of the Commissioner, for the Member to be accompanied in his or her appearance before the Commissioner,

<sup>1</sup> HC (326) Annex 3, p. xxxii.

<sup>2</sup> Erskine May 21st edition p. 135.

by an adviser. There is also the risk, particularly when the procedure is new, that any published decision of the Commissioner that a *prima facie* case has been established will immediately be interpreted by the media as conclusive proof of the Member's guilt. It is for the consideration of the Select Committee whether such a report should be published until the Committee or Sub-Committee meets to act upon it. It could be argued that in some or all instances there will be a risk to natural justice should there be any publication by the Commissioner of details of an investigation, or even of the precise terms of the complaint to which it relates, before it has been considered by the relevant Committee or Sub-Committee. In any event, since the Commissioner will need to seek the authority of the Committee or Sub-Committee to send for persons and papers, the Commissioner will need to keep it fully informed of his actions. It might also be desirable to provide specifically, either in the guidelines of the Commissioner or more formally, that the Member should have the right to make a written reply both to the allegations and to the findings of the Commissioner which would be published at the same time. Any settlement between the Commissioner and a Member whose conduct is the subject of complaint should clearly be reported to the Committee or Sub-Committee. The Committee or Sub-Committee will then decide whether to accept that the settlement is satisfactory or whether some further action, either by the Commissioner or the Member, is required.

39. The Nolan Committee expects the Commissioner to play a much more pro-active role in enforcing standards of conduct than the current Registrar of Members' Interests is permitted to do.<sup>1</sup> It is the Commissioner who will have the final say on a Member's entry in the register and not, as at present, the individual Member. The Select Committee may wish to consider whether any guidance should be given on the extent to which the Commissioner may use the wide discretion which the Nolan Committee recommends; and in what particular respects the Commissioner should be answerable to the Committee or Sub-Committee. It might also be considered appropriate for the Commissioner to be required to make an annual report on his or her activities, which should be published.

40. If the Select Committee wishes to implement the Nolan Committee's recommendations in respect of independent publication by the Commissioner, the House should be invited to agree to a Resolution that the Commissioner have power to lay before the House any report on any matter relating to the exercise of his or her functions, and that such reports be printed as House of Commons papers. This would both give the power required and protect the Reports by privilege in the terms of the Parliamentary Papers Act 1840. Alternatively such reports could be made to the appropriate Committee or Sub-Committee who would report them to the House as Committee Papers.

#### STAGE 2: INVESTIGATION BY COMMITTEE

41. The Nolan Committee recommends that inquiries be carried out by a newly established Sub-Committee of the Committee of Privileges. It is not easy to see why the Committee of Privileges has been regarded as specially suitable to deal with matters involving the conduct of Members. The large majority of cases before that Committee relate to a range of issues involving alleged breaches of privilege and contempts which have nothing whatever to do with Members' personal conduct. On the comparatively rare occasions in the past when questions involving the conduct of individual Members have needed to be examined,<sup>2</sup> the House has appointed a specific Committee. Prior to the reference last session to the Committee of Privileges of allegations relating to payments for tabling Questions,<sup>3</sup> it had not dealt with a similar subject since 1947.<sup>4</sup> The Privileges Committee does not initiate investigations: except where leaks from Select Committees are concerned,<sup>5</sup> it examines matters which are specifically referred to it, on Motion, by the House. Decisions on what matters should be given precedence over other House business have for very many years been reserved to the Speaker. Members make a complaint privately in writing to the Speaker who, if she thinks it appropriate, will give precedence to a Motion to refer the matter of the complaint to the Committee of Privileges. If the House agrees to the Motion, the Committee investigates the matter and reports its conclusions and recommendations to the House, which then makes the final decision.

<sup>1</sup> The First Report of the Select Committee on Members' Interests (Declaration)—1974 (HC 102) which the House endorsed, stated that "under no circumstances should the Registrar and his staff be seen as enforcement officers with powers to inquire into the circumstances of Members" (para 37).

