



House of Commons
Commission

Employment of Members' staff by the House

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The House of Commons Commission

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1 Introduction

1. On 30 April the House agreed the following resolution (moved by the Deputy Leader of the House):

“(1) That, in the opinion of this House, staff who work for an hon. Member should be employed by the House, as a personal appointment and managed by the hon. Member; and

(2) That the House of Commons Commission shall consider this decision and make recommendations for its implementation, including any transitional provisions which may be necessary, by 29 October 2009.”¹

2. Employment by the House would replace the current arrangement whereby each Member employs his or her own staff but the House pays staff directly and provides for standard contracts and pay ranges. The Member is required to ensure that the staff concerned are employed to meet a genuine need relating to the Member's parliamentary duties, are able and (if necessary) qualified to do the job and are actually doing the job, and that the costs charged to Staffing Expenditure are reasonable and entirely attributable to the Member's parliamentary work.²

3. The House has expressed a view and has asked us to make recommendations for putting it into effect, rather than requesting our opinion of the proposal. We have accordingly concentrated on examining how the proposal could best be implemented, rather than on whether it should be taken forward at all, which will be for the House to determine.

4. Since the House agreed its resolution, the Government has proposed an Independent Parliamentary Standards Authority (IPSA) and Parliament has passed legislation (the Parliamentary Standards Act 2009) to set it up. The establishment of the IPSA complicates the House's proposal. The IPSA has a statutory duty to prepare an allowances scheme³ and to pay allowances to Members. If Members' staff are to be paid from an allowance, the House would be the employer, the IPSA would pay the staff and the Member would recruit and manage. The House could pay direct, but it would need to be considered whether it would be more appropriate for a benefit to Members (in the form of the provision of staff) to be provided under the scheme which Parliament has only recently enacted. It seems likely that the IPSA's allowances scheme will include a staffing element and criteria to govern how this allowance can be spent. It would make sense for such rules to include standard contracts and pay scales, but at this stage it is not known what approach the IPSA will take.

¹ The resolution was agreed to on division by 280 votes to 100.

² The Green Book: A guide to Members' allowances (July 2009), p 27.

³ Section 5, Parliamentary Standards Act 2009.

Our consideration of the matter

5. We put out a consultation paper on 12 June and received 100 submissions.⁴ Because of the limited time available we relied entirely on written material. We would like to thank all those who took the trouble to send us their views.

6. The majority of submissions (57) were from Members' staff, sometimes presenting the views of several staff members. Also, there were three submissions from Members directly incorporating the views of their staff⁵ and there were submissions from the Members' and Peers' Staff Association (MAPSA) and the Unite and TUS unions. The Members' staff who wrote to us were overwhelmingly opposed to the proposal,⁶ as was the MAPSA. Among Members, only four of the 36 who responded were in favour.⁷ The Parliamentary Labour Party (PLP) and the 1922 Committee were opposed to the proposal.⁸

7. We were pleased to receive so many submissions from staff, which gave us a valuable insight into how they view their employment by Members. We wish to emphasise at the start of this report that we could not do our jobs as Members without the help of our staff and that we recognise and value immensely their dedication and loyalty.

8. We did not approach this subject without previous knowledge. Not only are we, individually, employers of staff, but the matter had already been examined in detail by the Members Estimate Committee (MEC), whose membership is the same as the Commission's, in its *Review of Allowances* in 2008.⁹ The evidence gathered then has been of great value to us in the current examination.¹⁰ The MEC stated then that it was "vitally important" to the work of Members "that their staff should be entirely and unambiguously committed to the individual MP and the causes being championed, rather than to the House of Commons as a corporate body."¹¹ It observed then that it had been unable to identify any model elsewhere which combined central employment by Parliament with an individual Member's ability to appoint and direct his or her own staff.¹² It remains the case that no such model has been identified, but in this report we attempt to devise one in response to the House's request.

⁴ The consultation paper and the submissions are on the Commission's website at www.parliament.uk/about_commons/house_of_commons_commission_.cfm. References in this report to the submissions are in the form 'MS' followed by the number of the submission.

⁵ MS 10, 40, 41.

⁶ 36 were opposed, 12 in favour and nine were neutral or expressed no view on the principle of House employment.

⁷ Seven expressed no view on the principle of House employment. For the balance of views in 2008, see HC 578-I (2007-08), para 86.

⁸ MS 1, 2.

⁹ Third Report from the Members Estimate Committee, 2007-08, Review of allowances, HC 578-I, paras 72-103. The current members of the Commission who were members of the MEC in 2008 are Sir Stuart Bell, Harriet Harman (Leader of the House), Nick Harvey and David Maclean.

¹⁰ HC 578-II (2007-08), Ev 12-22.

¹¹ HC 578-I (2007-08), para 92.

¹² *Ibid.*, para 85. For information on other parliaments, see *ibid.*, paras 81-5; HC 578-II (2007-08), Ev 14.

Reasons for change

9. The reason given by the Leader of the House on 30 April for the proposed change was as follows: “The reality is that the staff allowance is nothing to do with our salary; it is to pay our staff. Yet, because it is accounted for as part of our allowance, the public see it as part of our pay, which it is not.”¹³ Several other Members referred in submissions to us to the possible benefit of separating expenditure on staff from Members' other expenses and allowances.¹⁴

10. The most important public concern about Members' staff relates to employment of family members. The current proposal is not directly relevant to that, and the matter is separately under consideration by the Committee on Standards in Public Life.¹⁵ We note the view expressed by the MEC in 2008 that, subject to assurance that the family members are genuinely carrying out the role and paid at a fair rate, “it would seem entirely perverse to rule out employment of some of the best employees who could possibly be found and who represent excellent value for taxpayers' money.”¹⁶

11. Although only one reason was given for making the proposal, some Members' staff identified other potential advantages from it, in some cases despite being opposed to it in principle. These included:

- Greater consistency of pay and other terms and conditions among Members' staff.¹⁷
- Better employment practices as a result of being employed by a larger organisation with better HR support, in areas such leave entitlements, health and safety and grievance procedures.¹⁸
- Better protection of staff in cases of exploitation or grievances.¹⁹
- Regular pay rises reflecting changes in the cost of living.²⁰
- Pension provision and pay being made comparable to that of House staff.²¹
- Recognition of trade unions.²²

Not all agreed on these points, especially on the last of them. The trade unions also referred to the issue of equality of pay and pensions with House staff.²³ One Member referred to the

¹³ HC Deb, 30 April 2009, c.1070; see also c.1072.

¹⁴ eg MS 10, 24, 31, 33, 35, 37.

¹⁵ See Committee on Standards in Public Life, *Review of MPs' expenses: Issues and Questions* (April 2009), paras 3.24–3.25.

¹⁶ HC 578-I (2007–08), paras 96–7.

¹⁷ eg MS 48, 52, 53, 55, 61, 71, 80, 82.

¹⁸ eg MS 50, 60, 61, 68, 82, 87.

¹⁹ eg MS 55, 73, 80.

²⁰ eg MS 52, 54, 95.

²¹ MS 67, 95. See also MS 3.

²² eg MS 46, 52, 61, 71, 79, 87.

