



# HOUSE OF LORDS

## Leader's Group on the Code of Conduct

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### Report

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### *The Leader's Group on the Code of Conduct*

The Leader's Group was appointed by the Leader of the House, Baroness Royall of Blaisdon, on 21 May 2009, "to consider the Code of Conduct and the rules relating to Members' interests, and to make recommendations".

### *Membership*

The Members of the Leader's Group were:

Lord Eames (Chairman)

Baroness Hamwee

Lord Hart of Chilton

Baroness Jay of Paddington

Lord Kingsland\*

Lord MacGregor of Pulham Market

\*Lord Kingsland died on 12 July 2009. He was not replaced on the Group.

A full list of Members' interests can be found in the Register of Lords' Interests:

<http://www.publications.parliament.uk/pa/ld/ldreg/reg01.htm>

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# Report of the Leader's Group on the Code of Conduct

## PART 1: REPORT AND COMMENTARY

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### Introduction

1. On 21 May 2009 the Leader of the House, Baroness Royall of Blaisdon, announced the appointment of a Leader's Group on the Code of Conduct.<sup>1</sup> The Group was appointed "to consider the Code of Conduct and the rules relating to Members' interests, and to make recommendations". From the outset, we interpreted these terms of reference broadly: we have considered not just the rules governing Members' conduct and the registration of interests, but the scope of the Code, the role of the Registrar and the Sub-Committee on Lords' Interests, the conduct of investigations, and the range of sanctions available in cases of misconduct.
2. This report is divided into three parts. The first part describes the background to our work, summarises our reasoning and our key conclusions, and provides a commentary on our proposals for a new Code of Conduct and a Guide to the rules on the conduct of Members of the House of Lords. The second and third parts contain our proposed Code of Conduct and Guide respectively. These two documents are the most important parts of this report, and we urge Members to examine them carefully. We envisage that the House will in due course be invited formally to adopt them by Resolution, and, if they are adopted, that they will come into force in the spring of 2010. To assist Members in comparing our proposals for a new Code and Guide with the current position, the present Code, agreed in 2001, is reproduced in Appendix 4.
3. We have taken the House as it is presently constituted as the basis for our review. In other words, we have assumed a largely appointed House, whose Members are unsalaried, but who may claim limited financial support in respect of membership. We have held informal discussions with the Senior Salaries Review Body (SSRB), in the context of their current review of financial support for Members of the House of Lords, to ensure that they were aware of the approach we were taking. We have at all times taken full account of the House's tradition of self-regulation.
4. With regard to sanctions, we have similarly proceeded on the basis of the House's existing powers, which are limited either to "naming and shaming" Members guilty of breaches of the Code, or in more serious cases to suspension within the lifetime of a Parliament. Although Part 3 of the Constitutional Reform and Governance Bill, published on 20 July, would if enacted confer upon the House of Lords the power not only to expel Members, but to suspend a Member notwithstanding a dissolution of Parliament, we do not consider that it is at present feasible to establish a clear "hierarchy" of sanctions.

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<sup>1</sup> HL Deb., 21 May 2009, col. 1434.

