



House of Commons
Committee on Standards

Mr Peter Lilley

Fifth Report of Session 2014–15

Report, together with an appendix and formal minutes relating to the report

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The Committee on Standards

The Committee on Standards is appointed by the House of Commons to oversee the work of the Parliamentary Commissioner for Standards; to examine the arrangements proposed by the Commissioner for the compilation, maintenance and accessibility of the Register of Members' Interests and any other registers of interest established by the House; to review from time to time the form and content of those registers; to consider any specific complaints made in relation to the registering or declaring of interests referred to it by the Commissioner; to consider any matter relating to the conduct of Members, including specific complaints in relation to alleged breaches in the Code of Conduct which have been drawn to the Committee's attention by the Commissioner; and to recommend any modifications to the Code of Conduct as may from time to time appear to be necessary.

Current membership

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Powers

The constitution and powers of the Committee are set out in Standing Order No. 149. In particular, the Committee has power to order the attendance of any Member of Parliament before the committee and to require that specific documents or records in the possession of a Member relating to its inquiries, or to the inquiries of the Commissioner, be laid before the Committee. The Committee has power to refuse to allow its public proceedings to be broadcast. The Law Officers, if they are Members of Parliament, may attend and take part in the Committee's proceedings, but may not vote.

Publications

Committee reports are published on the Committee's website at www.parliament.uk/standards and by The Stationery Office by Order of the House.

Committee staff

The current staff of the Committee are Eve Samson and Alda Barry (Clerks), Katy Simms (Second Clerk) and Cecilia Santi O Desanti (Committee Assistant).

Contacts

All correspondence should be addressed to the Clerk of the Committee on Standards, Journal Office, House of Commons, London SW1A 0AA. The telephone number for general enquiries is 020 7219 6615

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1 Report

1. This Report arises from a complaint from Mr Thomas Docherty MP that Mr Peter Lilley had failed to declare a relevant financial interest, namely a non-executive directorship in Tethys Petroleum Ltd, in debates in Westminster Hall on the Climate Change Act and on Energy Prices, Profits and Poverty.¹ Mr Lilley told the Commissioner that the activities of Tethys Petroleum were restricted solely to Central Asia, and that its activities, revenues and profits “neither affect nor are affected by the UK energy market domestic energy bills (the subject on 7 November) nor by the Climate Change Act 2008 (the subject of 10 September).”²

2. The Commissioner took advice from the Registrar of Members’ Financial Interests who considered that Mr Lilley had no conflict of interest in the matter under discussion in either debate cited by the complainant, but:

Members are however required to declare an interest “if it might reasonably be thought by others to influence the speech, representation or communication in question.” In the context of the debate on 7 November 2013, it seems to me that an ordinary person might have viewed Mr Lilley’s interest in this way. Although Mr Lilley has told you that Tethys Petroleum Ltd operates only in central Asia, I would not have expected an ordinary person to know this. I would therefore have advised Mr Lilley that in my view the rules of the House required him, before speaking in the debate, to declare that he was a non-executive director of Tethys Petroleum Ltd. I would also have advised him, when declaring his interest, to point out that since Tethys Petroleum Ltd is active only in Central Asia, it does not affect nor is affected by the UK energy market.³

3. Mr Lilley disputed this. In his view, this interpretation amounts to saying that declarations of interest should be made even when a Member does not have a financial conflict of interest if an uninformed observer might consider that an entry in the Register of Members’ Financial Interests suggests that such an interest exists.⁴ It appears he considered that the two debates related to UK domestic policy, while Tethys Petroleum operated in Central Asia.⁵

4. In the course of the Commissioner’s inquiry Mr Lilley and the Commissioner had an extensive exchange of correspondence, which is appended to the Commissioner’s memorandum, and summarised in that memorandum. The disagreement centres around

1 [WE1](#), see also HC Deb 10 Sep 2013 : Column 235WH; HC Deb 7 Nov 2013 : Column 149WH

2 [WE6](#)

3 [WE8](#)

4 [WE11](#)

5 [WE6](#)

the interpretation of the requirements of the Code of Conduct and the Guide to the Rules. The Guide to the Rules states that:

The main purpose of declaration of interests is to ensure that Members of the House and the public are made aware, at the appropriate time when a Member is making a speech in the House of Commons or in Committee, or participating in any other proceedings of the House, of any past, present or expected future financial interest, direct or indirect, which might reasonably be thought by others to be relevant to those proceedings.

In 1974 the House replaced a long standing convention with a rule that any relevant financial interest or benefit of whatever nature, whether direct or indirect, should be declared in debate, or other proceeding. [...]

It is the responsibility of the Member, having regard to the rules of the House, to judge whether a financial interest is sufficiently relevant to a particular debate, proceeding, meeting or other activity to require a declaration. The basic test of relevance should be the same for declaration as it is for registration of an interest; namely, that a financial interest should be declared if it might reasonably be thought by others to influence the speech, representation or communication in question. A declaration should be brief but should make specific reference to the nature of the Member's interest.⁶

The Guide does not give any advice as to how the Commissioner or the Committee should assess what “might reasonably be thought” by others to constitute a relevant interest.

5. The phrase “might reasonably be thought” could relate to the degree to which an interest, fully understood, represents or might be thought to represent a conflict of interest. This is akin to the test used in legal proceedings, although taking part in such proceedings is not directly comparable to speaking in debate. Mr Lilley’s point that his interest in an energy company operating in Central Asia did not relate to debates on UK energy policy is linked to such an interpretation. Mr Lilley considers that the test of the Guide “presupposes that a financial conflict of interest exists and then asks, is it such that this interest, once drawn to their attention, ‘might reasonably be thought by others to influence the speech representation, or communication in question’ even though we are in honour bound to try not to let it sway our argument.”⁷

6. The phrase might also relate to the level of understanding which should be required before an observer decided that it could “reasonably be thought” that an interest influenced a speech. In this case, the test would be not about the objective nature of the interest in question, but about what an observer would presume from information in the public domain. There is a further, subsidiary, question here about how much it is reasonable to expect the observer to look beyond matters such as the Register entry in question. The Commissioner notes that:

6 [Code of Conduct and Guide to the rules relating to the Conduct of Members](#), 2012, HC 1885, paragraphs 8, 72, 74

7 [WE11](#)

Where a declaration is made my advice is that it should be sufficient in itself to clarify the situation for the listener and should not require them to undertake additional research in order to understand the nature of the interest.⁸

The Commissioner considers that, while there was in fact no conflict of interest, Mr Lilley's interest in Tethys Petroleum might reasonably be thought by others to have influenced his speeches in the two debates. She does not consider that someone who heard Mr Lilley's words in Westminster Hall, or read them in Hansard the next day, would — if aware of these interests — then be expected to find out about them by consulting the internet. We note that Mr Lilley's original Register entry relating to Tethys Petroleum has now been amended to make clear that Tethys Petroleum operates exclusively in Central Asia.⁹

7. We note that the Commissioner concludes “this memorandum considers at some length a fairly small but important issue in the interpretation of the Guide to the Rules [...] which does not appear to have been directly tested until now. It is helpful to have the opportunity to clarify this point, and the Committee to take a view on my interpretation, as well as on the separate question of how it applies in the circumstances of the particular complaint.”¹⁰

8. The current standards system means that points of interpretation of the rules are considered in context of particular cases. This has been the case since the inception of the system. The Commissioner has acted properly in submitting a memorandum on the two matters together and, as the Commissioner requested, it is appropriate for us to consider the principle separately from the particular complaint. Times have changed since the Guide to the Rules was first set in place. We do not think the requirement to declare interests ought solely to be directed at conflicts of interest. Its purpose should include ensuring that those participating in debate, and those listening, are aware of matters which may be reasonably perceived to be directly related to the views expressed. We consider that a Member should ensure that his or her Register entry is as informative as possible. However full the Register entry may be, there will always be occasions on which it will imply that an interest is more relevant than in fact it is; in that case, the Member should either simply declare the interest, or explain the true position. We agree with the Commissioner on this.

9. As the Commissioner notes, this is a novel point of interpretation. The Commissioner's memorandum is carefully considered, and sets out her views. It is unfortunate that she was unable to deal with the matter of principle apart from the individual case. That is a lacuna in the current procedures, which we hope the current Standards Sub-Committee Inquiry will address. We note that the Commissioner invited Mr Lilley to bring the principle before the Committee and he did not take that opportunity. When an exchange of letters was copied to the Committee at a later stage we felt it was inappropriate to interfere with a case so far advanced.