²³ MS 4, 5.

benefits of improved transparency and accountability,²⁴ and others to improved pay and conditions for Members' staff and reduced likelihood of exploitation.²⁵ We consider later whether some of these potential benefits could be achieved by other means.²⁶

Numbers and costs

12. Staffing Expenditure is currently set at a level intended to allow each Member to employ the equivalent of 3.5 full-time staff (increased from three in April 2008).²⁷ The number of Members' staff is about 2,700, or just over four per Member.²⁸ **The scale of the proposed transfer of staff to a new employer is therefore significant.**

13. Also important for our purpose is that about two-thirds of those staff work in the constituencies rather than at Westminster. This has major implications for any scheme for direct employment by the House.

14. Turnover is high, with about 70 new starters added each month. The fact that, while Staffing Expenditure is intended to provide 3.5 full-time equivalent staff, Members employ more than this figure demonstrates that there are many part-time employees.

15. Since 2005/06, Staffing Expenditure²⁹ has increased by more than 20% to its current level of £103,813 per Member. The number of staff employed has increased by 200 since 2006/07, raising the average per Member from just under four in 2006/07 to just over four in 2008/09. On average Members spend approximately 95% of the maximum available. The average full-time equivalent salary for Members' staff is approximately £25,000 per annum, with full-time salaries in Westminster being around £3,000 per annum higher than those in the constituency. Base pay comprises some 85% of the total spending. Much smaller amounts are spent on staff bonuses (about 4%) and on overtime (0.5%). The remainder of the budget is spent on items such as employer's National Insurance costs and payments for bought-in services.³⁰

The Member-employee relationship

16. Several important aspects of the current relationship between Members and their staff are highlighted by the submissions we received and are taken into account in what follows:

- Members vary greatly in how they divide their working time between their different roles as Members, how many staff they have, where they locate them, how they organise them and how well they carry out their duties as employers.³¹

²⁴ MS 24.

²⁵ MS 24, 33, 35. See also MS 100.

²⁶ Paras 99–101 below.

²⁷ HC 578-I (2007–08), paras 75–6.

²⁸ Information from the Department of Resources.

²⁹ Formerly the Staffing Allowance.

³⁰ Information from the Department of Resources.

³¹ MS 3, 10, 11, 32, 45, 97.

- The submissions received overwhelmingly emphasise the importance of political affinity and political loyalty,³² although there were also suggestions that political commitment was not so important for caseworkers.³³
- The relationship between Members and staff is a highly personal one, and personal loyalty is vitally important; it is also essential in small teams that everyone can work well together.³⁴
- Many staff prefer working in a small team to being part of a large organisation, and were motivated to work for a particular Member rather than for any larger entity.³⁵

The Member-House relationship

17. The relationship between Members and the House is almost as important in this context as that between Members and their staff. The first and obvious point is that Members are not employees of the House. Consequently, if the House became the employer of Members' staff, the situation would not be comparable to that of other large organisations with employees divided into small teams, where line managers are appointed by the employer to manage those teams and can be regularly appraised and if necessary moved, disciplined or dismissed. Different means would be needed to ensure that Members' actions as regards their staff did not create unacceptable risks to the House itself in its role as employer.

18. The other aspect is not so relevant to our examination because it relates less to the practicality than to the principle of the proposed change, on which the House has already given its view. It is that Members do not in any sense work for the House as an organisation or have the same objectives as the House. They have loyalty and duties towards constituency, party and country, but are not expected to promote the interests of the House as such. Indeed they may be actively working against the objectives of the House administration, and must have the freedom to do so. Several employees of Members pointed out that they did not feel they were working for the House, and some Members and some staff referred to the risk of divided loyalties and the damage this might do the relationship between Members and their staff.³⁶ Some staff also considered that their authority and therefore their ability to represent the Member locally would be diminished if they were employed by the House rather than independently by the Member.³⁷

Difficulties to be resolved

19. We identify the most important difficulties posed by the House's proposal as follows:

- How the House could fulfil its legal responsibilities as the employer of Members' staff.

³² MS 10, 14, 19-21, 25, 29, 33-5, 41, 55-7, 65, 68, 69, 72, 73, 76, 78, 85, 86, 88, 94, 95, 97, 100.

³³ MS 58, 59, 61, 79, 82.

³⁴ MS 10, 11, 25, 35, 37, 63, 72, 85, 86, 97.

³⁵ eg MS 10, 40, 49.

³⁶ MS 20, 35, 40, 49, 76, 92, 97.

³⁷ MS 76, 94.

- In particular, how it could discharge its responsibility as an employer in respect of Members' staff based in the constituencies and be a good employer rather than a remote bureaucracy. Several constituency staff who wrote to us believed that the House administration knew little about them or that they were neglected by it.³⁸
- How the consequences of a general election with a large turnover of seats, and especially a large transfer of seats between parties, could be coped with.
- How the additional costs of the House employing Members' staff could be minimised.

Initial considerations

20. Members' entitlement to staff could be expressed either as a number of staff at particular pay levels or a sum of money to be spent on staff (subject to the standard pay ranges specified by the House). The former would greatly restrict Members' current flexibility in using their Staffing Expenditure to best effect, and would also remove Members' incentive to control the cost of their staff. We recognise that allocating staff expenditure would be more like the current system than allocating a number of staff, but we regard it as the only way to devise a scheme which might have some chance of being acceptable to Members. **The limit on the staffing of Members' offices from public funds should continue to be a financial one rather than a limit on the number of staff paid for.**

21. Some of those who wrote to us feared that Members' freedom to organise their staff in the way which suited them best could be replaced by a 'one size fits all' system.³⁹ We see no reason why this should be the case, and seek to avoid it in our proposals below, but **it is inescapable that the House's new duties as employer would significantly restrict Members' freedom in some respects.**

³⁸ MS 10, 47, 59, 90.

³⁹ MS 11, 40, 65, 68.

2 The employing body

22. We consider first what sort of body could be formally the employer, since this potentially resolves some of the difficulties. The matter was examined in detail by the MEC in 2008 and we draw on its work here.⁴⁰ The House as such cannot be formally the employer because in legal terms it is an unincorporated association rather than a corporate body with enduring legal personality. There are broadly five options: the House of Commons Commission, the House's Corporate Officer, the IPSA, a company limited by guarantee and a new statutory body.

23. We start by noting that being the employer of 2,700 staff divided into 646 teams would be a major responsibility, and cannot be treated as an add-on to other responsibilities. It is likely to be either the major task or the only task of whichever body is determined upon.