5. It would be relatively straightforward to make alterations to our proposed Guide to reflect developments in any or all of these areas. Indeed, the text of the Guide contained in this report refers at certain points to the need for further consideration by committees of the House before implementation. In addition, the Code states that the Guide should be kept under “regular review” by the Sub-Committee on Lords’ Interests.
6. When the Leader announced the membership of the Group on 21 May, she gave six names: Lord Eames (Chairman), Baroness Hamwee, Lord Hart of Chilton, Baroness Jay of Paddington, Lord Kingsland and Lord MacGregor of Pulham Market. The vacancy left by the tragic and sudden death of Lord Kingsland, on 12 July, was not filled.
7. Throughout our work we have been in agreement on the main issues facing the House. As early as 30 June we were able to agree the following conclusions, which remain the basis of our report:
  - There should be a Commissioner for Standards, who would be functionally independent but appointed by the House.
  - Subject to the findings of the Senior Salaries Review Body (SSRB) on financial support for Members, the investigation of complaints relating to financial support arrangements should be part of the Commissioner’s remit, along with complaints relating to the Code itself.
  - There should be a ban on “parliamentary consultancies”.
  - There should be a shorter, more general Code, accompanied by more detailed guidance, which would be reviewed in light of experience and “case law”.
  - The Code should include a positive statement of the role of the House, and the contribution that Members were expected to make to the work of the House.
  - There should be stronger emphasis on induction and on explicit acceptance by Members of the standards contained in the Code.
8. Our final report is unanimous. While the death of Lord Kingsland deprived us, as it did the House, of a wise and experienced counsellor, whose contribution to our final deliberations was sorely missed, it will be clear from what we have already stated that we had agreed our conclusions in outline before his death. We hope therefore that this, our final report, would have secured his support.

### **Our inquiry**

9. The Group held 13 meetings. At our first meeting, on 9 June 2009, we agreed a series of questions, which were sent out to all Members by means of a Lords Notice, dated 11 June. We received 34 written contributions from individual Members of the House, who are listed in Appendix 2; we also received written submissions from the Committee on Standards in Public Life and on behalf of the Sub-Committee on Lords’ Interests.
10. In addition, we held meetings with the following:
  - Lord Brabazon of Tara, Chairman of Committees
  - Lord Chadlington

Baroness D'Souza, Convenor of the Crossbench peers

Baroness Hayman, Lord Speaker

Lord Jay of Ewelme, Chairman of the House of Lords Appointments Commission

Brendan Keith, Registrar of Lords' Interests

Sir Christopher Kelly, Chairman of the Committee on Standards in Public Life (CSPL)

John Lyon, Parliamentary Commissioner for Standards in the House of Commons

Lord McNally, Leader of the Liberal Democrat peers

Michael Pownall, Clerk of the Parliaments

Peter Riddell, Chairman of the Hansard Society and Chief Political Correspondent, Times Newspapers

Baroness Royall of Blaisdon, Leader of the House

Lord Strathclyde, Leader of the Opposition in the House of Lords

Dr Brian Woods-Scawen, member of the CSPL

Sir George Young MP, at that time Chairman of the House of Commons Standards and Privileges Committee.

11. At the outset of our inquiry we decided that in order to encourage frank discussion of the issues we would treat all evidence, whether written or oral, as confidential. We have made an exception in the case of the Committee on Standards in Public Life, and the CSPL's memorandum is placed on the record in Appendix 3. We are enormously grateful to all who contributed to our work.

### **Background to our inquiry**

12. The Group was appointed as a direct result of events in the first half of 2009. On 25 January the *Sunday Times* alleged that four peers had expressed willingness to promote amendments to legislation currently before Parliament in return for payment. The following day the Leader of the House announced to the House that she had asked the Sub-Committee on Lords' Interests to investigate these allegations. At the same time she informed the House that she had written to the Chairman of Committees, asking that the Committee for Privileges review both the sanctions available to the House in the event of serious allegations being proved, and "any issues relating to the rules of the House that arise, especially in connection with consultancy arrangements".<sup>2</sup>
13. In the event, the Committee for Privileges decided not to take forward the Leader's proposals for a review of the rules governing consultancies until after the investigation into the four peers was completed. That investigation reached its conclusion on 20 May, with the House's agreement to the First and Second Reports of the Committee for Privileges: the First establishing the House's power to suspend its Members; the Second finding that two of the four peers had in fact breached the Code, and recommending

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<sup>2</sup> HL Deb., 26 January 2009, col. 10.

accordingly that they be suspended from the service of the House for the remainder of the 2008-09 session of Parliament.