<sup>2</sup> E.g., Select Committee on the Conduct of a Member (HC(1940-41)5); Select Committee on the Conduct of Members (HC(1976-77)490).

<sup>3</sup> Committee of Privileges, First Report, HC (1994-95)351.

<sup>4</sup> Reports from the Committee of Privileges, (HC(1946-47)138,142.

<sup>5</sup> Under a procedure agreed by the House on 18 March 1986, a Special Report by a Select Committee relating to unauthorised disclosure of a draft report which in the view of the Committee constitutes a substantial interference with its work automatically stands referred to the Committee of Privileges.

42. There is a risk that dealing on a continuing basis with matters relating to conduct could blur the essential purpose for which the Committee of Privileges exists and so hamper the work of the House. The Commissioner will also exercise the function of Registrar. The Committee of Privileges might thus be drawn for the first time into matters relating to the day to day administration of the Register of Members' Interests and of the other Registers of interests which the Registrar maintains. This role has little in common with that which it has fulfilled hitherto.

43. Other difficulties arise from the subordinate relationship of Sub-Committees to a main Committee. Sub-Committees do not regularly have power to make Reports without these being approved and amended by the main Committee. This can cause disagreement and delay, and problems arising from the day to day management of such a system constituted a powerful reason why in 1979 the Select Committee on Expenditure which operated through sub-committees was abolished and replaced by several free-standing Departmentally-related Committees. Members may also wish to avoid the anomaly of a Parliamentary Commissioner having the power to make independent reports whilst reporting to a Sub-Committee which had no such power.

44. It is of course true that there are considerations which would support the Nolan Committee's proposals for a Sub-Committee: the size (17 Members) of the present Committee of Privileges; the reluctance by the House nowadays to accept small Select Committees to deal with procedural matters (prior to 1939 the Committee of Privileges, chaired by the Prime Minister, consisted of 10 Members); and, perhaps particularly, the interesting suggestion of the Nolan Committee that, since a Sub-Committee must report to the main Committee, the full Committee of Privileges might act as a "court of appeal" on cases of conduct.

45. The latter proposal could be an important protection for Members which should not be set aside lightly. However, when examined closely it presents difficulties if operated in the context of a Sub-Committee. It would be contrary to natural justice for the members of the Sub-Committee who had investigated the case (and who might in the circumstances of an appeal against an adverse verdict be considered by the Member to be misguided or prejudiced) to be members of the "appeal court" and sit in judgment on their own decisions. Apart from objection in principle it could well be that Sub-Committee Members, being most familiar with the case, would tend to dominate the Committee's proceedings which would add to the injustice. Members of the Sub-Committee could be excluded when appeals were considered; but Members might well find it difficult to set aside a decision taken by so many of their Committee colleagues.

46. The Select Committee may think it preferable to avoid these problems by establishing a separate Committee for Standards. However if this were done, and the appeals procedure were to be retained, this would also involve a procedural novelty. Select Committees do not generally sit in judgement on the findings of other Select Committees. The Committee of Privileges would need to be empowered to accept appeals from the "Committee for Standards" and the powers of the latter would need to be limited accordingly. In one respect the Committee of Privileges is already a "court of appeal". When a Select Committee is itself unable to resolve the *prima facie* contempt of an unauthorised disclosure of its proceedings, which substantially interferes with the work of that Committee, a Special Report to the House to this effect immediately stands referred to the Committee of Privileges. Moreover, given the long standing primacy of the Committee of Privileges such a solution might be generally acceptable to Members.

47. On the basis therefore that a separate Committee for Standards is the preferred solution, I would envisage that its procedure in respect of individual cases, whether arising from a complaint or on the initiative of the Commissioner would be broadly similar. Having investigated the matter, the Commissioner would make a report which he (or the Committee) might or might not publish in full at that stage (see para. 38 above). By analogy with the Comptroller and Auditor General's reports on Departments, it might be that the Commissioner's report would be agreed as far as possible with the Member concerned beforehand. The Committee would then hold a hearing, which would be based closely upon that report and the reply by the Member.