8 Appendix (Commissioner's memorandum), para 61

9 Appendix (Commissioner's memorandum), para 33, para 46.

10 Appendix (Commissioner's memorandum), para 85

10. The Guide to the Rules states that “it is the responsibility of the Member, having regard to the rules of the House, to judge whether a financial interest is sufficiently relevant to a particular debate, proceeding, meeting or other activity to require a declaration.”¹¹ Mr Lilley’s action in declaring his interest on other occasions demonstrates a willingness to declare when he judged it relevant. He has given his explanation as to why he did not think his interest was relevant to the debates in question. We do not think it would be fair to Mr Lilley to find him in breach of a rule which was not clear at the time he considered the matter. It would be inappropriate for us to criticise Mr Lilley or suggest further action in this case. We will work with the Commissioner and the Registrar to ensure more clarity in future.

11 [The Code of Conduct and Guide to the Rules relating to the conduct of Members](#), 2012, HC 1885, para 74

Formal Minutes

Tuesday 9 January 2015

Members present:

Kevin Barron, in the Chair

Sir Paul Beresford	Peter Jinman
Mr Christopher Chope	Walter Rader
Mr Geoffrey Cox	Sir John Randall
Mr Dominic Grieve	Dr Alan Whitehead

Draft Report (*Mr Peter Lilley*), proposed by the Chair, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 and 2 read and agreed to.

Paragraph 3 read, amended and agreed to.

Paragraphs 4 to 6 read and agreed to.

Paragraphs 7 to 10 read, amended and agreed to.

A paper was appended to the Report.

Resolved, That the Report be the Fifth Report of the Committee to the House.

None of the lay members present wished to submit an opinion on the Report (Standing Order No. 149 (9))

Ordered, That the Chair make the Report to the House.

[Adjourned to a day and time to be fixed by the Chair.]

Appendix: Memorandum from the Parliamentary Commissioner for Standards— Complaint against Rt Hon Peter Lilley MP

Introduction

1. This memorandum reports on my investigation into a complaint that Mr Lilley MP, the Member for Hitchin and Harpenden, failed to draw attention to a relevant interest on two occasions when he spoke in debates in Westminster Hall. This is a matter at the less serious end of the spectrum but is brought to the Committee as Mr Lilley does not accept my interpretation of the Rules relating to the conduct of Members.

The Complaint

2. On 11 April 2014 I received a letter from Mr Thomas Docherty¹, the Member of Parliament for Dunfermline and East Fife concerning Mr Lilley. He asked me to investigate Mr Lilley's failure to declare a relevant interest in the course of debates in Westminster Hall at which he spoke on 10 September 2013 and 7 November 2013. The first debate concerned the Climate Change Act and the second was on Energy, Prices, Profits and Poverty. Mr Lilley's entry in the Register of Members' Financial Interests² included his non-executive role with Tethys Petroleum Limited, a gas and oil exploration company, and Mr Lilley's speeches³ concerned the rise in energy bills and the cost of renewable energy.

3. Before I initiate an inquiry, I consider whether there is sufficient evidence to justify an inquiry into whether a particular named Member may have breached the Code of Conduct as alleged. In this case, the facts are that Mr Lilley did speak in the debates identified and did not declare an interest on either occasion. His non-executive role with Tethys Petroleum was recorded in the Register of Members' Financial Interests and had the potential to be relevant to the debates. I therefore considered that there was sufficient evidence to justify an inquiry and initiated it on 8 May 2014. I wrote to Mr Lilley on that date⁴.

4. The complaint which I accepted was that Mr Lilley failed to declare that he is a non-executive director of Tethys Petroleum Limited on two occasions when he spoke in Westminster Hall debates. These were the debate on the Climate Change Act on 10 September 2013 and the debate on Energy, Prices, Profits and Poverty on 7 November 2013.

1 WE1

2 WE5

3 WE2

4 WE3

Relevant Rules of the House

5. The Code of Conduct for Members of Parliament approved by the House on 12 March 2012 provides in paragraph 13 as follows:

“Members shall fulfil conscientiously the requirements of the House in respect of the registration of interests in the Register of Members' Financial Interests. They shall always be open and frank in drawing attention to any relevant interest in any proceeding of the House or its Committees, and in any communications with Ministers, Members, public officials or public office holders.”

6. The rules in relation to the declaration of Members' interests are set out in Chapter 2 of the Guide to the Rules. Paragraph 72 of the 2009 Guide provides as follows:

“In 1974 the House replaced a long standing convention with a rule that any relevant financial interest or benefit of whatever nature, whether direct or indirect, should be declared in debate, or other proceeding...”

Paragraph 74 says:

“It is the responsibility of the Member, having regard to the rules of the House, to judge whether a financial interest is sufficiently relevant to a particular debate, proceeding, meeting or other activity to require declaration. The basic test of relevance should be the same for declaration as it is for registration of an interest; namely, that a financial interest should be declared if it might reasonably be thought by others to influence the speech, representation or communication in question. A declaration should be brief but should make specific reference to the nature of the Member's interest.”

Paragraph 76 states:

“The House has endorsed the following advice on the occasions when such a declaration of interest should be made: ‘no difficulty should arise in any proceeding of the House or its Committees in which the Member has an opportunity to speak. Such proceedings, in addition to debates in the House, include debates in Standing Committees, the presentation of a Public Petition, and meetings of Select Committees at which evidence is heard. On all such occasions the Member will declare his interest at the beginning of his remarks... it will be a matter of judgment, if this interest is already recorded in the Register, whether he simply draws attention to this or makes a rather fuller disclosure..’”

Paragraph 77 states:

“In a debate in the House the Member should declare an interest briefly, usually at the beginning of his or her speech. If the House is dealing with the Committee or Consideration stages of a Bill it will normally be sufficient for the Member to declare a relevant interest when speaking for the first time.”

My Inquiry

7. In the course of my inquiry I have considered evidence from

- a) Mr Lilley
- b) The Registrar for Members' Financial Interests

Evidence from Mr Lilley

8. Mr Lilley wrote to me on 13 May⁵ and explained that the activities of Tethys Petroleum were restricted solely to Central Asia. He said:

“Its activities, revenues and profits neither affect nor are affected by the UK energy market or domestic energy bills (the subject on 7 November) nor by the Climate Change Act 2008 (the subject of 10 September).

Having always declared this interest ... long before these debates when, if ever, I considered it would be relevant to the Parliamentary debates. It clearly has no bearing on UK energy policy which has no impact on Tethys Petroleum Limited's activities or profitability.

The only occasion I felt it had some, albeit insignificant, relevance was when the Select Committee on Energy and Climate Change interviewed the UK Special Representative on Climate Change, Sir David King, whose job it is to try to influence the energy policy of every other government on the planet. So, I declared my interest in Tethys on that occasion.”

9. I sought the advice of the Registrar and wrote again to Mr Lilley on 3 June 2014⁶ enclosing both my letter⁷ and her response⁸. I said:

*“While accepting that you had no conflict of interest in the matters under discussion, the Registrar would, nonetheless, have advised you to make a declaration before contributing to the debate on the Climate Change Act on 10 September 2013 and before contributing to the debate on Energy, Prices, Profits and Poverty on 7 November 2013. On the basis of that advice, which I accept, I consider that you have breached House Rules. In reaching that conclusion, I am mindful that the correct test is not whether a Member has a conflict of interest but whether a financial interest **‘might reasonably be thought by others to influence the speech, representation or communication in question’**.”*[My emphasis.]

[] If you were to accept the Registrar's advice, with your agreement, I would be ready to consider resolving this matter through the rectification procedure. []

In order for me to implement the rectification procedure, it would be necessary for you to accept that you were in breach of the Code of Conduct (paragraph 13) and the rules of the

5 WE6

6 WE9

7 WE7

8 WE8

9 Extract from paragraph 74 of the Guide to the rules relating to the conduct of Members

House as set out in Chapter 2 of the Guide to the Rules. You would be expected to make an apology to the House for your failure to declare your interest at the relevant time. It would also be helpful if you would make a commitment to avoid a recurrence.

It would be very helpful if you could let me know within the next two weeks whether you would like me to rectify the complaint on the basis I have suggested. I am most grateful for your help on this matter.”

10. Mr Lilley did not respond by 17 June 2014 as requested and I wrote to him on 24 June¹⁰ to ask again for his comments, sending a further copy of my letter and enclosures. Mr Lilley responded on 1 July¹¹. I quote his letter in full:

“I apologise for the delay in responding to your letter of 3 June which replied to mine of 13 May.

I am pleased that both you and the Registrar of Interests accept that I had no conflict of interest in the matters under discussion. I had assumed that that would be the end of what is one of a series of vexatious references by Mr Docherty.