14. The following day, 21 May, the Leader of the House announced our appointment. But while the timing of this announcement avoided the risk of any overlap or confusion between our work and that of the Sub-Committee on Lords' Interests, in its investigation into the *Sunday Times* allegations, the impact of those allegations upon the reputation of the House, and the practical issues arising in the course of the Sub-Committee's investigation, are an inescapable backdrop to our work.
15. There can be no doubt that the House's reputation has been damaged by recent events. Since early 2008 there have been several media stories alleging misconduct by Members of the House. At the time of our inquiry, certain Members of the House were under police investigation for alleged misuse of the overnight subsistence allowance.
16. Thus times have changed since the current Code of Conduct was agreed in 2001. At that time, the House had never experienced a serious formal complaint against a Member—indeed, the first such complaint was not made until 2004. Since then, however, complaints have been on a rising trend:

**TABLE 1: Complaints in the House of Lords<sup>3</sup>**

<i>Year</i>	<i>All complaints received</i>
2004	1
2005	1
2006	2
2007	6
2008	9
2009 (to 30 September)	21

17. A similar trend, albeit starting at a much higher level, is evident in the House of Commons. The Parliamentary Commissioner for Standards reports the following figures for complaints received by him from 2004/05 to 2008/09:

**TABLE 2: Complaints in the House of Commons<sup>4</sup>**

<i>Year</i>	<i>All complaints received</i>
2004/05	137
2005/06	133
2006/07	214
2007/08	248
2008/09	285

18. A “light touch” approach to regulating Members' conduct may have been appropriate when the present House of Lords Code of Conduct was agreed

<sup>3</sup> Source: Registrar of Lords' Interests. These figures include complaints relating to expenses, which are handled by the Clerk of the Parliaments.

<sup>4</sup> Source: Annual Report of the Parliamentary Commissioner for Standards 2008-09 (June 2009, HC 608), p 24.

in 2001, but is becoming harder to defend. We believe that the Code, and the administrative structures that support it, must evolve to reflect these changed circumstances.

### Summary of conclusions

19. The key changes from the *status quo* contained in our proposals (most of which derive from the conclusions we reached on 30 June, summarised above) are as follows:
  - (1) The Group proposes a slightly shorter Code, which sets out in general terms the principles of conduct and the main duties of Members of the House; this is accompanied by the more detailed Guide to the Rules, which explains these principles and duties in more detail, focusing in particular on the rules for registration and declaration of interests.
  - (2) We preface the Code with a statement of the role of the House of Lords within the United Kingdom Parliament, and of the contribution which Members of the House are expected to bring to its work.
  - (3) We recommend that Members of the House sign a formal undertaking, immediately after taking the oath, both upon Introduction and at the start of each subsequent Parliament, to abide by the Code of Conduct.
  - (4) We clarify that the Code applies to Members' conduct as parliamentarians—their performance of their parliamentary duties—and that it does not extend to non-parliamentary (including ministerial) work.
  - (5) We make it clear that one of the overarching principles underlying the Code is the duty to act in the public interest.
  - (6) We propose an outright ban on what may be called “parliamentary consultancies”, in other words on the acceptance of payment in return either for parliamentary services or for the provision of advice on how to lobby or otherwise influence Parliament. In parallel, we abolish the confusing distinction between “parliamentary” and “non-parliamentary” consultancies. The key distinction is between, on the one hand, offering parliamentary services or advice to paying clients and thereby profiting from membership of the House (which we believe is not acceptable) and, on the other, legitimate outside employment.
  - (7) We propose a new definition for “paid advocacy”, to the effect that Members should not seek by parliamentary means to confer exclusive benefit on outside bodies from which they receive payment.
  - (8) We have clarified the wording of the definition of “relevance”, as it relates to Members' outside interests, by specifying that only those interests are relevant which a “reasonable member of the public” might consider likely to affect a Member's discharge of his or her parliamentary duties. The term “reasonable member of the public”, which is familiar in the courts, is taken to imply an impartial and well-informed consideration of all relevant facts.
  - (9) We have proposed simpler and more self-explanatory categories for the registration of interests. With the banning of “parliamentary consultancies”, all financial interests should in future be treated in the

same way, so that there can be no benefit in registering an interest under one category rather than another.