24. The House of Commons Commission is a statutory body which employs the staff of the House. Unlike the House itself, it has the capacity to enter into a contract of employment which endures notwithstanding changes in the composition of the House. In principle it could create a new House department in which Members' staff could be employed. There would, however, be some significant disadvantages:

- The Commission is required to keep complementing, grading and pay of staff “broadly in line” with those of the Home Civil Service. Other conditions of service, which would probably include political impartiality, must be kept broadly in line “so far as consistent with the requirements of the House of Commons”.⁴¹ Imposing a requirement of political impartiality on Members' staff would be inappropriate and unrealistic.
- The Commission recruits on merit through fair and open competition, on the basis of specified criteria (including political impartiality). We discuss below whether recruitment of Members' staff should be similar, but if two different recruitment practices were used, one of them not requiring political impartiality, movement between the two parts of the enlarged House Service would be difficult, and this would conflict with the Commission's policy of emphasising the unity of the House Service.
- Members' staff would have the same employer as current House staff, and any variation in the terms and conditions of staff between the two categories carrying out similar work or work of equal job weight or value for the same employer would need to be justified. Undoubtedly the different arrangements could be made consistent, but it would certainly be complex, difficult and expensive. Pensions would also need to be “in line” with those in the Home Civil Service, which would benefit Members' staff but would be expensive (as discussed below).⁴²
- The Commission's attention would be diverted from its existing tasks.

⁴⁰ HC 578-II (2007-08), Ev 15-20.

⁴¹ Section 2, House of Commons (Administration) Act 1978.

⁴² Paras 77, 92 below.

25. If the House's Corporate Officer (the Clerk of the House) became the employer of Members' staff, he or she would not be bound by the "broadly in line" provision, but there would be similar considerations as regards recruitment, political impartiality and terms and conditions. We doubt the wisdom of making the head of a non-party-political service responsible for staff recruited at least partly on the basis of political sympathies, as well as the wisdom of turning the Corporate Officer into a major employer when he or she has other important work to do.

26. Another option would be to make the IPSA the employer of Members' staff, but there are two strong objections to this:

- The IPSA, just when it is struggling to establish itself, would be overwhelmed by the burden of employing 2,700 staff, and this aspect of its work would become its main task. Managing a large body of staff is not what the IPSA is for.
- Employing Members' staff would require flexibility and a light touch, and there would preferably be some involvement of Members' in the employing body, whereas the IPSA is designed to be independent of Members and to impose and enforce rules.

27. The two other options would, like the IPSA, be established by the House but separate from it. A company limited by guarantee could be established fairly quickly and Members could participate in it as directors, perhaps forming the majority of directors. A new statutory body would take longer to set up because it would require legislation. It too could have Member involvement, and could report to the House of Commons Commission to ensure that it remained within the House's control. The extent to which the company or statutory body left Members to appoint and manage their staff could be determined at the time of its establishment, but the duties of the new body would need very careful definition (eg any requirement to achieve value for money) if Members' independence in organising their staff was to be retained.

28. We rule out the options of the House of Commons Commission, Corporate Officer or the IPSA as the employer of Members' staff. **Our preference if the House is to be the employer of Members' staff is for the employing organisation to be a new statutory body.**

29. This arrangement would remove any requirement for Members' staff to be politically impartial, or for there to be fair and open competition. Also, by making the employer of Members' staff separate from the employer of House staff it removes the requirement for the pay, pensions and other terms and conditions of the two groups of staff to be assimilated, which for some (especially among Members' staff) is the main advantage of the proposal. This is of course separate from the issue of whether it would be *desirable* to reduce any disparity between the pay and pensions of the two groups.

30. Where in the following paragraphs we refer to the House as the employer, we mean the statutory body or other organisation which would be formally the employer.

3 The House's responsibilities as employer

31. The House's resolution was evidently intended to minimise the practical consequences of making the House the employer of Members' staff, leaving Members to appoint and manage the staff themselves. But changing the employer is not a mere bookkeeping exercise. It would transfer all the legal duties of the employer from individual Members to the House.⁴³ The House would inescapably acquire extensive new duties, and the question for us to consider is therefore not whether it should have those duties but how it should fulfil them following the proposed change. In one case (dismissal) the potential new role would determine whether the House was legally the employer at all.

32. The change would also transfer staff from a multitude of small teams with separate employers to a single employer, and creating a single large pool of staff has important consequences, discussed later.⁴⁴ In addition it would separate the role of employer from recruitment and day-to-day management, creating new risks for the House.

33. The legal duties we consider in this section relate to dismissal, recruitment and health and safety. In later sections we examine duties related to non-discrimination, the Working Time Directive and the minimum wage.

Defining the employer

34. The Employment Rights Act 1996 defines "employer" as a person by whom an employee or worker is employed and a "contract of employment" as a "contract of service or apprenticeship".⁴⁵ Relevant considerations in defining an employment relationship include the existence of an obligation personally to perform the work (ie substituting someone else is not permitted), the question of control (who decides what the work will be, how it is done and to what timescales) and the question of integration (who decides whether a person is integrated into an organisation and by whose policies he or she is bound, for example as regards discipline and annual leave). Ultimately, the question of who in law is the employer is the question of who is the party to the contract of service, and who may bring it to an end. Accordingly, party A can remain the employer, even where party B selects for appointment and manages the employee on a day-to-day basis. Provided the contract of service is made with party A and he retains the power to terminate the contract of service, he will be the employer. Otherwise he will not be.

Discipline and dismissal

35. Thus it would be an unavoidable consequence of the House becoming the employer that the House alone had the power to dismiss Members' staff and the obligation to respond to any Employment Tribunal proceedings. Employment Tribunal proceedings relating to Members' staff are rare (about two or three per year), but the use of

⁴³ If the House were the employer, contracts of employment would be governed by the law of England and Wales, even if the Member for whom the staff worked sat for a constituency in Scotland or Northern Ireland.

⁴⁴ Paras 56–63, 66, 68–72 below.

⁴⁵ Section 230, Employment Rights Act 1996.

compensation payments and compromise agreements to avoid possible Tribunal proceedings is less unusual. There are about 20 of these each year.⁴⁶

36. At present the House is not a party to Tribunal proceedings concerning Members' staff. Members can claim any costs incurred as a result of such proceedings as Staffing Expenditure, but only up to the annual limit on Staffing Expenditure; beyond that the cost falls on them. Once it became the employer, the House would be the defendant in any Tribunal proceedings over unlawful discrimination or unfair dismissal, and would be liable for the costs; it might also be required to reinstate a member of staff. Members would be, if anything, more rather than less likely to get into difficult situations if the House was responsible for dealing with the consequences, and pay-offs might become harder and more expensive to arrange if staff were aware that the resources of the House rather than just an individual Member could be called upon.

37. This raises several issues. What would be the respective roles of House and Member in cases of disciplinary proceedings and dismissal? How could the House limit the risk it would be exposed to (bearing in mind that compensation is unlimited if unlawful discrimination is proved), and should the cost of any Tribunal decision or pay-off be shared between House and Member in some way or in certain circumstances? What would be done if the Tribunal ordered the reinstatement of an employee?

38. Given the close relationship between a Member and his or her staff, it would be a difficult situation if a Member wished to dismiss but the House was not willing to endorse the dismissal. It is harder to envisage a situation in which the House wanted to dismiss a member of staff against the wishes of a Member, but it could in principle happen if a member of staff committed a serious offence such as harassment of other staff or was found not to be doing the work. Many Members argued in their submissions to us that the decision on whether to dismiss must be left to the Member and that the Member should have the final word.⁴⁷ For legal reasons this is simply not consistent with the House becoming the employer. However unpalatable to Members, **it is unavoidable that the House's wishes must prevail if House and Member disagree over whether Members' staff should be dismissed; otherwise the House could not be regarded as the employer.**

39. It would be important therefore that there was a clear understanding between the House and individual Members about what each could expect from the other in this area. This understanding would need to cover:

- When the Member must inform and consult the House, ie at the earliest possible stage.
- In what circumstances the House will normally endorse a Member's decision (eg in cases of breach of confidentiality or when proper procedures have been followed) and in what circumstances it will not.
- When the House might take the initiative (eg when offences have been committed such as abuse of the internet or when well-founded complaints about conduct have been made to it).