So I was astonished that you should be minded to rule that I should nonetheless have been obliged to declare that I did NOT have a conflict of interest, still more that I should apologise for not declaring that I did NOT have a conflict of interest. This would constitute a novel and as far as I am aware unprecedented extension of the House's rules. I would suggest that this interpretation should be considered by the Standards Committee before it is accepted. It should surely not be applied retrospectively?

Personally, I would be reluctant to speak in a debate where I had a meaningful conflict of interest in support of that interest. And of course no Member should allow their advocacy to be influenced by their interests.

What is the purpose of declaring an interest? It is presumably to give those listening to, or subsequently reading, a debate a "health warning". Although no Member should deliberately advocate their own interest, we are all human and may be unintentionally influenced. So to warn others and remind ourselves of the importance of objectivity we say "please interpret my remarks in the knowledge that I may be better informed about, or subconsciously more sympathetic, to one side of this argument because of such and such an interest".

The test mentioned in clauses 13 and 74 to which you refer surely presupposes a financial conflict of interest exists and then asks, is it such that this interest, once drawn to their attention, "might reasonably be thought by others to influence the speech, representation or communication in question" even though we are honour bound to try

10 WE10

11 WE11

not to let it sway our argument. The test is not, "do we have an interest listed in the Registrar of Interests, which an ignorant person might mistakenly assume, just from the name, to be relevant to the debate?" I would in any case contest your suggestion that it is "reasonable" to assume that all petroleum companies operate in the UK let alone that they might contribute to the rise in British household energy bills. Or are you saying it is always "reasonable" to assume most tenuous suspicion that any Member of Parliament is probably motivated by some undeclared interest unless he specifically declares his innocence?

The purpose of the rules is surely not to invite, still less to validate, every malign suspicion which people may have or opponents may try to invoke. To take that line would be further to undermine the standing of Parliament. Your decision to investigate this reference, even though you acknowledge that I had no conflict of interest, has already achieved what Mr Docherty intended as you will see for the attached press statements, headlined "MP investigated over financial interests". Fortunately for me the reaction even from my opponents has been like that of the attached email.

I have also just received the attached email¹² which was accompanied by a phone call the purport of which is that I should also declare my interest in Tethys Petroleum whenever I discuss plans to expand Luton Airport because, the sender assumes that the only explanation for my refusal to oppose all expansion outright must be that my company supplies fuel to airlines using Luton (which needless to say it does not). On your interpretation of the rules this might be deemed a "reasonable" suspicion which I should be obliged to deny. Can you confirm whether this would be your ruling? It would be sad on the 800th Anniversary of Magna Carta if this country is to replace a presumption of innocence by the assumption of guilt wherever the most baseless suspicion is raised.

You ask me to dispose of this issue by apologising for breaking the rules. If I had done so, even in spirit, I would happily apologise. But I do not believe I have broken the rules either in word or spirit. So how could I with integrity make a false declaration that I have done so?

I have spoken to a number of Members all of whom are astonished that we might in future be expected to declare that we do not have a conflict of interest (if a person ignorant of the nature of our interests might suspect that we have).

I sincerely urge you to reconsider your provisional finding."

11. I replied on 11 July¹³:

"... neither I nor the Registrar consider that her advice amounts to a novel and unprecedented interpretation of the rules. In fact, her letter refers to a report on this issue as

12 WE12

13 WE13

long ago as 1990-91. I also think the interpretation can be supported by reference to the Third Report of Session 2013-14¹⁴ by the Committee on Standards and the Twelfth Report of the Session 2010-11 by the Committee on Standards and Privileges.¹⁵ While the details of those cases are not closely analogous to the circumstances of this complaint, in both cases the Registrar's advice was based on what another person might reasonably think rather than whether an actual influence had been in play. In both cases, the Committee upheld the complaint about failure to declare a relevant interest.

The Committee in reaching its conclusions on the second case said (paragraph 20) "Those rules are intended to ensure that other Members of the House and the public are provided with full information relevant to Members' participation in proceedings. As the Commissioner has pointed out, such openness is important in ensuring that Members are seen to be acting in the public interest. Failure to observe the rules risks bringing the House and its Members generally into disrepute." The Committee's comments helpfully underline that the Register has several audiences, including the public and other Members.

I would emphasise again that I am not suggesting a conflict of interest existed, only that a third party might reasonably consider – on the face of the information easily accessible to them – your non-executive directorship to influence your speech, representation or communication. []

I have looked again at your entry in the register. While Tethys Petroleum's registered address is recorded in the Register as being in the Cayman Islands, the description of its business says only that it is a 'gas and oil exploration and producing company'. I do not doubt the accuracy of that statement but it is not immediately evident that the company has no interests in Europe and, in the absence of a declaration, there is no way for the ordinary listener to find out without searching the company's own website. It is for this reason that I consider declaration was needed in this instance.

You draw attention to emails that you have received from constituents on this matter. I am not in any way suggesting that it is reasonable to assume on the most tenuous suspicion that a Member is motivated by some undeclared interest unless he declares his innocence. The view I have expressed in this case should not be taken to apply to all other cases where the Member has an interest.

[] I hope that this response has given you some further insight into my thinking, as yours did for me. If you feel able now to accept the proposal to settle this matter by way of the rectification procedure, then I am still happy to do that. If you are not, I suggest that the next step might be for us to meet to talk this matter over. If you then feel that the Committee's views should be sought on a matter of principle, I will prepare a Memorandum, sharing all the relevant evidence with them and setting out my own view as well as yours, in order that the Committee can make a ruling.

14 Committee on Standards, Third Report of Session 2013-14, Mr Simon Hughes MP, HC 805

15 Committee on Standards and Privileges, Ms Alison Seabeck MP, HC 840

[] I would be grateful if you could let me have your response by Friday 25 July. If you would like to meet, please contact my office on the number below to arrange a time.”

12. On 15 July Mr Lilley amended his registration in respect of Tethys Petroleum to add the words “*operating exclusively in Central Asia.*”¹⁶

13. Mr Lilley emailed in response to my letter on 21 July¹⁷. He made it clear that he did not consider there was an obligation set out in the rules to declare that he did not have an interest and asked whether there was any precedent for a Member being required to declare in a debate an interest which did not represent a conflict of interest. Mr Lilley did not accept that either of the cases to which I had referred in my previous letter was relevant to his situation and says:

“Declaring an interest is not an end in itself. The purpose of it is to draw to people’s attention an interest of which a) they were unaware and b) they should be aware because it represents a conflict of interest and so they need a ‘health warning’. Yet the only circumstance where you imagine it may be necessary for a non-conflict of interest to be declared is where someone a) is aware of the Member’s interests as spelt out in the Register – so making that person aware of them is otiose; and b) has wrongly concluded that the Member may have a conflict of interest. Where there is no conflict of interest, no health warning was needed. And if the person was overly suspicious that is their fault not that of the Member.

Clause 74 must be taken as a whole. It says “it is the responsibility of the Member ... to judge whether a financial interest is sufficiently relevant to a particular debate ... to require a declaration”. The phrase “sufficiently relevant” implies that the financial interest is known in sufficient detail to be evaluated and its impact assessed. To avoid relying on the MP’s subjective introspection on whether the interest may affect what he says he is given an objective test “might [the financial interest] reasonably be thought by others to influence the speech ... in question.”

The difference between us is this. I believe that that final sentence must be viewed in the context of the whole clause which prescribes judging whether a financial interest, the details of which must be known, is sufficiently relevant to influence a Member’s speech.

You believe the last sentence can be divorced from the rest of the Clause and applied to someone who is ignorant of the actual interest and merely surmises from the name of the organisation listed in the Register of Interests – Tethys Petroleum or the National House-Building Council for example - that it might be in some vague sense relevant to a debate on energy bills or fire protection. “

14. I then sought a meeting with Mr Lilley but was informed that he would not be back in the House of Commons until the beginning of September. I wrote to him on 29 July¹⁸ to

16 WE14
17 WE15
18 WE16

ask his office to set up a meeting as soon as possible after his return to the House, and wrote again on 4 August to confirm a meeting on 1 September. A note of the meeting is set out in my letter to Mr Lilley dated 2 September¹⁹. It summarises the substance of the disagreement as follows:

“You have said very clearly that you believe my interpretation of the rules to be an unprecedented extension of the House’s rules and that my analysis is wrong. You do not think that your non-executive directorship of Tethys Petroleum Ltd ‘might reasonably be thought by others to influence the speech, representation or communication in question’. You did not consider any of the cases or other material I had cited supported my interpretation and suggested that my approach was too rigid and did not reflect the intention of the House when the rules were approved. I did not agree. I emphasised that each of the rules should be read in the context of the general principles of conduct (which are set out in section IV of the Code). I made clear that, while I do think you breached the rules, I do not think that this was at the most serious end of the spectrum nor did I consider that you had had a conflict of interest. That was not the test to be applied in this situation. The test, as set out in paragraph 74 of the Guide to the Rules whether your financial interest “might reasonably be thought by others to influence the speech, representation or communication in question.”