- (10) We propose that the Code should include a requirement that Members abide by the rules agreed by the House in respect of financial support and the use of facilities of the House.
- (11) We have sought to rein back “registration creep”, the cluttering of the Register by the inclusion of minor, usually non-financial interests, by making clear the kinds of interest, particularly non-financial, which should *not* be registered in future.
- (12) We have recommended the appointment of a House of Lords Commissioner for Standards. The Commissioner would be appointed by the House, and could only be dismissed following a resolution of the House. He or she would have full operational independence, while enjoying the protection, as an agent of the House, of parliamentary privilege.
- (13) The Commissioner would investigate all allegations of misconduct, including those relating to Members’ financial support and the use of facilities of the House. His task would be to establish the facts and offer conclusions regarding possible breaches of the Code to the Sub-Committee on Lords’ Interests. The Sub-Committee would review the Commissioner’s findings and recommend the appropriate sanction; any Member would then have a right of appeal to the Committee for Privileges, against both the Commissioner’s findings and the recommended sanction.
- (14) We have sought to clarify the meaning of “procedural fairness” in respect of investigations, by reference to the principles of natural justice and fairness.

### **The Parliamentary Standards Act 2009**

20. We followed closely the progress of the Parliamentary Standards Bill, now the Parliamentary Standards Act 2009. The Act establishes a statutory authority to pay MPs’ salaries and allowances and to prepare a Code of Conduct relating to MPs’ financial interests; there is also to be a Commissioner for Parliamentary Investigations to investigate false claims for allowances or breaches of the Code of Conduct; a criminal offence of providing false or misleading information for allowances claims is created.
21. At Report stage during Lords consideration of the Parliamentary Standards Bill the Leader of the House moved an amendment to insert what is now section 2 of the Act, which provides that “Nothing in this Act shall affect the House of Lords”. She also made the following commitment:
- “As I made clear at Second Reading, and again in Committee, the Government entirely accept that this Bill does not apply to your Lordships’ House. That is self-evidently the case. We also accept that it should not be extended to your Lordships’ House as it is presently constituted.”<sup>5</sup>

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<sup>5</sup> HL Deb., 20 July 2009, col. 1416.

22. It is not for this Group to comment in detail on the Parliamentary Standards Act, but we do feel that our remit, to review the House of Lords Code of Conduct, authorises us, notwithstanding the Leader's commitment, to comment briefly on the appropriateness of applying comparable provisions to this House.
23. Time will tell whether the new statutory system for paying MPs' salaries and allowances works effectively, and restores public confidence in the use to which public money is put. Only in light of the conclusions of the Senior Salaries Review Body on the financial support for Members of the House of Lords will it be possible to judge whether the remit of the new authority with regard to such financial support should be extended to this House.
24. However, the Group does not see a case for a statutory Code of Conduct for the House of Lords, or a statutory Register of Financial Interests. There are three reasons for this.
25. First, a system of statutory regulation of peers' financial interests would, in current circumstances, be disproportionate. Membership of the House does not constitute full-time employment, and is not salaried; the work undertaken in Parliament by Members is, in many cases, additional to their day-to-day work, to the outside jobs on which they rely for their livelihood. As the House is presently constituted, we believe that subjecting Members to a statutory Code of Conduct and statutory registration of financial interests would be unwarranted.
26. Secondly, we found general agreement that an independent but non-statutory Commissioner, appointed by the House itself, reporting to the Committee for Privileges, would lead to greater transparency, while preserving the fundamental principles of self-regulation and parliamentary privilege.
27. Finally, a statutory Code of Conduct would open up the prospect of judicial review of the House's decisions on matters of internal discipline. It is essential for any free and independent legislature to be able to regulate the conduct of its members without external interference. A statutory Code would contravene this fundamental principle.