48. It would, perhaps, be too restrictive to lay down a comprehensive procedure which should always be followed. The circumstances will vary in each case. In many cases the Commissioner and the Member will find it possible to reach agreement on some matters and not on others and that in some cases the points which remain outstanding will be relatively minor. The main concern should be to ensure that the procedure agreed upon in any particular case is fair to all parties. The Nolan Committee recommends that in exercising its discretion on whether an "adviser" accompanying a Member should be able to act as the Member's representative at the hearings, the Committee should

follow the principles relating to the exercise of natural justice set out in Halsbury's Laws of England (para. 44).<sup>1</sup> In fact these principles might well apply to the whole of the procedure of the Standards Committee. Certainly the Member must be notified in full of all the allegations against him and should be permitted to see, and given the opportunity to refute, any of the evidence relating to the allegations. When these allegations are of a serious nature it seems reasonable that the Member or the Member's adviser should be given the opportunity to question a witness, through the Chairman.

49. These principles should also apply to the degree to which both the Standards Committee and the Committee of Privileges (on appeal) should conduct their hearings on individual cases in public. Provided great care is taken to ensure that rules are in place to allow a fair hearing by the Member, and bearing in mind that the Standards Committee will be constituted of senior Members, sitting in public may well have advantages in publicly demonstrating that justice is being done. The power to sit in private, when the Standards Committee and the Privileges Committee consider it appropriate, should of course be retained; there may be occasions where evidence of a secret, commercially confidential or other character could properly be dealt with only in that way. Similar considerations may be thought to apply to televising such proceedings which have a far greater impact and tend, particularly in a relatively small committee room, to change the character of the proceedings taking place in many ways. The select committee may wish to consider whether, as with Committees on Private Bills, the relevant resolution of the House should be amended so as to enable the Standards Committee and the Privileges Committee to sit in public without admitting the television cameras.

50. In the Committee of Privileges the Attorney General has for many years always been a member of the Committee and has customarily led the questioning. His advice and the advice of his Office has been available to the Committee by virtue of his membership. In the case of the Select Committee on the Conduct of Members, Session 1976-77 (HC 490) the Attorney General was instructed, in the motion appointing the Committee, to "attend the Committee so far as the Committee may require to present evidence relevant to the subject matter of the inquiry;" and was permitted to "give such further assistance to the Committee as may be appropriate". The experience of Attorneys General and their broad knowledge of the law and of parliamentary law, has been of great value to the Committee of Privileges. It is important that this assistance should be available to the Committee for Standards when needed and that the appropriate power be granted by the House.

#### STAGE 3: THE APPELLATE ROLE OF THE PRIVILEGES COMMITTEE

51. It is hoped that any report submitted to the Privileges Committee by the Standards Committee would not be re-examined in detail except when there was an appeal either by the Member, or, perhaps, exceptionally, by the Commissioner. The Privileges Committee will not have heard all the evidence and consequently ought not to second guess the Standards Committee. There is an argument for a uniformity of procedure in the case of appeals and a set of formal rules would be advisable. It might be satisfactory in most cases to confine the witnesses to the Member in question (and perhaps his "adviser"), the Chairman of the Standards Committee, and the Commissioner.

52. Subject to what is said in paragraph 54 below, it does not seem necessary to contemplate a reference to the Committee of Privileges where no appeal is taken against the decision of the Committee for Standards.

#### STAGE 4: PROCEEDINGS IN THE HOUSE

53. The Nolan Committee seems to hope that the majority of cases, whether arising from allegations or from an initiative by the Commissioner, will be resolved either by rejection, or by agreement between the Commissioner and the Member, or *mutatis mutandis* by agreement between the Committee for Standards and the Member. The time which the Privileges Committee and the House would devote to such cases would therefore be small. This may be so. However, it is difficult to see how cases involving the censure of the House, suspension or reprimand by the Speaker would not normally require the involvement, with or without appeal, of the Privileges Committee and ultimately a debate in the House.

54. An alternative course which might be adopted in some circumstances is that where an adverse decision is reached at an earlier stage, which the Member accepts without making an appeal to the

<sup>1</sup> Cm 2850, p.44.