The difference between us appears to rest on the extent to which a reasonable person should be expected to research into Tethys Petroleum Limited’s activities before forming a view, and on the definition of ‘reasonable’.

15. I reminded him that we had discussed possible resolution of the issue and:

“I was clear that I was not in any way seeking to persuade you to accept a rectification if you do not agree with my interpretation of the rules. If you believe that I am wrong, the matter should be put before the Committee for them to reach their own decision. In addition to my report you would have the opportunity to put your view to the Committee.”

16. I reminded Mr Lilley that he had also suggested there might be further relevant evidence:

“Towards the end of our discussion you mentioned that the relevance of your non-executive directorship of Tethys Petroleum Ltd to discussions on energy and climate change had been tested long before the two Westminster Hall debates that led to Mr Docherty’s complaint.

“You recalled having been challenged directly by at least one other Member and said that you thought that all the Members present on the relevant occasions would have been aware of that. I believe you thought you might also have declared it in other relevant

Committee meetings. You were not sure if or where this would have been recorded but we agreed that this might be relevant evidence. You agreed to give some thought to this and to let me have sight of any evidence that you identify.

[]” It would be helpful if you could let me have any additional material by 16 September 2014 but please let me know in advance if you need longer. I will of course consider carefully any additional evidence you submit before coming to any final conclusion. “

17. Mr Lilley emailed me on 17 September²⁰ attaching some email correspondence and links to newspaper articles covering the last two years, and on 18 September he sent minutes of meetings. I have considered all of this information and attach the relevant parts²¹. The first set of attachments include emails to the Guardian, a critique of the Stern Review of the Economics of Climate change (90 pages)written by Mr Lilley, and email exchange with Channel 4 and others early in 2014 on the subject of a televised debate on fracking. There are references to Mr Lilley’s connection with Tethys Petroleum, but no evidence to support Mr Lilley’s contention that the detail of his interest was so widely known that he did not need to declare it in debate. I attach in evidence Mr Lilley’s covering email to me and the letter to the Guardian to which it refers, which sets out Mr Lilley’s position most clearly, but have not included all of the attachments.

18. The information sent on 18 September includes a full set of minutes of the Select Committee on Energy and Climate Change for 2012-13, and notes of an evidence session of that Committee held on 13 February 2013 and of another evidence session on 25 March 2014 (65 pages double-sided) covering approximately 40 meetings. From these papers I noted that Mr Lilley declared his interests three times. On 13 November 2012 he stated that he was a non-executive director at Tethys Petroleum but did not specify the area of operation. On 13 February 2013 in an evidence session on Gas Generation Strategy, to which Mr Lilley refers in his letter of 13 May, he declared:

“For the sake of interest, I will declare that I am a director of an oil and gas company, which operates entirely in central Asia Neither of which is relevant to the subject of this Committee.”

19. On 25 March 2014 (after the dates to which the complaint relates), Mr Lilley said:

I should declare and draw the attention of the Committee to, my interests as vice chairman of an oil and gas company operating in central Asia.”

20. I have attached the relevant pages of minutes to the evidence but have not included all the other pages sent to me by Mr Lilley. I have also attached the covering email from the Clerk to the Committee summarising the declarations made which could be identified. The email acknowledges that there may be other occasions on which Mr Lilley has told the Committee that the company operates in Central Asia.

20 WE18

21 WE19

21. I wrote to Mr Lilley on 2 October²² thanking him for the additional information but saying:

“The evidence you have provided does not challenge my view on the necessity for declarations. I have, therefore, looked carefully at whether the declarations you have made on other occasions might have made declarations on 10 September and 7 November 2013 unnecessary. Having reflected on the precise wording of the Guide, I do not think they could have done so.

I hope it will be helpful if I explain how I have reached that view. Before I do that, it may be helpful to highlight the sections of the Guide that I think are particularly pertinent.”

22. I then set out the arguments which now form the basis for my analysis later in this memorandum including the following paragraphs:

“I nonetheless looked carefully at each of the declarations the Clerk to the Committee on Energy and Climate Change has identified in her email of 18 September 2014. The notes of the Committee Meeting on 13 November 2012 are not sufficiently detailed for me to see the context and thus to judge Tethys’ relevance to the proceedings. On 13 February 2013, when the Committee was taking evidence on the Gas Generation Strategy, you qualified your declaration, saying ‘For the sake of interest, I will declare that I am a director of an oil and gas company, which operates entirely in Central Asia, and have been an adviser to an Indian electricity generator, neither of which is relevant to the subject of this Committee...’ The third occasion the Clerk has identified post-dates the two Westminster Hall debates and, is therefore, not relevant.

Your declaration on 13 February 2013 illustrates, I think, the difference between the declaration of a conflict of interest and a declaration of an interest which might reasonably be thought by others to influence a speech, representation or communication. It was in keeping with the specific requirement set out in paragraph 74 of the Guide and with the underlying purpose of declaration, described in paragraph 8. It seems to me that similar declarations on 10 September and 7 November 2013 would have been equally appropriate.”

I concluded:

“I remain of the view that the omission of declarations on 10 September and 7 November 2013 has put you in breach of the Code of Conduct and its associated rules. However, as I hope I made clear when we spoke, I do not believe either breach was an attempt to conceal a conflict of interest. The evidence you have provided most recently demonstrates that you have a record of making declarations when you recognise them to be appropriate.

Given that these breaches of the Code and its associated rules are not at the most serious end of the spectrum, it remains open to me to conclude this complaint through the

rectification process. For me to do that, it is necessary for you to accept that you breached the rules and for you to commit to apologise to the House for those breaches.

*Please let me know by **16 October 2014** if you wish me to conclude the investigation in this way. If you feel unable to accept my view, I will prepare a Memorandum to the Committee on Standards in accordance with Standing Orders Nos 149 and 150.”*

23. There was some delay in receiving a response to this letter. Mr Lilley emailed me on 16 October²³ to say that he had only received my letter on 13 October and was about to leave on a Select Committee visit to China. He did not say when he would return. My office contacted his office on 20 October, 30 October and on 5 November²⁴ and I received two letters from Mr Lilley by email on 6 November²⁵.

24. In the first of these Mr Lilley made it clear that he did not accept my interpretation of the Rules, did not accept that he had broken them and therefore said:

“I cannot find any honest way to apologise. You agree that you would not press me to say anything which I do not believe to be true.

The alternative is to refer this matter to the Committee. You tell me that the Committee has never overturned a ruling by the Commissioner. That has made me even keener to avoid a reference.

However, I do not see any alternative and whatever, the risks to my reputation, there may be merit in bringing to the Committee’s attention some broader issues raised by your ruling.”

25. Mr Lilley then sets out a number of consequences which he considers will follow from my “ruling” and also says:

“Without in any way criticising you or your predecessors, it would also be valuable for the Committee to review the role and powers with which the Commissioner is endowed.

- *Is it right that the Commissioner should be investigator, prosecutor, judge and – effectively – rule maker?*

Your ruling is based on an interpretation of the sentence in the Guidance to the rules which says that “Members are required to declare a financial interest if it might reasonably be thought by others to influence the speech in question”. Your interpretation is contrary to both the letter and the spirit of the rule.”

23 WE21

24 WE22, 24, 25

25 WE26, 27

26. Mr Lilley sets out his arguments in detail and they are included in full in the evidence attached and addressed in my analysis. I have therefore not included the whole of his letter here. He concludes by saying that:

*You interpret the uncertainty implicit in the phrase “might reasonably be thought by others” to apply not just to the following words “to influence on the speech in question”, which is its grammatical meaning, but backwards to the nature of the financial interest. You interpret the sentence as if it said “Members are required to declare a financial interest if **on the basis of the Register of Interests it might reasonably be thought by others to be something** which might reasonably be thought by others to influence the speech in question.” Effectively you have inserted the words I have italicised to give an additional layer of uncertainty. But that is not what the Guidance says. The Guidance refers simply to the “financial interest” which is a matter of objective fact. It does not refer to what people might imagine the “financial interest” to be. Indeed in the previous sentence the Guidance says “It is the responsibility of the Member, having regard to the rules of the House, to judge whether a financial interest is **sufficiently relevant to a particular debate**”. The degree of relevance can only be judged from the objective details of the interest.*

Whether a Member’s interest conflicts with a subject under debate is an objective matter. It can be decided objectively – as you did in my case – by establishing what the company does and whether the issues under debate could affect the company’s and Member’s material interests.