### **Commentary on the proposed Code of Conduct and Guide to the Rules**

#### *Paragraphs 1 to 5: introduction*

28. The Group's conclusions on the purpose of the Code, and its relationship to the culture of the House of Lords, are embodied in paragraphs 1 to 5 of our proposed Code, which are reproduced in Box 1.
29. There has been criticism in recent months of the House's continuing reliance on concepts such as "personal honour". Much of this criticism is, we believe, misplaced. It is not possible in any complex institution to devise watertight rules, governing every possible eventuality. Of course there needs to be clarity in the rules; but the key challenge facing the House is to reinforce and develop its existing culture of honourable and honest conduct, building on its traditional strength of self-regulation, or "peer pressure". The House does not need to invent new principles, but reinvigorate old ones. As a recent Hansard Society briefing paper states, "As a physical building the Palace of Westminster, more than most, carries profound ideological symbolism in relation to probity and integrity based on implicit understandings about the

nature and morality of law. Such understandings need to be refreshed and reasserted in the context of the modern Upper House.”<sup>6</sup>

### BOX 1

#### *Introduction*

1. The House of Lords is the second Chamber of the United Kingdom Parliament. As a constituent part of Parliament, the House of Lords makes laws, holds government to account, and debates issues of public interest.
2. Membership of the House is not an office, and does not constitute employment; most Members' primary employment is or has been outside Parliament. In discharging their parliamentary duties Members of the House of Lords draw substantially on experience and expertise gained outside Parliament.
3. The purpose of this Code of Conduct is
  - (a) to provide guidance for Members of the House of Lords on the standards of conduct expected of them in the discharge of their parliamentary duties; the Code does not extend to Members' performance of duties unrelated to parliamentary proceedings, or to their private lives;
  - (b) to provide the openness and accountability necessary to reinforce public confidence in the way in which Members of the House of Lords perform their parliamentary duties.
4. This Code applies to all Members of the House of Lords who are not either a) on leave of absence; b) suspended from the service of the House; or c) statutorily disqualified from active membership.
5. Members sign an undertaking to abide by the Code after taking the oath at introduction and at the start of each Parliament.

30. We therefore believe that it is time that the Code, rather than just telling Members what they should not do, should place rules of conduct within the context of a positive statement of the contribution of this House, as currently constituted, to the work of Parliament and to the governance of the United Kingdom. This we have attempted in paragraph 1 of our proposed Code. The Code should also state clearly that membership is unsalaried; that most Members necessarily have outside sources of income and careers; and that their ability to draw, in the course of their parliamentary work, on experience and expertise gained outside Parliament is one of the greatest strengths of this House, which should be protected. This we have attempted in paragraph 2.
31. But while we have sought to rebalance the Code, articulating more clearly and comprehensively the general principles of conduct which guide Members of the House, and cutting back on the amount of detailed rule-making, we are conscious also that recent events have highlighted the vagueness of the present Code, leaving many Members genuinely uncertain as to the meaning of terms such as “paid advocacy” or “relevant interest”. The Registrar reported to us that his workload had increased substantially in recent years; in particular, he was frequently called upon to advise Members on what they could or could not do in the House, something not envisaged when the present Code was agreed in 2001. More detailed, formal guidance on the application and interpretation of the general principles and rules embodied in the Code is now needed. We therefore propose that, in tandem with a revised Code of Conduct, the House should adopt a more detailed “Guide to the Rules”. This will be capable of being revised and updated as new issues arise, or as “case law” develops. It will be an authoritative source of advice to

<sup>6</sup> Hansard Society, Briefing Paper 1: *Restoring Trust in the House of Lords* (July 2009), p 4.

