



REF: CC-RES-CODES OF CONDUCT

8 March 2022

Guidance Note

Parliamentary Codes of Conduct and Enforcement

The Constitutional Commission has received an enquiry regarding Parliamentary Codes of Conduct and how these may be enforced. In response to this enquiry, the Constitutional Commission provided information on an expedited basis, which is now contained in this Guidance Note.

By way of background, it is relevant to note that the Constitutional Commission has previously expressed its support for the introduction of a Parliamentary Code of Conduct and, in so doing the Constitutional Commission has joined ranks with both the Human Rights Commission and the Standards in Public Life Commission in this regard. It is also clear that any such Code of Conduct will require effective sanctions if it is to perform a meaningful role in our constitutional arrangements.

The Human Rights Commission has already undertaken some significant research in this area and its comprehensive *Table of Formal Parliamentary Codes of Conduct, or Related Documents, for Caribbean Territories and Non-regional Commonwealth Jurisdictions* can be accessed at:

https://www.humanrightscommission.ky/upimages/publicationdoc/CodesofConductResearchacrossCommonwealthCaribbeanandRelatedJurisdictions_041120_1607626984_1607626984.pdf.

Of particular note in the context of this enquiry is the column headed "Parliamentary Code of Conduct" and the reference therein to the Commonwealth Parliamentary Association's *Recommended Benchmarks for Codes of Conduct Applying to Members of Parliament* ("the CPA Benchmarks"), which are available at:

<https://www.cpahq.org/media/3wqhbbad/codes-of-conduct-for-parliamentarians-updated-2016-7.pdf>.

The CPA Benchmarks specifically address the issue of Enforcement in section 5 and establish that, as part of the effective implementation of a Parliamentary Code of Conduct, an independent system for investigating alleged breaches should be established. Indeed, the CPA Benchmarks proceed to outline a suggested model for independent investigation in the following terms:

5.1 Complaints and Investigations

A code shall make provisions to the effect that:

- 5.1.1 A complaint alleging breach of the Code by a Member shall be made to an identified office holder who must forthwith refer it to an investigator for investigation of the facts.*
- 5.1.2 At least one investigator must be appointed by the House as soon as practicable following adoption of the Code.*
- 5.1.3 The investigator must be selected by a non-partisan process or other method designed to secure multiparty support.*
- 5.1.4 An Investigator shall be independent of Parliament, any Member of the Parliament, Government, or political party or grouping, and is appointed for a fixed term.*
- 5.1.5 An Investigator shall have knowledge, investigative skills, experience, personal qualities and standing within the community suitable to the office.*
- 5.1.6 The Code shall protect the investigator from removal except for proven misbehaviour or other reasonable grounds.*
- 5.1.7 The investigator may determine that a complaint is frivolous or vexatious and decline to investigate it.*
- 5.1.8 A Member and the complainant shall treat any complaint as if sub judice.*
- 5.1.9 Any Member of Parliament shall cooperate with and assist an Investigator in the investigation of any complaint under the Code.*
- 5.1.10 If there is evidence of a breach of criminal law, it must forthwith be referred to the police or corruption control agency as appropriate.*
- 5.1.11 After investigation, the investigator must present a report to the Presiding Officer (or Deputy if concerning the Presiding Officer) who must determine whether or not a breach has occurred, and if a breach has occurred, refer the report to the House for further proceedings in accordance with its rules.*
- 5.1.12 If a complaint has become known publicly and has not been upheld, this outcome shall be made public.*

5.2 Appeal or review

The Code shall make provision that a Member against whom a complaint has been upheld, has rights to appeal or review.

5.3 Sanctions and penalties

- 5.3.1 The Code shall specify graduated sanctions and penalties for breaches of the Code according to the seriousness of the effects of breaches on the functioning, reputation*

and legitimacy of the parliament.