Committee of Privileges, and which requires a sanction by the House, a formal motion to give effect to the recommendation of the Standards Committee could be agreed by the House without debate. Such a decision might be preceded by a personal statement by the Member, and the questions on any relevant Motion, and the amendments thereto, might be put forthwith.

#### CONCLUSION

55. Whatever the procedural or structural changes made to give effect to the Nolan Committee's recommendations, the need to deal with the general run of privilege cases will remain. Where, as will often be the case, such cases arise wholly independently of matters likely to be of interest to the Commissioner there seems no need to disturb existing procedures. Although in the most serious cases conduct of Members may be such as to constitute a contempt, and therefore be a matter of privilege, this also applies to the more serious cases of failure to register or declare interests which have, since 1977, been dealt with by another Committee under a distinct and detailed procedure. Although the Nolan Committee is critical of the rules for registration and for dealing with complaints, it is clear that its recommendations build very much upon them. I believe this to be the correct approach and that the new procedures in respect to conduct should so far as is practicable be distinguished from the treatment of other cases involving privilege.

#### VI. GUIDANCE TO MEMBERS

56. Lord Nolan's Committee proposes that Members should be reminded more frequently of their obligations to register and also to declare their interests, as well as of the fact that registration does not remove the need for declaration. Moreover, Members should receive better guidance on what their obligations are, especially on their first arrival in the House. Presumably the provision of such guidance will fall mainly to the Commissioner for Standards.

57. The existing rules and the practice of the Select Committee on Members' Interests may provide a sound platform for further progress. All new Members of Parliament are sent a registration form, copies of the relevant Resolutions of the House, a copy of the most recent Register, with its useful explanatory introduction and (since 1993) a pamphlet explaining the rules of registration and declaration in a straightforward but more detailed manner. Members are reminded that they must register their interests within three months of their return at a General Election or four weeks after taking the oath following a by-election. There is an annual circular letter sent by the Registrar to all Members, which is an opportunity for them to reacquaint themselves with the purpose and significance of the Register in general, as well as to review their own entries. A pamphlet is available, explaining the rules regarding registration in a straightforward manner, but at greater length than the registration form itself will allow.

58. It will be for the Commissioner to shape and develop these existing means of communication as he or she sees fit. My Department's broader experience with orientation courses for new Members after General Elections has been that it is rather difficult, at a hectic time for recently elected Members, when similar demands are being made of them in other directions, to hit on a really effective and speedy way of passing on information. But we are of course happy to give such advice and assistance as the Commissioner may need.

#### VII. LAW OF BRIBERY

59. The subject of bribery was dealt with comprehensively by the former Clerk of the House in a recent memorandum to the Committee of Privileges which is published in the Appendices to the Minutes of Evidence of the Committee's First Report of this Session<sup>1</sup>. Attention is also drawn to the memorandum by the Attorney General appended to the same report<sup>2</sup> and to the opinion of the Committee with respect to the law of bribery relating to Questions<sup>3</sup> set out in paragraph 8 of the report. The position of Members has been made particularly uncertain in the light of the charges of common law bribery recently brought against a Member which are discussed in some detail in both of the memoranda referred to above. In the interests of Members, as well as in the wider public

<sup>1</sup> Complaint Concerning an Article in *The Sunday Times* of 10 July 1994 relating to the conduct of Members, HC 351, Appendix 6, pp 161-162 of volume 2.

<sup>2</sup> *Ibid.* Appendix 5, pp 154-157.

<sup>3</sup> HC 351-I, p.vii, paragraph 8.

interest, it is important that the extent to which the actions of Members are subject to the law of bribery should be clarified as soon as possible.

#### VIII. NEXT STEPS

60. Before 7 July the Committee might wish:

- (1) To decide whether a Motion for Resolution might be put to the House in respect of consultancies and, if so, agree upon the appropriate words for that Motion;
- (2) To draw up an appropriate Motion to place before the House accepting in principle the recommendations of the Nolan Committee relating to the registration of interests, and the extension of the arrangements for declaring interests on the Order Paper and Notice Paper;
- (3) To identify the Commissioner for Standards' main responsibilities, and request the Speaker to take steps to appoint such an officer; and
- (4) To recommend the main lines of the Select Committee structure and procedure to implement the Nolan Committee's proposals.