Members, endorsed by the House as a whole, and reinforcing the hitherto open-ended advisory functions of the Registrar of Lords' Interests.

32. Members should also be made aware of the Code and should be encouraged to make a positive commitment to the values it embodies. We therefore recommend (and include a provision in paragraph 5 of the Code to this effect) that, as an integral part of the ceremony of taking the oath, Members should sign a formal undertaking to abide by the Code immediately after signing the Test Roll, upon introduction and thereafter at the start of each new Parliament. The Clerk of the Parliaments has undertaken to look further at how in practice such a requirement could be implemented.
33. These formal undertakings given by Members need to be backed up, both by the political parties and groups, and by the House's Administration. The parties and groups can help in providing more mentoring for new Members, and ensuring that such mentoring focuses on standards, not just on political or practical matters. The Administration can ensure that the Code and standards of conduct figure more prominently in the induction of new Members. There should also be regular "refresher courses"—standards and rules evolve over time, so a one-off course of induction is within a few years likely to be out of date. The annual "stock-taking" of Members' entries in the Register of Interests may need to be conducted more frequently: the Code has since 2001 required that changes be notified to the Registrar within one month, but this rule appears to have been widely neglected. The responsibility for changing this rests ultimately with Members themselves, but the Administration can certainly help.
34. In summary, a balance must be struck. Members need clarity and detail in the rules governing their conduct; at the same time, simply obeying the letter of the rules is not enough—as recent events have shown, higher standards are expected of Members of Parliament, and a defence that particular behaviour was "allowed under the rules" carries little weight in public opinion. We believe that the approach we have adopted, on the one hand a Code which focuses on general moral principles and duties, to which Members are required to make an active and regular commitment, and on the other detailed guidance on the practical implementation of the rules, strikes the right balance.

*Paragraphs 6 to 9: general principles of conduct*

35. The section of the Code dealing with general principles of conduct is given in Box 2.
36. In this section we have consolidated and clarified those parts of the existing Code that deal with what might be called "general principles" of conduct, rather than specific rules regarding registration of interests. For the most part these provisions will be familiar to Members, though we have reordered them to some extent.
37. We also propose some important changes. First, we have included in paragraph 7 a greater emphasis on Members' duty to act in the public interest. The present Code simply requires that Members should "resolve any conflict between their personal interest and the public interest in favour of the public interest". We believe that this should be expressed more positively, as a responsibility that Members, in the conduct of their parliamentary duties, should always act in the public interest. We are

supported in this conclusion by the CSPL, which recommended that the Code “should be amended to make clear that Members of the House of Lords should take account of the public good in determining their actions”.

## BOX 2

### *General principles of conduct*

6. By virtue of their oath, or affirmation, of allegiance, Members of the House have a duty to be faithful and bear true allegiance to Her Majesty The Queen, Her heirs and successors, according to law.
7. In the conduct of their parliamentary duties, Members of the House shall base their actions on consideration of the public interest, and shall resolve any conflict between their personal interest and the public interest at once, and in favour of the public interest.
8. Members of the House:
  - (a) must comply with the Code of Conduct;
  - (b) should act always on their personal honour;
  - (c) must never accept or agree to accept any financial inducement as an incentive or reward for exercising parliamentary influence;
  - (d) must not seek to profit from membership of the House by accepting or agreeing to accept payment or other incentive or reward in return for providing parliamentary advice or services.
9. Members of the House should observe the seven general principles of conduct identified by the Committee on Standards in Public Life. These principles will be taken into consideration when any allegation of breaches of the provisions in other sections of the Code is under investigation:
  - (a) *Selflessness*: Holders of public office should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.
  - (b) *Integrity*: Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might influence them in the performance of their official duties.
  - (c) *Objectivity*: In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.
  - (d) *Accountability*: Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.
  - (e) *Openness*: Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.
  - (f) *Honesty*: Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.
  - (g) *Leadership*: Holders of public office should promote and support these principles by leadership and example.