By contrast, whether a conflict of interest actually influences what a Member says is a subjective matter. It cannot be determined objectively. We cannot know what the Member would have said if they did not possess the interest. Even Members themselves cannot be certain that they are not subconsciously influenced by their conflict of interest. That surely is why a subjective ‘reasonable person’ test is introduced. We cannot decide objectively whether an interest has influenced the speech, representation or communication in question. So we ask: would a reasonable person, knowing the nature of the interest and the issues under debate, think that it might influence the speech, representation or communication in question?

It is unnecessary and perverse to extend the subjective test back from where it is needed (deciding whether a member’s words may be influenced consciously or subconsciously by a given financial interest) to where it is not needed (speculating about what a person might imagine a Member’s interest to involve when this can easily be established objectively).

I also disagree with your interpretation of the rules for the following reasons:

1. *It is without precedent. On no previous occasion has a Member who has an interest which involves no conflict with the matter being debated been made to apologise for not declaring that interest and not explaining that it involved no conflict.*

You have declined to provide any precedent.

2. *It is wrong to apply a novel interpretation of the rules retrospectively.*

3. *There is no mention in the Rules or Guidance of an obligation to explain that an interest, the nature of which may not be clear, does not constitute a conflict of interest. If that were the intention of the Rules it would surely be mentioned somewhere?*

You have declined to provide any reference to this obligation in the rules.

4. *It is not “reasonable”, as you have ruled, for someone who knew of my interest in Tethys Petroleum to jump to the conclusion, solely on the basis of its name, that it is involved in the UK energy market. They could have established the nature of Tethys’ interests in about 5 seconds by googling its name. In point 6 below your predecessor, faced with doubts about the nature of a Member’s interest established the facts by viewing the organisation’s website. You have not responded to this point.*

5. *There can be no way of knowing what mistaken assumptions people may make about the nature of interests declared in the Registrar of Interests. I gave you the example of an email from a constituent (triggered by reports of your investigation of my interest in Tethys Petroleum) who jumped to the conclusion that the reason I do not oppose all expansion of Luton Airport must be because Tethys, he falsely assumes, supplies aviation fuel.*

You sidestep the question as to whether in debates about airports I must also declare and explain that Tethys does not constitute a conflict of interest.

6. *Although there is no precedent for your ruling, there is a precedent for the Commissioner taking the opposite approach to you. In the Seabeck case, to which you referred me for other reasons, the Member had two interests the names of which suggested possible conflicts with the subject of debate. The Registrar “consulted their respective websites to see how each described its remit”. She concluded that in one case there was an objective conflict of interest and the Member was rebuked for not declaring it. In the other there was not a conflict and the Member was not rebuked for not declaring it. On your ruling she should have been required to declare and explain that it was not a conflict of interest.*

You have declined to explain why I should be treated differently from Ms Seabeck.

7. *The presumption underlying your ruling is that it is always “reasonable” for the public to presume on the most tenuous suspicion that any Member of Parliament is motivated by some undeclared financial interest unless he specifically declares his innocence.*

“Unfortunately I have not been able to persuade you to engage with these arguments. Although you have been unable to rebut them you have persisted in your original view. So I am obliged to throw myself on the mercy of the Committee of Standards to whom I will send this letter.

27. In his second letter of the same date, also circulated to the Committee on Standards addresses other issues arising from the meeting on 1 September. He says;

“At our meeting on 1 September you suggested that if I could demonstrate that I had previously explained to the Select Committee that Tethys Petroleum operates solely in Central Asia and has no interests in the UK this might alter your decision. I said at the time that I could not see how that would help since your ruling related to whether someone listening to the debate on UK household energy bills, having previously read the Register of Interests, might “reasonably think” that Tethys Petroleum’s business constituted a conflict of interest. However, you assured me that this information could change your mind so I and the Clerk of the committee spent a considerable amount of time finding evidence that I had made the facts about Tethys known to the Committee and in the media.

Incidentally, as I left your office I bumped into a former Law Officer and explained that you had asked me to provide this information. His response was that it was for you to provide evidence of my guilt not for me to prove my innocence.

Having nonetheless provided you with the evidence you requested you now tell me that my original doubts about whether it could enable you to lift your charge were correct. But to add insult to injury you now cite the fact that I explained to the Committee that Tethys interests were irrelevant to UK energy policy as evidence that I should also have done so in the Westminster Hall debates.

However, if you read the record of the committee session you will see that I chose to make the declaration for a very specific and unusual reason which has no relevance to Mr Docherty’s complaint. The circumstances were as follows: prior to the session I had argued that the witnesses we were about to interview were not disinterested experts but campaigners committed to upholding a particular view in the debate on global warming. Moreover, I wanted to demonstrate that they stood to lose their jobs if they resiled from the views to which their organisations are wedded. Some colleagues had suggested this would be out of order. So to prevent the Chair from silencing me, I began by declaring my own lack of interest before going on to expose theirs. My words immediately following those you quote make this clear:- “On the subject of declaring interest, could I establish that you are all professional advocates of—what I would call—global warming alarmism ... None of your organisations would employ anyone who had an open mind or doubts on those propositions?” There is no read across from this to the Docherty situation as you suggest.”

28. I responded to Mr Lilley on 10 November²⁶ saying that I would now prepare a Memorandum for the Committee and correcting some of the points made in his letters. This letter was also circulated to the Committee on Standards. In particular I said;

I understand the reasons for your decision. I have always been clear that a rectification must be founded on a genuine agreement about the meaning of the rules. I said in my letter of 2 September that "I was not in any way seeking to persuade you to accept a rectification". As it is clearly not appropriate I will now prepare a memorandum for the Committee on Standards in accordance with the Procedural Note of which you have a copy.

However, I am concerned by some of the statements in your letters, to which I would like to respond at this stage;

- The meeting on 1 September 2014 was not a "private" meeting as you suggest. On 11 July I wrote to you inviting you to come and discuss the complaint with me to agree a way forward if possible and on 29 July I wrote again suggesting a discussion of the points of principle which were preventing a resolution of the matter...., my complaints manager was present and kept a note of the meeting which I shared with you in the form of a letter on 2 September. I invited your comments on the accuracy of the notes as a formal record of the meeting which would then form part of the record of my investigation but have not so far received any.*
- I did not request you to find additional evidence. During the meeting you mentioned that you had previously been challenged on the relevance of your non-executive directorship of Tethys Petroleum Ltd and thought that your interest was widely known by everyone at the debates and did not require declaration. I would always want to give a Member every opportunity to provide any evidence which might be relevant and invited you to do this. I could not say without seeing the evidence how relevant it might be, but did encourage you to send me anything you thought would be useful.Having considered all of [your additional evidence] it did not in fact change my view that subject to your agreement, the complaint was one which could have been concluded by rectifying it.*
- Thirdly, you say that I told you the Committee had never overturned a ruling by the Commissioner. I did not say this and do not believe it to be true. You yourself said that you did not think that the Committee would ever come to a different conclusion from that of a Commissioner.*

I have responded to you on these points immediately as I did not want to leave room for any misunderstanding on these issues. I will now draft a memorandum for the Standards Committee. If you wish to submit any further evidence before I do so, it would be helpful to have it at this stage....

29. I also reminded him that I had not received any comments he wished to make on the record of our meeting on 1 September.

30. Mr Lilley wrote to me again on 25 November²⁷ although I did not receive this letter until 1 December. He said;

“Thank you for your letter of 10 November.

I am sorry if the word description of our meeting on the 1st September as ‘private’ is inappropriate. You described it as ‘not an evidence session’ and asked if I minded you having your complaints manager present to keep a record. I said I did not mind in the least since I had no interest in it being private, but was puzzled why this was necessary if this meeting was not to provide evidence for the inquiry.

You invited my comments on the accuracy of the notes. They are broadly accurate, but not complete. For example, it contains no reference to my inquiry as to whether the Committee had ever rejected your or your predecessors’ recommendations. To which you replied that as far as you were aware they had not. I replied that that put me in a difficult position. Then I asked whether, if they were to reject your ruling, you would resign. You appeared disturbed by the suggestion and said you did not think it would come to that.

Likewise, under ‘Relevant New Evidence’, the notes do not record: (a) that it was your assistant who suggested my offhand remarks about the nature of my interest in Tethys having been spelt out on a number of occasions might provide relevant evidence; (b) that I said I could not see how that was relevant, given that your ruling rested on what someone who had only browsed the Register of Interest might ‘reasonably’ speculate what Tethys does. The statement that ‘we agreed that this might be relevant evidence’ is therefore not accurate.