D W Limon

13 June 1995

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#### Annex A

##### *The Register (Recommendations in paragraphs 70 and 71 of the Nolan Committee's Report)*

1. The Rules for Registration need to be precisely drafted in order to ensure proper compliance. This will be especially important if the House adopts the proposals that Members holding consultancies or benefitting from sponsorship should disclose their levels of remuneration and deposit the terms of their agreements with the Registrar or his successor.

2. No information is generally available about agreements which currently exist between Members and the bodies who employ them as advisers, but it seems likely that some are unwritten and others are too informal to constitute a legally binding contract. The Report regards it as "essential that the full terms of all consultancy and sponsorship agreements, if not already in writing, should be reduced to writing." While it should be possible eventually to ensure that this requirement is fully met, particularly when all financial interests are registered *de novo* at the start of a new Parliament, some interval may have to be allowed to enable existing agreements to be brought up to the necessary standard. In the first instance, perhaps the aim should be to require Members to produce to the Registrar within a given period written confirmation from the company or other organisation of the remuneration payable, the value of any material support supplied, and the nature of the services to be provided.

3. It is assumed that such documents will not be published as part of the annual Register but that, unlike any other correspondence between Members and the Registrar, they should be made available for inspection by other Members and by members of the public on the same terms as the updated versions of the Register. It may be noted, however, that the practical consequence of this requirement could be to lay open to public view by this method more detailed information in the form of the actual sums payable than a Member would be expected to disclose in the Register.

4. If the House agrees that remuneration should be disclosed in bands, the simplest method would be to incorporate this in the Register alphabetically (A = under £5,000, B = £5,000–£9,999, etc.) It may also be worth recalling the suggestion by Mr Campbell-Savours to the Select Committee on Members' Interests that "where the sum received from any registered source or group of sources exceeds a total of £10,000 per annum an indication of that fact should be given by marking the registered source of remuneration with an asterisk." (First Report, Session 1991–92, p. xxxv).

5. In the absence of firm information about this whole area, it might be desirable for the Select Committee to take some evidence both from Members holding consultancies and from the companies



employing them before attempting to frame detailed amendments to the Rules on Registration. For example, if the phrase "annual remuneration" were employed, it would have to be clear whether this referred to prospective remuneration (in the case of a new contract) or actual earnings in the previous financial or calendar year (if existing contracts were not sufficiently specific).

6. It is accepted that detailed entry requirements could be improved to give a clearer description of the nature and scope of the interests declared. Indeed the Select Committee on Members' Interests addressed themselves to this very question in their Report of Session 1991-92, with particular references to consultancies. The Registrar has since issued periodical reminders to Members, though with only partial success, that the Rules now require more specific information to be provided.

7. While the Registrar frequently discusses and agrees with Members the appropriate form of entry in a particular case, in the end he has to rely on the information with which a Member supplies him. If the deposit of contracts is sanctioned by the House, the necessary details on which to base a full entry should become available, but the new Commissioner may have to be prepared to overrule Members in deciding in what terms an interest should be recorded.

8. The Nolan Report recommends that updating of the Register should be immediate, and that the updated version should be made more widely available electronically. The present practice is that the Register is published annually as at 31 January. Any subsequent alterations are made instantly on a word processor, and a loose-leaf copy is printed out about every three weeks and made available to Members in the Library and for public inspection in the Registry.

9. It is understood that there would be no technical difficulty in including the Register on the parliamentary data video network as soon as this becomes generally available to Members, though the question of wider public access to the network remains to be considered by the Finance and Services Committee. Even then, however, it would still be necessary for updated versions to be produced in something like their present form to meet the frequent enquiries which are received about the development of a Member's financial interests over a period.