⁴⁶ Information from the Department of Resources.

⁴⁷ eg MS 11, 21, 29, 34.

40. This provides an additional reason for the employing body to be a statutory commission with Member representation, since these would not be appropriate decisions for officials of the House.

41. Reducing the risk to the House would involve both good communication between the House and Members and requiring the whole or part of the cost of Tribunal decisions or pay-offs to be borne by the Member if he or she has been at fault. In principle, the Member could be asked to contribute towards the cost of such proceedings or indemnify the House of Commons entirely in such cases. Such an indemnity or contribution would not be ordered by the Employment Tribunal as part of the proceedings, but it could be made a condition of supplying staff to a Member that such an indemnity or contribution (funded if possible from Staffing Expenditure) would be made by the Member in these circumstances. This would of course be more difficult to arrange if it was the IPSA which was making the payments to Members' staff. **The House would need to protect itself from the risks which direct employment of Members' staff would impose on it by transferring some of the risk back to Members.**

42. If an Employment Tribunal ordered reinstatement, the House would be in a similar situation to that when it needed to redeploy Members' staff following an election, which we discuss below.⁴⁸

43. We have devoted considerable attention to dismissal not because it happens frequently (it does not), but because of its legal importance and the potential risk. Any new employment arrangement must be able to cope with difficult situations as well as day-to-day routine.

Recruitment

44. Recruitment is a less difficult area. The House does not need to conduct recruitment itself in order to be the employer, and the House's resolution provides for personal appointment by Members to continue. The questions are whether the House should insist on certain standards in recruitment procedures, such as fair and open recruitment, and whether it might sometimes exercise a veto. Most Members who wrote to us were strongly opposed to the House having any role in this area, and particularly to the House having a veto, arguing that the principle of personal appointment was paramount.

45. **We would favour minimal House involvement in recruitment**, because of the highly personal nature of appointments already noted, because the rapid turnover of Members' staff would make any involvement expensive, and because there is little evidence of a problem justifying an expensive remedy. The House's main interests would be to ensure that there was no unlawful discrimination and to discourage methods which might result in problems later through unsuitable people being recruited.

46. We agree with those who argued that political affinity is an important aspect of working for a Member. Fair and open recruitment (unlike selection on merit) does not preclude making a particular political allegiance a criterion for appointment, given that this

⁴⁸ Paras 56–63.

is often genuinely necessary to perform the job well. Some Members do advertise posts,⁴⁹ but making this compulsory would make recruitment more expensive, slower and more time-consuming, and it would create a requirement to be demonstrably fair to all applicants. As one Member put it:

“Only I know the qualities I am looking for in an applicant. This does not always mean the most qualified on paper for the job; I need to ensure that staff have the skills and personal qualities to deal with the constituents and a grasp of the political nuances and implications of issues we are dealing with. This is also a small office with at times a stressful workload which makes it essential that all members of staff can work well together.”⁵⁰

47. We see no reason to impose a requirement for fair and open competition, provided that certain minimum standards are adhered to. These would include checking that the person is capable of doing the job, checking references and ensuring that the person has authorisation to work in the UK. The Member would be required to declare that such standards had been adhered to, and that declaration, with documentary evidence where possible, would be sufficient. We do not believe this would be onerous, and it could protect Members from the consequences of imprudent appointments. **We propose that it be a condition of Staffing Expenditure that Members report in respect of new staff that certain standard recruitment procedures have been followed.**

48. We have considered how the House might ensure there was no unlawful discrimination in appointments, and have concluded that this would have to be left to the good sense of Members, as it is now. In the event of a Tribunal case the indemnity mentioned above would come into play.

49. The House currently has no veto over Members' appointments of staff, and we see no reason to change this (except in one respect) if the House becomes the employer. If a proposed member of staff poses a security risk, this can be dealt with, as now, by not providing a pass and not allowing access to the Parliamentary Network. The one area where the House would need to exercise a veto is if it became apparent that the recruit did not have authorisation to work in the UK, for which there is a penalty of up to £10,000. Any such cases will be identified by the Members' Staff Verification Centre.

50. Some concern was expressed to us that if it became the employer the House would impose a retirement age on current staff.⁵¹ We would strongly oppose any attempt to restrict Members' discretion and the opportunities available to staff in this way.

Health and safety

51. As employer, the House would have responsibility for health and safety in premises where Members' staff work. It already has this for the Parliamentary Estate at Westminster; what would be new would be responsibility for premises scattered throughout the UK,

⁴⁹ MS 10.

⁵⁰ MS 20.

⁵¹ MS 3, 4.

including some workplaces within homes. The employer's health and safety responsibilities are the same for employees working at home as for other employees.

52. Some Members' staff argued that greater involvement of the House in health and safety in constituency offices would be beneficial. One stated that his current workplace would not pass any health and safety inspection, and that the Member spent little time in the constituency office, and another that "I have worked previously in an office which broke a number of H&S guidelines and was a completely unsafe environment to work in."⁵² Several referred to the security problems of constituency offices, such as the risk from violent members of the public and the absence of mail screening.⁵³ Others opposed any House involvement.⁵⁴

53. Members tended to argue that they should retain responsibility for health and safety in their own premises, but the House would not in fact be able to sub-contract this responsibility to Members, since they are not its employees. Nevertheless we favour the lightest possible touch consistent with ensuring employees' safety, as follows:

- Training and advice for Members and Office Managers.
- Self-certification of premises by Members.
- A limited and risk-based audit regime, using regionally-based teams to minimise the cost.
- A reserve power for the House to remedy any problems and deduct the cost from the Member's Staffing Expenditure, and in extremis to prevent staff working in the premises in question.

54. **The House could fulfil its health and safety responsibilities for constituency offices by a combination of training and advice, self-certification by Members, a limited audit regime and a reserve power to remedy problems or withdraw staff. Somewhat different methods would be needed where staff work at home; the House would still need to satisfy itself in these cases that work spaces were fit for purpose and safe.**

⁵² MS 60, 79. See also MS 52, 59.

⁵³ MS 47, 86. See also MS 33.

⁵⁴ eg MS 58, 92.

4 The impact of general elections

55. The position of Members' staff during a Dissolution would not change if the House became their employer. As now, Staffing Expenditure would continue during the election campaign. Campaigning by such staff would not be forbidden, but Staffing Expenditure for any working time when the staff member was campaigning would have to be reimbursed.

56. On the other hand, the situation following an election would be radically different. At present, if a Member leaves the House, a "redundancy situation" arises: the employer has ceased or intends to cease to carry on the business for which the employee was employed.⁵⁵ The job which the member of staff has done has, in effect, disappeared. Therefore the member of staff may fairly be dismissed on grounds of redundancy, though redundancy compensation is payable (from the Winding Up Allowance).