Also the earlier statement that ‘The difference between us appears to rest on the extent to which a reasonable person should be expected to research into Tethys Petroleum Limited’s activities before forming a view and on the definition of reasonable’ reflects your views not mine.

However, I cannot see why the accuracy or inaccuracy of these notes is of importance.”

31. At this stage I had just completed my draft Memorandum and did not believe it would be helpful, particularly in the light of Mr Lilley’s final sentence, to prolong discussion on the accuracy of the summary of our meeting. I have therefore inserted the letter in full and acknowledged it in sending my draft memorandum.

32. Mr Lilley responded by email on 11 December²⁸. He asked for a number of amendments to be made to the short section which summarises his arguments and this has been done. In addition to this he made a number of points;

“I am amazed that it is necessary to send 63 pages to the Committee. This non-issue has wasted hours of my time but we could surely avoid wasting too much of the Committee’s time as well.”

He suggested that I have prejudged the evidence saying, *“it is clear that you pre-judged this case from the start and feel unable to back down.”* and cited four examples in the draft report where he criticised the language I have used.

Mr Lilley says that I have misrepresented the original complaint saying,

*“At no point in your evidence do you make it clear that the infringement of the rules which you allege I have committed **is not one that Mr Docherty accused me of**. His complaint suggested I had a “direct financial interest”, constituting a “conflict between personal and public interest”, so that I was acting “as a paid advocate”. Having dismissed those charges when you accepted that I did not have a conflict of interest, you nonetheless decided to investigate whether I should have declared that I did **not** have a conflict of interest. This is a charge of your own invention and was not made by Mr Docherty, doubtless because - like me - he did not dream that there was such an offence. So your whole statement of evidence largely misrepresents the charges Mr Docherty made. It is a moot point whether you as Commissioner should be pursuing charges of your own.*

There are many other points in your dossier that I could take issue with. But life is too short.”

Mr Lilley also objected to the process set out in the Procedural Note whereby the factual sections of the Memorandum have been shared with him at the draft stage, but not my analysis.

He concluded, *“I am sure you will largely ignore all this as you have not deigned to respond to most of my points throughout this process. So let us get it over with.”*

Evidence from the Registrar

33. **The Register of Members’ Financial Interests** published on 7 April 2014 includes the following entry for Mr Lilley;

“Tethys Petroleum Limited (non-executive). Address: University House, 11-13 Grosvenor Place, London SW1W 0EX; registered at 89 Nexus Way, Camana Bay, Grand Cayman, Cayman Islands. Gas and oil exploration and producing company. (Updated 6 January 2014)”

34. It lists quarterly payments received from that source.

35. On 20 May I wrote to the Registrar enclosing the correspondence between myself and Mr Lilley to that date. I asked for her advice on whether, under the rules of the House in relation to the declaration of interests, she considered that Mr Lilley should have declared his non-executive directorship when he participated in the proceedings outlined. I asked whether Mr Lilley sought advice on this matter from her or her office and for any other comments she wished to make.

36. The Registrar replied on 23 May. She told me

“We have no record of Mr Lilley seeking advice on declaration before these debates. I have however considered what advice I would have given, if asked.

Mr Lilley has told you that “The activities of Tethys Petroleum Ltd are restricted solely to Central Asia. Its activities, revenues and profits neither affect nor are affected by the UK energy market or domestic energy bills (the subject on 7 November) nor by the Climate Change Act 2008 (the subject on 10 September).” On this basis he had no conflict of interest in the matters under discussion on either occasion cited by the complainant.

Members are however required to declare an interest “if it might reasonably be thought by others to influence the speech, representation or communication in question.” In the context of the debate on 7 November 2013, it seems to me that an ordinary person might have viewed Mr Lilley's interest in this way. Although Mr Lilley has told you that Tethys Petroleum Ltd operates only in central Asia, I would not have expected an ordinary person to know this. I would therefore have advised Mr Lilley that in my view the rules of the House required him, before speaking in the debate, to declare that he was a non-executive director of Tethys Petroleum Ltd. I would also have advised him, when declaring his interest, to point out that since Tethys Petroleum Ltd is active only in Central Asia, it does not affect nor is affected by the UK energy market.

I am encouraged in my advice by the words of the Select Committee on Members' Interests, which said in its First Report of 1990-91 (HC 108) that “We would also remind Members that one of the purposes of declaration of interest is to avoid any accusation of unavowed motive.” While this Report dates from over 20 years ago, I do not believe that the expectations of the House have changed. A full declaration on 7 November 2013 would have reassured to other Members in Westminster Hall, and anyone else following the debate, that Mr Lilley had no conflict of interest.

In relation to the debate on 10 September 2013, I think that Mr Lilley's non-executive role in Tethys Petroleum Ltd was perhaps less relevant. Nevertheless it seems to me that an ordinary person might still reasonably have considered it to influence his arguments against the emphasis on renewables. I therefore would have advised him in my view that the rules of the House required him to declare his non-executive role in Tethys Petroleum Ltd before speaking about energy in that debate. I would also have advised him to point out that Tethys Petroleum Ltd is active only in Central Asia and is not affected by the UK energy market.”

Statement of Facts

37. Mr Lilley was at the time of these events a non-executive Director of Tethys Petroleum Ltd, a gas and oil exploration company. He has declared this in the Register of Members' Financial Interests, giving a UK address and the address of its registered office in the Cayman Islands. He has recently informed the Registrar that he has resigned from this post.

38. Mr Lilley declared his interest in Tethys in Energy and Climate Change Committee meetings in 2013.

39. On 13 February 2013 in that Committee, he declared "*I am a director of an oil and gas company, which operates entirely in Central Asia and [...]neither of which is relevant to the subject of this Committee.*"

40. On 10 September 2013 Mr Lilley spoke in a Westminster Hall debate on the Climate Change Act and on 7 November 2013 he spoke in a Westminster Hall debate on Energy, Prices, Profits and Poverty.

41. Mr Lilley did not declare an interest in Tethys Petroleum on either occasion.

42. On 8 May I accepted a complaint from Mr Docherty concerning Mr Lilley's failure to declare his interest on these occasions.

43. The Registrar for Members Financial Interests advises that the House requires Members to declare an interest "*if it might reasonably be thought by others to influence the speech, representation or communication in question*" and then to make it clear if that interest is in fact not relevant.

44. On 3 June I wrote to Mr Lilley offering to rectify this matter under Standing Order 150 if he accepted that he was in breach of the Code of Conduct (paragraph 13). I explained that in order to do this Mr Lilley would be required to make an apology to the House and make a commitment to avoid a recurrence.

45. On 11 July I suggested to Mr Lilley that if he was unhappy with my interpretation of this point in the Rules I was prepared to seek the Standards Committee's views on the point of principle. I also pointed out that his entry in the Register did not make it evident that Tethys had no interests in Europe.

46. On 15 July Mr Lilley amended his entry in the Register to add the words "*operating exclusively in Central Asia*" to his entry relating to Tethys Petroleum.

47. Following further exchanges of correspondence and a meeting (in which I again offered to put the point at issue to the Committee), and the production of additional evidence by Mr Lilley, I wrote again to Mr Lilley, setting out my view. I again stated that the breach was not at the most serious end of the spectrum and offered a rectification.

48. On 6 November Mr Lilley sent two further letters. He explained that he did not accept my interpretation of the Rules and questioned my role. As he did not consider that he was

in breach of the Rules he was unwilling to apologise to the House and he forwarded copies of his letters to members of the Standards Committee.

49. I replied to him on 10 November to address some of his statements and to set out the process which I would now follow.

50. Mr Lilley replied on 25 November and his letter is included in his evidence above. He emailed on 11 December in response to the draft Memorandum, which I had sent to him on 2 December 2014.

Mr Lilley's Argument

51. Mr Lilley summarised his position in his email to me of 11 December 2014. He said:

- You accept that I did not have a conflict of interest.
- There is no precedent for any Member being required to explain that he or she had no conflict of interest.
- There is no reference in the rules to Members being required to explain that they have no conflict of interest.
- It is manifestly not the intention of Parliament that Members should be required to explain that they have no conflict of interest.

In essence, Mr Lilley contends that a Member needs to declare an interest only where the two conditions below both apply:

- (a) there is an actual conflict of interest as a result of what may be proposed in the proceedings in question and
- (b) which if the previous condition is met is likely to be the case – it is reasonable for others to think that the interest might influence.