10. On the question of better guidance to Members, it should be remembered that the publication of the "green guide" to the Rules on Registration and Declaration of Financial Interests, which describes in detail the requirements of each section of the Register as well as setting out the principles of declaration both in the House and in Select Committees, was only approved by the House in 1993 during the course of the present Parliament. It was then distributed to all Members to assist them in the preparation of their entries for the 1994 Register, which was the first to which the revised Rules applied. This guide will need to be revised further to reflect any alterations to the Rules which may arise out of the House's decisions on the Nolan Report. It could then be supplied to Members in its amended form as soon as might seem appropriate. In the end, however, the initiative must lie with Members to approach the Registrar or his successor for advice about their individual circumstances.

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## Annex B

### *Arrangements for the Appointment of the Parliamentary Commissioner for Standards*

1. In working out appropriate preliminary stages for the process of appointment for the Commissioner the precedent of the appointments of the three "Directors",<sup>1</sup> following the recommendations of the Ibbs Report may prove useful. In all three cases the House authorities, with assistance from the Civil Service Commission (including Recruitment and Assessment Services) and the Senior and Public Appointments Group in the Cabinet Office, made use of the services of management consultants. These assisted in several tasks, including, the drawing up of a job description, the insertion of a suitable advertisement in the newspapers and elsewhere and the preliminary sifting process. Thereafter a Board interviewed a short-list of candidates and drew up its own smaller short-list for submission to the Speaker, who made a final choice with the assistance of the House of Commons Commission. This may sound a lengthy process; but, driven hard as it was, it can be accomplished within three months. If therefore the House agreed a recommendation from

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<sup>1</sup> The Director of Finance and Administration, the Director of Works and the Director of Catering Services.

the Committee, an appointment might be announced by the end of October, followed by any necessary delay whilst the successful candidate divested himself/herself of any previous post which he/she might hold.

2. The compilation of the Job Description might prove difficult since final decisions about the precise nature of the duties might not have been made in time. Also, it would probably be unwise to specify, for example, a lawyer to the exclusion of an accountant or vice-versa—or, indeed, to preclude applications from persons of ability with an independent outlook in any other walk of life. Great reliance would have to be placed on each candidate's own assessment of his/her capacity and motivation for the job as measured beside the opinions of those for and with whom he/she had worked previously.

3. The appropriate salary for the Commissioner might again prove difficult to settle in advance of the competition for the appointment. It might however be sensible to lay down that a salary from within the current rates for members of the judiciary would be the most suitable, in view especially of the need for the Commissioner to be seen to be independent. There are some recent precedents for this.

4. Initially, it would probably be best to set up the appointment as a full-time job. The new Commissioner will have to acclimatise himself/herself quickly, re-organise the Registry, begin work on any cases placed before him/her, and make himself/herself available for counselling. This last task may prove especially onerous when a new Parliament is elected, as is bound to happen within eighteen months or so of his/her appointment. It would therefore seem sensible to offer the successful candidate a two or three year full-term appointment, renewable in that form in the absence of legislation, if the Speaker so agreed. But it must remain possible, especially if the main new arrangements prove eventually successful, that the amount of case-work on which the Commissioner's greatest skills would be deployed will diminish. After all, it has to be borne in mind that the present Members' Interests Select Committee has received only seven substantive complaints since 1990<sup>1</sup> and the Committee of Privileges even fewer. In that event, a part-time appointment might in due course be deemed more appropriate.

5. Two ancillary points are worth mentioning. First, the Commissioner will require some staff. It will be proposed that the present staff of the Registrar of Members' Interests, but *not* the Registrar himself, will be transferred to the Commissioner on secondment from the Clerk's Department. It will be for the Commissioner, after a short experience in the job, to suggest any changes either in numbers or gradings. It is assumed for these purposes that the Commissioner will take over responsibility not only for the Register for Members' Interests, but also for the other three existing (unpublished) Registers<sup>2</sup> (see para. 25 above). Secondly, it will be important that the Commissioner has good self-contained accommodation in the main building, with easy and reasonably private access for Members. The present accommodation of the Registrar, mixed up as it is with that for the Foreign Affairs and Defence Committees and the Private Bill Office, will not be adequate. The incoming Serjeant at Arms has already had this matter drawn to his attention and the House will expect him, no doubt in cooperation with the Accommodation and Works Committee, to find a solution which can be implemented as soon as the new Commissioner arrives.