57. If, instead, the employer is the House, a redundancy situation does not arise simply because the Member for whom the employee worked ceases to be a Member. It could not be said, for the purposes of the statutory redundancy scheme, or for the law of unfair dismissal, that the employer has ceased, or intends to cease, carrying on business.

58. Under both the redundancy and unfair dismissal provisions, the employer would be expected to make proper efforts to find alternative employment for the employee. Although it could be made a term of the contract of employment that the employment comes to an end when the Member ceases to be a Member, this is unlikely to provide an effective defence to a claim for unfair dismissal. The employee would be able to argue that the House acted unfairly by dismissing him or her without considering employment elsewhere (eg by assigning him or her to another Member).

59. Employing Members' staff on fixed-term contracts, as some who wrote to us suggested,⁵⁶ would not remedy this problem because after four years the courts will be likely to treat any contract of employment as a permanent one.

60. The House would therefore need to find alternative work for a significant number of Members' staff following a general election. Even when new Members have replaced Members from the same party, there would be very limited willingness among Members to take on the staff of former Members, though undoubtedly some would be chosen by new Members, as happens now. If large numbers of seats change hands between parties, the situation would be far more difficult. Many Members emphasised to us, not surprisingly, that they would not be willing to take on staff who had worked for a Member from another party and whose political loyalties probably lay with that party.⁵⁷ Again not surprisingly, there was deep hostility to any idea of a pool of staff from which Members must choose or from which staff would be allocated. For example:

"It is utterly unrealistic to expect an in-coming MP to take over the staffing arrangements of a predecessor. The politics may be different; the skills required will

⁵⁵ Section 139(1)(a), Employment Rights Act 1996.

⁵⁶ eg MS 100.

⁵⁷ eg MS 40.

be different; the MP may wish to bring existing staff with him/her; the office locations will almost certainly be different; the workload will be different.”⁵⁸

Some employees of Members also indicated their hostility to the concept of a pool, preferring to be made redundant.⁵⁹ Even if a Member was willing to take an employee from the pool, the employee might not be willing to work for that Member.

61. Staff based in the constituencies would be especially hard to redeploy. It would be possible to include a “mobility” obligation in their contracts of the kind which is often used within the Home Civil Service, and even without this it might be possible to argue that there is an implied term to the effect that the place of work can be changed, provided it remained within reasonable travelling distance for the employee. To go beyond that, it would be necessary to include an express term in the contract. Such a provision might of course severely discourage applicants for such posts, and it would be unfair as well as impossible to seek to apply it to existing staff. As already indicated, even if it could be applied, Members are unlikely to be willing to take on staff redeployed in this way in any number. On the one hand, the absence of a mobility clause might provide some basis for an argument by the House that an employee could fairly be dismissed on grounds of redundancy, because no comparable work was available within a reasonable travelling distance. On the other hand, that argument could not be made where the employee was willing to take on work outside the reasonable travelling distance.

62. Although Members have made clear their deep hostility to the concept of being required to take staff from a pool, the law would ensure that a pool of staff existed after a general election regardless of whether Members were willing to use them or not. It could be an extremely large pool: at some elections more than 200 seats change hands, which could result in 800 staff employed by the House but with no Member to work for. The logic of central employment is that there would be central assignment of staff to Members, but we are sure the House would not accept this. The likelihood is that, since the House would probably be unable to persuade an Employment Tribunal that the staff concerned were redundant, it would have to negotiate pay-offs with them, at considerable cost. Many would prefer to leave rather than be reassigned to a different Member, but undoubtedly others would not.

63. The problem of staff whose Member leaves the House is the most intractable aspect of the proposal that the House employ Members' staff. There is no easy answer to it, and resolving it would undoubtedly be highly expensive. Whether that cost would be worth bearing would depend on whether the benefits were considered to justify the cost.

⁵⁸ MS 21. See also MS 10.

⁵⁹ eg MS 10, 49, 85, 94. See also MS 3.

5 Pay and conditions of service

64. The House currently imposes the following requirements:

- Staff must be employed on standard contracts, and these must be submitted to the Department of Resources not later than eight weeks after the employee starts work (providing a contract to the employee within eight weeks is a legal requirement). There are standard descriptions of seven basic types of post (Office Manager/Executive Secretary, Senior Secretary/PA, Junior Secretary/Administrative Assistant, Senior Caseworker, Caseworker, Senior Research Assistant, Research Assistant).
- Pay must be within prescribed pay ranges for the seven types of post. For example, the range for Office manager/Executive secretary is £21,320 to £40,052.

65. Members have flexibility within the pay ranges and to a limited extent as regards hours (from 37.5 to 42), annual leave (from 20 to 30 days a year) and other terms and conditions. They also have discretion over bonuses, which may be up to 15% of the employee's gross annual salary. In practice there is also flexibility in the tasks staff carry out, despite the job descriptions. Members' discretion over salaries is not of course completely unfettered even within the prescribed ranges, as the Standards and Privileges Committee has emphasised,⁶⁰ and there is a requirement that any costs be reasonable.

66. Bringing all Members' staff into direct employment by the House would have several consequences:

- There would be a single large pool of staff with a single employer instead of numerous small teams, and the House would have a responsibility to ensure that there was equal treatment of comparable employees.
- The House would have a responsibility to ensure that other employment legislation was complied with, such as the minimum wage and the Working Time Directive.
- Whereas the House cannot currently recognise a trade union because it is not the employer,⁶¹ union recognition would become possible—a matter on which the views of staff were sharply divided. The House would employ more Members' staff than the threshold of 21, so any union would be able to secure the holding of a ballot on recognition of a trade union for collective bargaining purposes.⁶²
- Less obviously, the House would need to consider how far, if at all, it wished to go beyond its statutory responsibilities to ensure that it was a good employer and was perceived as such.

67. As regards practical consequences, the most basic is that the House would need more information about Members' staff than it currently collects, and more explanation of

⁶⁰ Fourth Report from the Standards and Privileges Committee, 2007–08, *Conduct of Mr Derek Conway*, HC 280, paras 18, 26, 31, 37.

⁶¹ Section 178, Trade Union and Labour Relations (Consolidation) Act 1992.

⁶² Schedule A1, Trade Union and Labour Relations (Consolidation) Act 1992.

Members' decisions regarding their staff. A second practical consequence is that it would need to have means for intervening in cases (hopefully rare) where there was a risk of employment law being breached. We next consider each relevant aspect of employment law.

Equal treatment

68. There would be a requirement to ensure equality of treatment (but not uniformity) among Members' staff in areas such as pay, bonuses, leave and flexible working. Equality of treatment would be required both within Members' own teams (where it ought to exist already) and between the staff of different Members.