5.3.2 *The Code shall specify that a Member convicted of a breach of the criminal law, may in addition be subject to a sanction or penalty if found to have breached the Code.*

The CPA Benchmarks also contain a table at page 12, which details various potential sanctions from different jurisdictions, ranging in seriousness from warning, through reprimand, rebuke, censure, admonition, suspension, disqualification from membership, expulsion, and disqualification to hold public office, to committal and imprisonment.

More recent relevant learning can be derived from the United Kingdom's House of Commons Committee on Standards and the *Review of the Code of Conduct: Proposals for Consultation* in its Fourth Report of Session 2021–22 ("the House of Commons Committee on Standards Review"), which was published as recently as 29 November 2021 and which can be found at:

<https://committees.parliament.uk/publications/7999/documents/82638/default/>.

Paragraph 198 of the House of Commons Committee on Standards Review is particularly instructive as it captures how a hybrid system for enforcement has evolved as best practice in parliamentary democracies, in which traditional self-regulation has come to be augmented by a number of independent components in order to provide effective enforcement:

The current standards system in the House of Commons is sometimes described as a "hybrid" system, because it maintains the House's traditional assertion that it has the right to regulate its own affairs (the doctrine known as "exclusive cognisance") but it includes significant elements that are independent of MPs. These include:

- *the independent Parliamentary Commissioner for Standards*
- *the Independent Parliamentary Standards Authority which considers matters relating to Members' salary and expenses*
- *the independent lay members of the Committee on Standards (who have an effective voting majority on the Committee)*
- *the external Independent Complaints and Grievance Scheme (ICGS) investigators overseen by the Commissioner*
- *the Independent Expert Panel (IEP) which hears appeals and recommends sanctions in ICGS cases.*

In addition, the Recall of MPs Act 2015, read together with the relevant Standing Orders, means that any suspension for at least fourteen days or ten sitting days can lead to a by-election if ten per cent of the Member's constituents sign a recall petition.

Given the House of Commons Committee on Standards Review represents a contemporary consideration of the current issues arising in the context of Parliamentary Codes of Conduct and their practical enforcement, the Conclusions and Recommendations in the House of Commons Committee on Standards Review should inform the current local developments; as should the Draft Revised Code of Conduct at Annex 1 to the House of Commons Committee on Standards Review, which, for the purposes of “Upholding the Code”, proposes that:

- 1) *The application of this Code shall be a matter for the House of Commons, and particularly for the Committee on Standards, the Independent Expert Panel and the Parliamentary Commissioner for Standards in accordance with Standing Orders.*
- 2) *The Commissioner may investigate a specific matter relating to a Member’s adherence to the rules of conduct under the Code.*
- 3) *Members must co-operate at all times with the Parliamentary Commissioner for Standards in the conduct of any investigation and with the Committee on Standards and the Independent Expert Panel in any subsequent consideration of a case.*
- 4) *Members must not disclose details in relation to: (i) any investigation by the Parliamentary Commissioner for Standards except when required by law to do so, or authorised by the Parliamentary Commissioner for Standards; nor (ii) the proceedings of the Standards Committee or the Independent Expert Panel in relation to a complaint unless required by law to do so, or authorised by the Committee or the Panel.*
- 5) *Members must not lobby a member of the Committee on Standards, the Independent Expert Panel or the Parliamentary Commissioner for Standards, or their staff, in a manner calculated or intended to improperly influence their consideration of whether a breach of the Code of Conduct has occurred, or in relation to the imposition of a sanction.*
- 6) *Members must not seek to influence, encourage, induce or attempt to induce, a person making a complaint in an investigation to withdraw or amend their complaint, or any witness or other person participating in a complaint to withdraw or alter their evidence.*
- 7) *Failure to comply with a sanction imposed by a sub-panel of the Independent Expert Panel shall be treated as a breach of the Code.*
- 8) *Failure to comply with a sanction imposed by the Committee on Standards or the House relating to withdrawal of services or facilities from a Member shall also be treated as a breach of the Code.*

In conclusion, the Constitutional Commission notes:

1. There are a range of potential sanctions available to ensure that a Parliamentary Code of Conduct is effectively upheld; and
2. The importance of independence as a key component in any enforcement mechanism.