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#### Letter from Nicholas Winterton MP to the Chairman of the Committee

#### NOLAN REPORT

You suggested that I might write to you to register my concerns about what I believe are ill-conceived recommendations from the Nolan Committee.

First, as a matter of constitutional principle, I reject entirely the suggestion that this House or its Members should be subject to the scrutiny of any outside individual, such as the proposed Commissioner for Standards. Members are answerable to the House and to their constituents. That is the platform upon which I was elected, and the platform upon which I shall continue to serve.

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<sup>1</sup> Nolan, Evidence Q. 681-682.

<sup>2</sup> These cover parliamentary journalists, all-party and parliamentary groups and Members' personal staff.

Secondly, I oppose entirely any suggestion that Members should be required to declare the details of contracts which they might have negotiated with client companies, or with companies upon whose boards they serve. These are confidential matters, and to suggest, in particular, that the level of any payments involved should be declared is totally unacceptable. It is a longstanding principle that individuals' financial affairs are confidential matters between them and the Inland Revenue, and I for one will not break this longstanding convention.

Thirdly, the Nolan Committee has failed, blatantly, to understand fully the complexity of the situation with which it has been concerned and has displayed a disappointing and deeply worrying ignorance about the work of consultants generally, and of Members serving outside clients in particular.

I cannot see, for example, that there is any moral distinction between providing services/advice on the one hand to a major national company, or, on the other hand, to a public relations or other consultancy retained by that company.

If there are specific actions on the part of Members which the House believes need either to be controlled or be banned, then let us do that, but to seek as the Nolan Report does to draw distinctions between the types of company or organisation to whom those services are provided is bizarre in the extreme and is a recipe for the introduction of a system which is unworkable and cannot be policed.

It matters not whether a client company is a merchant bank, a firm of solicitors, a parliamentary consultancy, or a general PR firm. The distinctions are not real, merely presentational. What each is seeking to do is to provide to clients advice on the best ways in which to identify, approach and influence the key decision-makers of Westminster, Whitehall and Brussels.

If such businesses feel that they can improve the quality of their advice to their own clients by involving Members in the formulation of that advice, then they should be free to do so—to suggest otherwise is a) to reduce the openness of our system of Parliamentary democracy, and b) to give unfair advantages to major national and international corporations who are able to support in-house, or by direct consultancy links, a pool of experience, and hence of access and influence, which is denied to smaller groups or individuals whose case may be equally just.

Personally, I believe that a clear distinction exists between advocacy and consultancy. There is no need whatsoever to ban the latter since it is simply a way of enabling a Member to make time to give of his experience. In so far as the former is concerned, what is needed is openness and declaration so that the House is made fully aware when approaches are being made on behalf of clients.

Successful lobbying by interest groups, by individuals, and by industries, is the vital heart of a thriving and health democracy. It is something positively to be encouraged.

The Nolan Committee has, sadly, missed almost entirely the opportunity to contribute meaningfully to debate on these important issues. Indeed, in producing such an ill-considered Report it has shown itself incapable of fulfilling the responsibilities which it was given and has demonstrated very clearly indeed the wisdom of the House itself deciding these matters from the outset.

Those who advised the Prime Minister to establish this Committee were very unwise indeed and will share the responsibility for the undermining of sovereignty, and the reduction in the calibre of future Members which will ensue if its recommendations are accepted.

Furthermore, in political terms, since I for one reject the Report, and I know others will do the same, the hostage to fortune which has been created and which will now be used against the Government, is one for which those who advised the Committee's establishment are entirely responsible.

Finally, since the Committee itself found no real evidence of corruption in Parliament, that in itself should cause us to question the validity of its subsequent arguments for such draconian, unnecessary and unworkable regulations.