69. As regards pay, any departure from norms such as the recommended starting salaries would need to be justified by Members, and the House would need to be able to overrule Members if necessary. Given that some members of staff considered that there was unequal treatment within the existing small teams,⁶³ we believe some auditing of the appropriateness of pay levels would be necessary. As the Committee on Standards in Public Life said of Members' staff in 2008, "their salaries should be commensurate with their responsibilities, experience and skills. Observance of this should be auditable."⁶⁴

70. For bonuses there would need to be specified criteria, which do not currently exist, and justification would need to be provided, which is not currently the case. Again, the House would need to be able to overrule Members if bonuses could not be justified against the criteria, but we would expect this to be an exceptional measure when bonuses were clearly unjustified.

71. Leave is provided for in the standard contract, with some scope for variation. Members would need only to explain why they had allowed a longer or shorter period. Permission to work flexibly would also be covered by the proposed audit, and the House would need to be able to require information about it.

72. We recognise that ensuring genuine equality of treatment in these areas would be extremely difficult. Several members of staff argued convincingly that only the Member they worked for really knew how effectively they worked,⁶⁵ and there is a risk that any audit would be a largely paper-based exercise which simply exchanged one form of unequal treatment for another and left the most effective staff insufficiently rewarded. Presumably for that reason, Unite argued that determining bonuses and overtime should be left to Members.⁶⁶ **We envisage Members retaining most of the discretion they currently enjoy over pay and conditions of service, and that any audit would deal only with clear cases of inequality of treatment (with particular attention being paid to the pay and bonuses of family members). However, it would not be consistent with the House's status as employer for it to leave Members all of their current discretion over pay, bonuses and other terms of employment.**

⁶³ MS 61, 78. Inequalities between Westminster staff and constituency staff were also pointed out (MS 47, 84).

⁶⁴ HC 578-I (2007-08), p 77.

⁶⁵ MS 72, 92.

⁶⁶ MS 4.

Other legislation

73. Given the existence of the standard contract and the pay ranges, there should not normally be any problem as regards the minimum wage (other than potentially in respect of interns, discussed below). The same applies to the Working Time Directive, though we of course acknowledge that Members and their staff are sometimes under great pressure which can result in exceptional hours being worked. Information on overtime already has to be provided. We consider that it would be disproportionate for the House to require timesheets to be kept, but **the House would need to be able to respond to any complaints about non-compliance with legislation and to require information from Members and their staff.** Hours worked would of course be relevant to the audit of pay.

74. As for statutory sick pay, there would again need to be a requirement for Members to notify the House of any absences. The House would also need a power to intervene in other circumstances, such as a Member's refusal to allow time off for reasons prescribed by statute, such as paternity leave.

75. To some extent these new requirements would do no more than make it necessary for Members to carry out duties which fall to an employer in any case, including record-keeping on matters such as hours and leave. The MEC noted in 2008 the guidance from the Department of Resources that Members "should keep more comprehensive records of work undertaken by their staff, their qualifications, hours of work, holiday and sickness records, and also annual appraisals".⁶⁷ The Standards and Privileges Committee has also emphasised the importance of maintaining adequate staff records.⁶⁸ We recognise of course that, even so, having to account to the House and provide information would be irksome, but this would be an inevitable consequence of making the House the employer of Members' staff.

76. We have confined ourselves in this part of our report to meeting the House's legal obligations, rather than using the House's new role to improve employment practices more generally. The views of Members' staff varied on this point, some preferring supervision by their current employer and others hoping the House would impose more consistently professional employment practices. We consider later ways in which the House might assist Members more in their role as employers or managers of staff.⁶⁹

Consistency of pay and pensions between House staff and Members' staff

77. Some Members and Members' staff considered that if the House became the employer the pay and pensions of Members' staff would or should be made comparable to those of House staff.⁷⁰ The arguments for Members' staff to have similar pension rights to House staff was put to us forcefully, but it would be expensive. The case relating to pay is less clear because the work done by House staff and Members' staff is not necessarily similar. Were

⁶⁷ HC 578-I (2007–08), para 99.

⁶⁸ HC 280 (2007–08), para 37.

⁶⁹ Paras 99–101 below.

⁷⁰ MS 24, 28, 67, 70, 79, 95.

Members' staff to have the same employer as House staff there would be circumstances in which pay and pensions would have to be comparable (eg to have a good defence to an equal pay claim), but if our proposal for a separate statutory body as the employer of Members' staff were adopted there would be no such requirement. Making pay and pensions comparable therefore becomes a separate issue, to be considered on its merits, and it is consequently beyond the scope of what the House has asked us to do.

6 Exceptions

78. Members' staff do not necessarily work full-time for a particular Member; there is a variety of employment arrangements. Given that our scheme would allow Members to spend on staff up to a specified maximum sum, rather than to have a specified maximum number of staff, most if not all of these arrangements could continue if the House became the employer. For example, some staff are part-time or spend part of their time on other activities, such as working for an all-party group.⁷¹ Any such division of time needs to be monitored carefully whatever the employment arrangement, but no new issues are raised if the House becomes the employer.

79. Similarly, when temporary staff are taken on because longer-term staff are absent, for example on maternity leave, the House would become the employer of these staff. Arguably the change here would be that the House should bear directly the additional staff costs (without charging it against the Member's Staffing Expenditure) because the absent staff would be employees of the House and not working for the Member, though this would reduce the incentive for Members to manage staff absences.

80. If, instead of our proposal, the scheme were to be framed in such a way that Members were entitled to a specific number of staff, it would be far less flexible and most of the arrangements discussed in this part of our report would not be possible.

Collectively-employed staff

81. Some staff work collectively for a group of Members, paid for from the Staffing Expenditure of a number of Members. The one example we are aware of is the Parliamentary Research Unit (PRU), which works for subscribing Conservative Members. The Unit has 16 researchers, led by a director and a deputy director. 155 Members subscribe for its services, most paying £3300 a year plus VAT, drawn either from their Staffing Expenditure or their Administrative and Office Expenditure. Apart from the director and his deputy, staff are paid on the standard pay rates. The Unit argues that the collective arrangement eliminates duplication of work and improves the quality of the research through specialisation, training and quality control.⁷² The Senior Salaries Review Board stated in 2007 that "In principle we welcome pooled research and support facilities for MPs since these have the potential to provide better value for money ..."⁷³.

82. We consider it important that innovative arrangements such as collective employment should be able to continue, and see no reason why this should not be possible if the House employs Members' staff. Options for collectively-employed staff such as those of the PRU could include:

⁷¹ Staff paid for wholly from Staffing Expenditure may not spend more than a quarter of their time on work for an all-party group (Committee on Members' Allowances, Practice Note No. 3).

⁷² MS 99.

⁷³ Review Body on Senior Salaries, Report No. 64, *Review of parliamentary pay, pensions and allowances 2007*, Cm 7270-I, para 5.22.

- Continuation of the current employment arrangement, with employment by the House being confined to staff working for individual Members.
- Direct employment by the House of what are currently collectively-employed staff (other than managers such as the director and deputy director of the PRU), though this would have the disadvantage that the staff would continue to be employed by the House even if subscriptions dwindled.
- Direct employment by the House of what are currently collectively-employed staff, including their managers, which would require an additional and higher payscale for the latter.