52. Mr Lilley contends that relevance can and should be tested objectively if the nature of the interest is known, because it will then be clear – as it was in this case once Mr Lilley explained that Tethys operated exclusively in Central Asia - whether or not the interest in question could be affected by the proposals likely to be discussed in the parliamentary proceedings in which the Member is participating. If there is such a conflict of interest, a declaration should be invariably be made because others might reasonably think that a conflict of interest might influence the Member's speech.

Mr Lilley also contends that others can reasonably form an opinion only if they have sufficient information to appreciate the actual nature of the interest held, and that they can reasonably be expected to research beyond the information contained in the Register of Members' Financial Interests before forming that opinion.

53. Mr Lilley does not consider that the rules require a Member to consider on every occasion whether others, knowing only the name of the organisation or any details listed in the Register of Interests, might jump to the incorrect conclusion that they might be such as to influence the speech, representation or communication in question, and then to make a declaration of any interest where that test of relevance is met.

Analysis

54. My inquiry into whether or not Mr Lilley failed to declare a relevant interest in two debates in Westminster Hall has resulted in considerable dialogue between us, which has turned on two points; the definition of a relevant interest and whether Mr Lilley had a conflict of interest on either of these occasions. When I first put the complaint to Mr Lilley, he responded by explaining that he did not have a conflict of interest. If he had had such a conflict the relevant rule of conduct would have been;

55. *Rule 10. Members shall base their conduct on a consideration of the public interest, avoid conflict between personal interest and the public interest and resolve any conflict between the two, at once and in favour of the public interest.*”

56. I have been clear throughout that this was not the issue I was investigating and Mr Lilley has explained that he considered the absence of a conflict of interest meant that the question of declaration did not arise. However, I do not consider that that is the appropriate test.

57. The Guide to the Rules says at paragraph 8 that, *“The main purpose of declaration of interests is to ensure that Members of the House and the public are made aware, at the appropriate time when a Member is making a speech in the House of Commons or in Committee, or participating in any other proceedings of the House, of any past, present or expected future financial interest, direct or indirect, which might reasonably be thought by others to be relevant to those proceedings”*. However, the Guide also says at a later point that a relevant interest is one which others might reasonably consider to influence the Member’s action or words – a slightly different definition introducing a degree of circularity. Whichever definition is taken, this is a different test from that of conflict of interest and has a lower threshold.

58. The Code of Conduct sets out in section IV the Seven Principles of Public Life which Members are expected to follow. These include integrity, accountability and openness. The Rules of Conduct themselves then apply the principles in general terms to the conduct expected of Members. Of particular relevance to this matter is paragraph 13 which says:

59. *“Members shall fulfil conscientiously the requirements of the House in respect of the registration of interests in the Register of Members’ Financial Interests. They shall always be open and frank in drawing attention to any relevant interest in any proceeding of the House or its Committees and in in any communications with Ministers, Members, public officials or public office holders.”*

60. Further detail to assist in understanding the responsibility of Members is included in the detailed Guide to the Rules with paragraph 72 indicating that *“any relevant financial interest or benefit of whatever nature, whether direct or indirect, should be declared in debate, or other proceeding”* and paragraph 74 saying *“It is the responsibility of the Member, having regard to the rules of the House, to judge whether a financial interest is sufficiently relevant to a particular debate, proceeding, meeting or other activity to require a declaration. The basic test of relevance should be the same for declaration as it is for*

registration of an interest, namely, **that a financial interest should be declared if it might reasonably be thought by others to influence the speech, representation or communication in question.**” [My emphasis.]

61. A Member has a personal responsibility to consider whether a particular interest is relevant to his or her contribution to a debate. Where a declaration is made my advice is that it should be sufficient in itself to clarify the situation for the listener and should not require them to undertake additional research in order to understand the nature of the interest. In Mr Lilley’s case he had registered an interest in Tethys Petroleum Ltd giving a London address, a registered address in the Cayman Islands and describing it as a “gas and oil exploration and producing company.” Mr Lilley does not consider that this interest required declaration, as it did not give rise to a conflict of interest which influenced either of his speeches in Westminster Hall on the Climate Change Act or on Energy, Prices, Profits and Poverty. However, the rules make clear that it is for a Member to judge whether a particular interest meets the test of relevance. I have seen no evidence that Mr Lilley applied the relevance test and made that judgement on either of those occasions. Having decided that he had no conflict of interest, it appears that he did not also consider what others might reasonably think.

62. During my investigation, I have tried to establish whether in Mr Lilley’s current judgement others might reasonably think his interest in Tethys influenced his speech, representation or communication. His responses extrapolate from the particular circumstances of these two occasions to suggest that if this were the case a wide variety of improbable suspicion would then be deemed reasonable and make the position of any Member untenable. This is not the situation. The word “reasonably” was included in the rules for a purpose and should be given its usual meaning. In this case I do not assume that all petroleum companies operate in the UK, nor that an MP is probably motivated by an undeclared interest as Mr Lilley suggests. In my correspondence with Mr Lilley I have said that I do not consider that he had a conflict of interest in this situation and that this is not the test to be applied. Nevertheless I do think that his interest in Tethys Petroleum might reasonably have been thought by others to influence his speeches on these two occasions.

63. I make no judgment on whether Mr Lilley’s interest did in fact influence him during these two debates. As he himself has pointed out, “*we cannot know what the Member would have said if they did not possess the interest.*”²⁹ He has also pointed out that a declaration alerts the listener to the possibility that a Member may be ‘*better informed about*’ the issue under discussion, and I agree with him on that point. However, it is important to consider each of the debates separately in coming to a conclusion on the relevance of the interest. I do consider that others might reasonably think that a Member’s non-executive directorship of a petroleum company might have influenced that Member’s views of the Climate Change Act when, for example, he said it “*requires us to replace cheap fossil fuels with energy sources that are at least twice as expensive and*

*less reliable...”.³⁰ Similarly I do think others might reasonably think that a Member’s interest in a petroleum company might have influenced that Member in a debate concerning energy prices, profits and poverty when he said, “...*The public suspect that those increases in energy bills are driven by rising profits. Politicians and environmental campaigners have a vested interest in fanning that suspicion to divert attention from the increases in the cost of energy that the political elite are planning in the move to increasingly costly renewables, with the added costs they impose on the transmission network.*”³¹*

64. I recognise that the judgement on what others might reasonably think can be difficult. If a Member has made such a judgement in good faith and in a spirit of reasonableness, this would be much in their favour. However, so far as I am aware Mr Lilley has not considered whether others might reasonably have thought his financial interest influenced the two speeches in question and so I have not been able to review his arguments.

65. In the course of investigating this allegation I have consulted the website of the company in question, Tethys Petroleum, in order to find out about its activities. In the same way, when he investigated the allegations that another Member had in 2010 failed to declare an indirect interest, my predecessor consulted the websites of the organisations mentioned by the complainant, and of others mentioned by the Member herself.³² On each occasion, these references to websites were made as part of the investigation. It would be wrong to draw the inference from this that someone who heard Mr Lilley’s words in Westminster Hall, or read them in Hansard the next day, would – if aware of these interests - then be expected to find out about them by consulting their websites.

66. Mr Lilley alleges that I have interpreted the rules in a novel and unprecedented way. It is true that I have not been able to find an exact precedent, but the Registrar in her advice to me quotes from the First Report of the Select Committee on Members’ Interests, “*We would also remind Members that one of the purposes of declaration of interest is to avoid any accusation of unavowed motive*”³³ and suggests that the expectations of the House in this matter have not changed. I agree with her and point also to the comments of the Commissioner in relation to Ms Alison Seabeck³⁴ where he stated “*The test is not what the Member believes to be the case; it is what others might reasonably think*” and the Committee on Standards’ Third Report of 2013-14 in which the Committee says, “*We remind Members of the need to declare financial interests which might reasonably be thought by others to influence the speech, representation or communication in question...Guidance cannot cover every case: Members should always*

30 WE2

31 WE2

32 Committee on Standards and Privileges, Twelfth Report of 2010-12, HC 840

33 “The interests of Chairmen and Members of Select Committees’, Select Committee on Members’ Interests, First Report of 1990-91

34 Committee on Standards and Privileges, Twelfth Report of 2010-12, HC 840

assess their conduct against the Seven Principles of Public Life which are set out in the Code of Conduct itself.” I am aware that the details of those cases are not the same as Mr Lilley’s case but believe that the principles established by the respective committees are relevant here.

67. Mr Lilley complains that I have not responded to some of the issues he has raised in our correspondence. For reasons I have already explained above I have not been drawn into hypothetical examples of the times when a declaration will be needed. The Rules in this area are not appropriate for wide generalisations but require Members to interpret the underlying principles and to apply them to their particular circumstances. This analysis seeks in the section below to respond to the issues which he believes I have not addressed, but which I consider have already been covered in my conversations and correspondence with him.