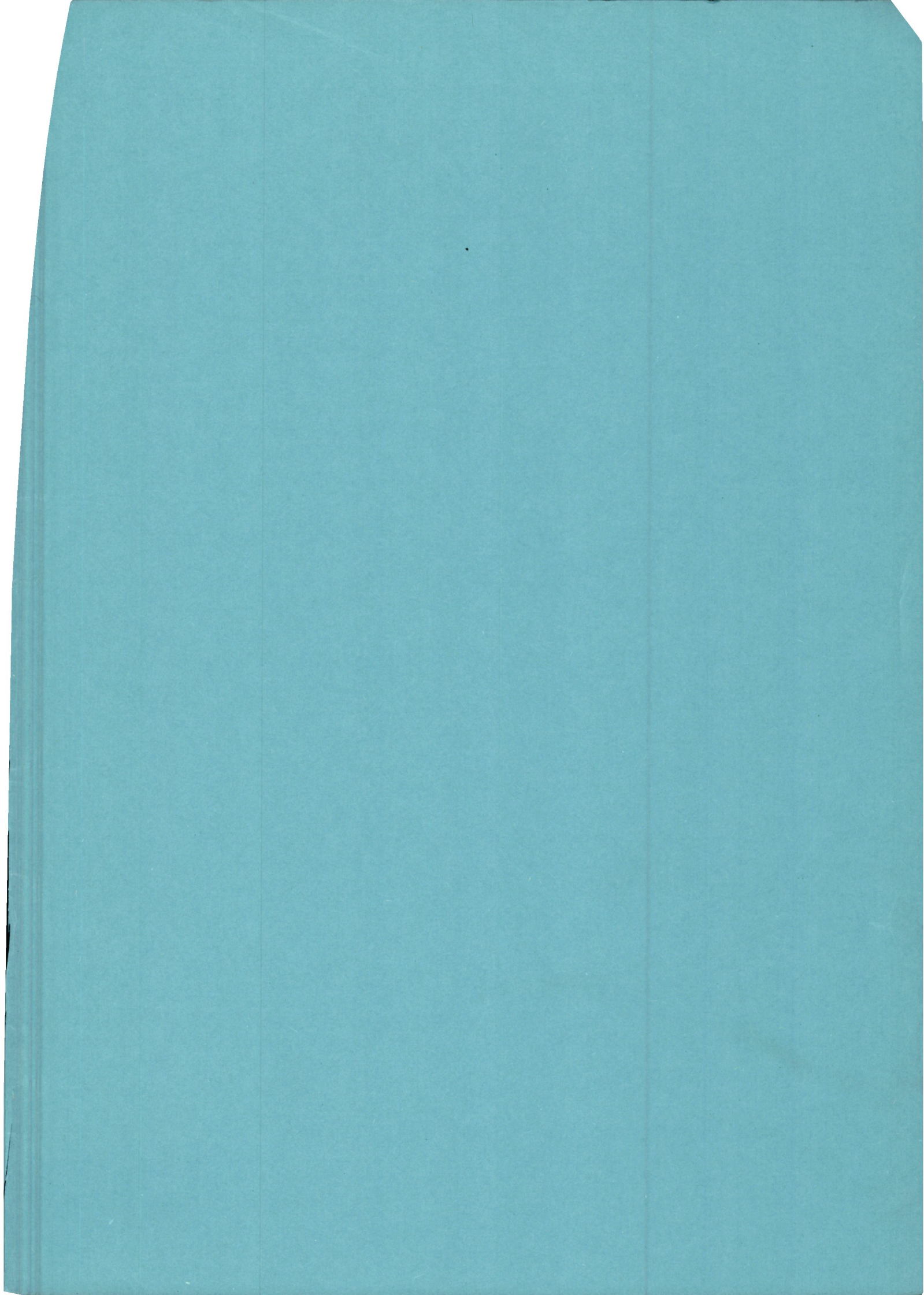
If the Report's recommendations are brought forward to the House in anything like their present form, then I shall oppose them.

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