Unpaid interns

83. One Member commented that “it would vastly increase the costs to the taxpayer or reduce the work-rate of MPs’ offices and their ability to be flexible through busy and less busy periods, if the practice of taking on unpaid interns (of which there is no current shortage of volunteers) were driven out.”⁷⁴ There is no problem if interns are genuinely working as volunteers, doing such work as they please; they are not then employees either of House or Member and have no contract of service. However, as soon as they are expected to be at work at specific times or to complete specific work, they are no longer volunteers but employees and some employment legislation will apply, such as the minimum wage. That problem potentially arises now, and is the responsibility of Members; currently the House Service sometimes becomes aware of Members’ unpaid interns only when incidental expenses and subsistence are claimed.

84. Unpaid interns cannot be employed by the House as they are not employees at all. **No changes would be needed to the existing arrangements for unpaid interns as a direct result of the House becoming the employer of Members’ staff.**

Self-employed workers

85. Several Members pointed out that they sometimes contracted for services from self-employed workers, and one such person wrote to ask us how the House’s proposal would affect her.⁷⁵ Under our proposal such arrangements could continue if Members wished, but it would need to be considered whether the House rather than the Member should be party to the contract for services. Allowing individual Members to agree such contracts would potentially be a loophole which would permit Members to re-engage staff directly, but we accept that trying to prevent this would be cumbersome.

Financial arrangements

86. At present Members can transfer as much funding as they wish from their Administrative and Office Expenditure to their Staffing Expenditure,⁷⁶ and some Members

⁷⁴ MS 20.

⁷⁵ MS 13, 15, 77.

⁷⁶ Green Book (July 2009), p 58.

use this option to employ more staff than would otherwise be possible. We see no reason why this flexibility should not continue under any new employment arrangement.

87. One Member asked if it would still be possible to augment Staffing Expenditure from the Member's own resources.⁷⁷ Again we see no reason why this should not be possible, provided the Member reimbursed the House for the cost. The issue could arise of whether a member of staff funded wholly by a Member or a third party to work for that Member would have to be an employee of the House, which would be hard to justify but which would otherwise give rise to various complications relating to equal treatment.

⁷⁷ MS 31.

7 Transitional arrangements

88. Members' staff raised several concerns with us about the transition to the House becoming their employer. Upon the change being made, existing contracts of employment with Members would be transferred to the new employer. **We take it as a given that the House would wish to ensure that no current member of staff experienced any deterioration in their existing terms and conditions.** The TUPE regulations would apply anyway, which would have the same effect. The fact that staff would remain under the day-to-day management of their current employer should mean that any informal working arrangements valued by staff would also continue.

89. Some staff objected strongly that if the House became their employer, they could no longer expect to be made redundant if the Member they worked for retired or was defeated at a general election, but might instead be reassigned to a different Member whom they had not chosen to work for,⁷⁸ though there were others who welcomed the prospect of reassignment instead of redundancy.⁷⁹ We agree that it would be unfair to set aside the legitimate expectation of existing staff that they will be offered redundancy if the Member they work for leaves the House. **Existing employees of Members should be given the option of being made redundant, with appropriate redundancy pay, when the Member they currently work for leaves the House.** This would also help to ease the problem we identify at para 63 above.

90. **It should also be confirmed on any transfer of Members' staff to the House that length and continuity of service are not affected by the transfer.**

91. Many fewer current staff would be affected and problems in reassigning staff would be minimised if no change was made in the employment status of Members' staff until the forthcoming general election. **If the proposal to make the House the employer of Members' staff goes ahead, it should not be implemented until the next general election at the earliest.**

⁷⁸ MS 10, 49, 94. See also MS 22, 27.

⁷⁹ eg MS 59, 68, 89.

8 Costs

92. The costs of the House becoming the employer of Members' staff cannot be predicted with certainty, and to some extent would depend on exactly how the proposal was implemented. For example, raising the employer's contribution to the pensions of Members' staff to the same level as for House staff (from about 10% to 22%) would cost about £6 million per year,⁸⁰ and a case can be made for this additional expenditure, but it is not part of our proposal.

93. An obvious additional cost would be extra human resources and administrative staff to manage 2,700 employees. Ratios of HR and administrative staff to employees typically vary from 1:50 to 1:100,⁸¹ which in the case of Members' staff would mean from 27 to 54 staff—or, taking account of the three staff of the Personnel Advice Service who currently offer employment advice to Members, an additional 24 to 51. Assuming an average grade of civil service Higher Executive Officer (or House of Commons B2 grade) at a cost of £40,000 per annum per member of staff (including pension costs and ERNIC), the total extra staff cost alone would be between £1 million and £2 million per year. Given that Members' staff are managed in small teams, have a high turnover and are scattered throughout the country, we would expect the cost to be towards the upper end of that range. There would also be an additional burden on the Legal Services Office.

94. The potential costs of Employment Tribunal proceedings are even less predictable. Each Tribunal case which goes to trial, whether won or lost, is estimated to cost about £8000 in legal fees, but the more significant aspect of cost would be any damages or the need to pay off potential litigants. Employment Tribunal awards (unless based on discrimination) are capped at £66,200, and settlements are commonly in the £15,000–£30,000 range. As indicated above, the House has deeper pockets and is at least as vulnerable to reputational damage as individual Members, so the number of cases and size of pay-offs could increase from their current levels, though our proposal for Members to indemnify the House could reduce the cost to the House.⁸²

95. Another major cost would be that of staff whose employer has left the House but whom it has not been possible to reassign to another Member. It is difficult to estimate the cost, but in an election year with, say, 150 Members leaving the House there could be 600 staff to be reassigned. Assuming that in the first month half were successfully reassigned the initial wage bill for the remainder would be about £1 million per month. This would diminish over time, but the total cost would be significant. Of course, the number of such employees would depend on political circumstances and the willingness of new Members to take on existing staff.

96. The requirement for equal treatment in areas such as pay would be likely to result in some levelling up of pay, but it is not possible to quantify this cost.

⁸⁰ Information from the Department of Resources.

⁸¹ Information from the Department of Resources.

⁸² Para 41 above.

97. Other additional costs would include the new statutory body, health and safety audits of premises and a possible increase in overtime payments if hours were better audited.

98. We conclude that the additional costs of the House employing Members' staff directly would be high.

9 Improving the existing system

99. The House has asked us to devise recommendations for implementing a new system for employing Members' staff rather than to suggest ways of improving the current system. Nevertheless, we note that the MEC proposed in 2008 that additional support should be given to Members as employers. It observed that Members "are sometimes rather less than model employers. They have varying degrees of experience and aptitude in human resource management, and as they are frequently stressed by their own workloads and the complexities of juggling multiple commitments, they can be difficult people to work for. ... there is scope for improvement in standards of employment practice."⁸³ The PLP stated in its submission to us that "We do ... believe there is a greater role for the House in offering guidance to members, particularly in relation to employment issues".⁸⁴ This could also help to address some of the concerns raised by Members' staff.⁸⁵

100. The establishment of the IPSA raises the question of which body should give any additional support to Members in their role as employers. Careful consideration will need to be given to whether this should be the House, as the provider of services to Members, or the IPSA, as the body paying Members' allowances, and how such support should be funded. The division of responsibilities will be a matter for discussion between the House and the IPSA over the next few months.