Mr Lilley’s Questions

68. Mr Lilley lists seven issues he says I have failed to answer. For the sake of completeness I have listed them below with responses:

69. A. *I also disagree with your interpretation of the rules for the following reasons:*

It is without precedent. You have declined to provide any precedent.

I have already agreed that there is no exact precedent and have drawn upon previous reports in which there is some but not complete similarity. It will not always be the case that the detail of every rule has been explored through precedent. As the Committee has pointed out, guidance cannot cover every case. Part of my role is to interpret the rules in the absence of such a precedent and to advise the Committee and Members.

70. B. *It is wrong to apply a novel interpretation of the rules retrospectively.*

71. I have explained that I do not believe I am doing so and have referred to the Select Committee on Members’ Interests’ First report of 1990-91 (HC 108) which says “..one of the purposes of declaration of interest is to avoid any accusation of unavowed motive.”

72. C. *There is no mention in the Rules or Guidance of an obligation to explain that an interest, the nature of which may not be clear, does not constitute a conflict of interest ... You have declined to provide any reference to this obligation in the rules.*

73. I have explained my interpretation of the rules with reference to the overarching principles set out in the Code of Conduct for Members, the Seven Principles of Public Life and paragraphs 72 and 74 of the Guide to the Rules.

74. D. *It is not “reasonable”, as you have ruled, for someone who knew of my interest in Tethys Petroleum to jump to the conclusion, solely on the basis of its name, that it is involved in the UK energy market. They could have established the nature of Tethys’ interests in about 5 seconds by googling its name.*

75. I have responded to this point in my analysis.

76. *E. There can be no way of knowing what mistaken assumptions people may make about the nature of interests declared in the Registrar of Interests. I gave you the example of an email from a constituent (triggered by reports of your investigation of my interest in Tethys Petroleum) who jumped to the conclusion that the reason I do not oppose all expansion of Luton Airport must be because Tethys, he falsely assumes, supplies aviation fuel. and*

77. *You sidestep the question as to whether in debates about airports I must also declare and explain that Tethys does not constitute a conflict of interest.*

78. I have not answered this question directly since it is hypothetical and in the absence of exact detail it is not wise to give any ruling. I have explained in my dialogue with Mr Lilley that it is important to look at the particular circumstances involved and not to seek to extend a rule too widely or generally. It is important that the interest declared “*might reasonably be thought by others to influence the speech*”.

79. *F. Although there is no precedent for your ruling, there is a precedent for the Commissioner taking the opposite approach to you. In the Seabeck case, to which you referred me for other reasons, the Member had two interests the names of which suggested possible conflicts with the subject of debate. The Registrar “consulted their respective websites to see how each described its remit”. She concluded that in one case there was an objective conflict of interest and the Member was rebuked for not declaring it. In the other there was not a conflict and the Member was not rebuked for not declaring it. On your ruling she should have been required to declare and explain that it was not a conflict of interest.*

You have declined to explain why I should be treated differently from Ms Seabeck.

80. I have explained that Mr Lilley’s situation and Ms Seabeck’s are not the same. Although the principle used is similar and the Committee sets out the test to be applied clearly, the cases are not and the outcomes are therefore not identical. In the course of his investigation the Commissioner consulted the organisations’ websites to find out about their remits. On the basis of the information he discovered, he took a view on the relevance of these interests. Since the issue of conflict was not relevant to the question of whether the interests should have been declared, the Commissioner did not consider whether these indirect interests amounted to a conflict on the part of Ms Seabeck.

81. *G. The presumption underlying your ruling is that it is always “reasonable” for the public to presume on the most tenuous suspicion that any Member of Parliament is motivated by some undeclared financial interest unless he specifically declares his innocence.*

82. This is not the case and I have explained that.

83. Finally, in his email of 11 December Mr Lilley said that I had misrepresented the original complaint; “[Mr Docherty] suggested I had a “direct financial interest”, constituting a “conflict between personal and public interest”, so that I was acting “as a paid advocate”.

84. Mr Docherty’s letter of 11 April 2014 says “I am writing to ask you to investigate what I consider to be a breach of the Code of Conduct in respect of declaring a relevant interest when speaking in the House of Commons.” This is the complaint I have investigated.

Conclusion

85. This memorandum considers at some length a fairly small but important issue in the interpretation of the Guide to the Rules relating to the conduct of Members, which does not appear to have been directly tested until now. It relates to the declaration of an interest and the test of relevance to be applied. The rules state at paragraph 74: “*The basic test of relevance [is]... that a financial interest should be declared if it might reasonably be thought by others to influence the speech... in question.*” It is helpful to have the opportunity to clarify this point and for the Committee to take a view on my interpretation, as well as on the separate question of how it applies in the circumstances of this particular complaint.

86. Mr Lilley and I have not been able to agree on the meaning of paragraph 74 and that means I have not had the opportunity to consider, and perhaps be persuaded by, his reasons for thinking others might not reasonably think his financial interests might influence his words on the occasions in question. For the reasons I have set out above I consider that Mr Lilley was in breach of this rule when he failed to declare his interest in Tethys Petroleum in speeches in Westminster Hall on 10 September 2013 and 7 November 2013.

87. The principle of clarifying the test of relevance for Members to apply in considering whether a declaration is appropriate is an important one. However, the application of that principle to Mr Lilley’s specific situation is not a matter at the more serious end of the spectrum. Mr Lilley has in any case amended his Register entry and has since resigned from his position with the company. Had Mr Lilley accepted a rectification, I would have considered that an apology on a point of order to the House, in accordance with section 108 of the Procedure for Complaints set out in the Code of Conduct and Guide to the Rules 2012, would have resolved the matter.

7 January 2015

Published written evidence

The following written evidence was received and can be viewed on the Committee's inquiry web page at www.parliament.uk/standards.

1	Letter from Mr Thomas Docherty MP to the Commissioner, 11 April 2014	WE 01
2	Enclosure to letter of 11 April 2014	WE 02
3	Letter from the Commissioner to Mr Thomas Docherty MP, 8 May 2014	WE 03
4	Letter from the Commissioner to Mr Peter Lilley MP, 8 May 2014	WE 04
5	Mr Peter Lilley MP Register Entry 10 March 2014	WE 05
6	Letter from Mr Peter Lilley MP to the Commissioner, 13 May 2014	WE 06
7	Letter from the Commissioner to the Registrar of Members' Financial Interests, 20 May 2014	WE 07
8	Letter from the Registrar of Members' Financial Interests to the Commissioner, 23 May 2014	WE 08
9	Letter from the Commissioner to Mr Peter Lilley MP, 3 June 2014	WE 09
10	Letter from the Commissioner to Mr Peter Lilley MP, 24 June 2014	WE 10
11	Letter from Mr Peter Lilley MP to the Commissioner, 1 July 2014	WE 11
12	Attachments to Letter from Mr Peter Lilley MP to the Commissioner, 1 July 2014	WE 12
13	Letter from the Commissioner to Mr Peter Lilley MP, 11 July 2014	WE 13
14	Mr Peter Lilley MP Register Entry, 15 July 2014	WE 14
15	Email from Mr Peter Lilley MP to the Commissioner, 21 July 2014	WE 15
16	Letter from the Commissioner to Mr Peter Lilley MP, 29 July 2014	WE 16
17	Letter from the Commissioner to Mr Peter Lilley MP, 2 September 2014	WE 17
18	Email from Mr Peter Lilley to the Commissioner, 17 September 2014	WE 18
19	Attachments to email from Mr Peter Lilley to the Commissioner, 17 & 18 September 2014	WE 19
20	Letter from the Commissioner to Mr Peter Lilley MP, 2 October 2014	WE 20
21	Email from Mr Peter Lilley MP to the Commissioner, 16 October 2014	WE 21
22	Email from the Commissioner's Office to Mr Peter Lilley's Office, 20 October 2014	WE 22
23	Email from Mr Peter Lilley's Office to the Commissioner's Office, 20 October 2014	WE 23
24	File Note: 30 October 2014	WE 24
25	File Note: 5 November 2014	WE 25
26	Letter from Mr Peter Lilley MP to the Commissioner, 6 November 2014	WE 26
27	Letter from Mr Peter Lilley MP to the Commissioner, 6 November 2014	WE 27
28	Letter from the Commissioner to Mr Peter Lilley MP, 10 November 2014	WE 28
29	Letter from Mr Peter Lilley MP to the Commissioner, 25 November 2014	WE 29
30	Email from Mr Peter Lilley MP to the Commissioner, 11 December 2014	WE 30