101. Examples of areas in which such support could be given, drawing both on the MEC's report and the submissions received during the current examination, include:

- Assistance with and advice on recruitment processes, such as "toolkits" for the assessment process. The Personnel Advisory Service is already willing to act as an independent party during recruitment if requested.
- Advice on performance management systems.
- Provision of software for record keeping.
- Additional guidance and advice in difficult areas such as managing sickness, poor performance, dismissal or reorganisation, together with a mediation service.
- Greater provision of training for staff, including staff based in the constituencies. Several constituency workers indicated to us the importance of distance learning. The current training contract with Capita started in July 2008, and in the nine months to the end of the 2008/09 financial year, 300 Members' staff attended 71 courses throughout the country. The cost of providing these courses was £110,000. Members had previously been surveyed to determine their requirements as employers. Organisations representing Members' staff were also invited to participate in the tendering process, but consultation both with Members and with constituency staff could be deepened in this area.

⁸³ HC 578-I (2007-08), para 90.

⁸⁴ MS 1.

⁸⁵ Para 11 above.

102. An important question is to what extent more support should be given directly to Members' staff (other than through training). The PLP pointed out that many staff would welcome such support.⁸⁶ The Office Managers employed by some Members could be a priority, and we note that in some circumstances the Personnel Advice Service already provides advice to them.

103. Another alternative to the proposal would be to report Members' expenditure on staff separately from other expenditure funded by the expenses and allowances system, in order to reduce the perception that Members benefit personally from Staffing Expenditure. This might or might not have that effect, but in our view the control and monitoring of expenditure by an independent body, the IPSA, is more likely to achieve that aim.

⁸⁶ MS 1.

10 Conclusion

104. Our recommendations for implementing the House's proposal, as requested by the House, are as follows:

- The limit on the staffing of Members' offices from public funds should continue to be a financial one rather than a limit on the number of staff paid for.
- The employing body should be a new statutory body with Members represented on it.
- The House should have responsibility and the last word in cases of dismissal of staff, and the respective roles of House and Member in this area should be carefully defined.
- The House should have only a minimal role in recruitment, and should not require "fair and open recruitment", but should insist on certain standard recruitment procedures as a condition of funding.
- Provision would need to be made to enable the House to meet its obligations under employment law, especially as regards equal treatment.
- As much flexibility as possible should be retained in the way Members' staff are organised, and Members should continue to be able to take on unpaid interns.
- There should be no deterioration in the terms and conditions of existing staff, and they should have the option of redundancy rather than reassignment if the Member they work for leaves the House.

105. We believe our proposed scheme would be the best way of achieving what the House decided it wanted in April and would be workable, although the problem of what to do with the staff of Members who have left the House remains unresolved. However, we do not commend our scheme to the House, for the following reasons:

- **it would have heavy costs;**
- **it would secure no clear benefits;**
- **it would place Members' staff in an ambiguous employment relationship; and**
- **it would significantly reduce the flexibility Members currently have to manage their staff.**

106. Our preference would be for the House (or if appropriate the IPSA) instead to give greater support to Members as employers, in the ways described above.⁸⁷

107. We have noted the criticisms from some Members' staff that there was no consultation before the House took its decision in April.⁸⁸ **If the proposal that the House should become the employer of Members' staff is to proceed, it will be essential that**

⁸⁷ Para 101.

⁸⁸ eg MS 3, 10, 47, 72.

there is extensive consultation both with Members and with their staff on a specific detailed proposal before it is put to the House.

Conclusions and recommendations

1. The scale of the proposed transfer of staff to a new employer is significant. (Paragraph 12)
2. The limit on the staffing of Members' offices from public funds should continue to be a financial one rather than a limit on the number of staff paid for. (Paragraph 20)
3. It is inescapable that the House's new duties as employer would significantly restrict Members' freedom in some respects. (Paragraph 21)
4. Our preference if the House is to be the employer of Members' staff is for the employing organisation to be a new statutory body. (Paragraph 28)
5. It is unavoidable that the House's wishes must prevail if House and Member disagree over whether Members' staff should be dismissed; otherwise the House could not be regarded as the employer. (Paragraph 38)
6. The House would need to protect itself from the risks which direct employment of Members' staff would impose on it by transferring some of the risk back to Members. (Paragraph 41)
7. We would favour minimal House involvement in recruitment. (Paragraph 45)
8. It should be a condition of Staffing Expenditure that Members report in respect of new staff that certain standard recruitment procedures have been followed. (Paragraph 47)
9. The House could fulfil its health and safety responsibilities for constituency offices by a combination of training and advice, self-certification by Members, a limited audit regime and a reserve power to remedy problems or withdraw staff. Somewhat different methods would be needed where staff work at home; the House would still need to satisfy itself in these cases that work spaces were fit for purpose and safe. (Paragraph 54)
10. The problem of staff whose Member leaves the House is the most intractable aspect of the proposal that the House employ Members' staff. There is no easy answer to it, and resolving it would undoubtedly be highly expensive. Whether that cost would be worth bearing would depend on whether the benefits were considered to justify the cost. (Paragraph 63)
11. We envisage Members retaining most of the discretion they currently enjoy over pay and conditions of service, and that any audit would deal only with clear cases of inequality of treatment (with particular attention being paid to the pay and bonuses of family members). However, it would not be consistent with the House's status as employer for it to leave Members all of their current discretion over pay, bonuses and other terms of employment. (Paragraph 72)

12. The House would need to be able to respond to any complaints about non-compliance with legislation and to require information from Members and their staff. (Paragraph 73)
13. We consider it important that innovative arrangements such as collective employment should be able to continue, and see no reason why this should not be possible if the House employs Members' staff. (Paragraph 82)
14. No changes would be needed to the existing arrangements for unpaid interns as a direct result of the House becoming the employer of Members' staff. (Paragraph 84)
15. We take it as a given that the House would wish to ensure that no current member of staff experienced any deterioration in their existing terms and conditions. (Paragraph 88)
16. Existing employees of Members should be given the option of being made redundant, with appropriate redundancy pay, when the Member they currently work for leaves the House. (Paragraph 89)
17. It should be confirmed on any transfer of Members' staff to the House that length and continuity of service are not affected by the transfer. (Paragraph 90)
18. If the proposal to make the House the employer of Members' staff goes ahead, it should not be implemented until the next general election at the earliest. (Paragraph 91)
19. The additional costs of the House employing Members' staff directly would be high. (Paragraph 98)
20. We believe our proposed scheme would be the best way of achieving what the House decided it wanted in April and would be workable, although the problem of what to do with the staff of Members who have left the House remains unresolved. However, we do not commend our scheme to the House, for the following reasons:
 - it would have heavy costs;
 - it would secure no clear benefits;
 - it would place Members' staff in an ambiguous employment relationship; and
 - it would significantly reduce the flexibility Members currently have to manage their staff. (Paragraph 105)
21. Our preference would be for the House (or if appropriate the IPSA) instead to give greater support to Members as employers, in the ways described above. (Paragraph 106)
22. If the proposal that the House should become the employer of Members' staff is to proceed, it will be essential that there is extensive consultation both with Members and with their staff on a specific detailed proposal before it is put to the House. (Paragraph 107)