38. There are more key changes in paragraph 8, which we propose in place of paragraph 4 of the present Code. Paragraph 4 reads:

- “(4) Members of the House:
- (a) must comply with the Code of Conduct;
  - (b) should act always on their personal honour;
  - (c) must never accept any financial inducement as an incentive or reward for exercising parliamentary influence;

- (d) must not vote on any bill or motion, or ask any question in the House or a committee, or promote any matter, in return for payment or any other material benefit (the 'no paid advocacy' rule)."
39. The interpretation of paragraph 4 was central to the investigation by the Sub-Committee on Lords' Interests into the recent allegations against four Members. In particular, there was controversy over the meaning of paragraph 4(b), and the time-honoured concept of "personal honour". Ultimately the House endorsed the conclusion of the Committee for Privileges that "Members who express a clear willingness to breach the Code of Conduct thereby demonstrate a failure of 'personal honour', and are thus in breach of paragraph 4(b) of the Code."<sup>7</sup> Two of the four Members were duly found by the House to have been in breach of this paragraph.
40. We heard differing views on whether or not the concept of "personal honour" should be retained; most were in favour of retention, though some felt that "personal honour" did not sit easily with the "Nolan principles". The CSPL itself argued "that the code should make explicit that peers should be expected to act not only on their personal honour but also to reflect the wider public good and should follow the spirit as well as the letter of the Code." We have dealt with the "wider public good" point in paragraph 7 of our proposed Code. As for the "spirit" of the Code, we believe that the interpretation of "personal honour" adopted by the House on 20 May meets this point. Indeed, the Sub-Committee, in its report on the four peers, stated that "A literal and technical compliance with the requirements of the Code is therefore not enough: Members are also bound to act on their personal honour in the context of the public's expectations of how a Member of the House of Lords ought to behave".<sup>8</sup>
41. We therefore believe that the concept of "personal honour", properly understood, requires Members not only to observe the letter of the Code and the accompanying Guide, but to act in the spirit of the Code in all their parliamentary activities. The concept should therefore be retained. In addition, we propose the following explanation of the term, for inclusion in the accompanying Guide to the Rules: "Paragraphs 8(a) and 8(b) of the Code, taken together, mean that Members are required not only to obey the letter of the rules, but to act in accordance with the spirit of those rules and the sense of the House."
42. At the same time, we have sought to make the rule in paragraph 8(c) less ambiguous, by stating in terms that Members may neither accept nor agree to accept financial inducement as an incentive or reward for exercising parliamentary influence.
43. Paragraph 4(d) of the present Code embodies the "no paid advocacy" rule. This is a very specific rule, which we believe belongs in a later section of the Code. We return to the "no paid advocacy rule" below, at paragraph 62. In its place we propose a further general principle, which flows from the long-standing principle that Members "must never accept any financial inducement as an incentive or reward for exercising parliamentary influence". Our proposal for paragraph 8(d) is as follows: "Members ... must not seek to profit from membership of the House by accepting or agreeing to

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<sup>7</sup> Committee for Privileges, 2nd Report, session 2008-09 (HL Paper 88-I), p 12.

<sup>8</sup> *Ibid.*, pp 29-30.

accept payment or other incentive or reward in return for providing parliamentary advice or services”.

44. The rationale for this proposal is given in the accompanying Guide, and we draw Members' attention to the following paragraphs in particular:

“13. Members of the House of Lords have a wide range of outside interests and careers. The Code in no way seeks either to curtail these interests or careers, or to discourage Members from drawing on the knowledge and expertise so gained in their parliamentary work. It is thus entirely appropriate for a Member of the House also to work in any non-parliamentary sphere of activity, for example as Chairman or Director of a major company; as Chief Executive of a Non-Departmental Public Body; as officer of a Trade Union; as a doctor or lawyer. Moreover, it is not only permissible, but desirable, that such Members, having declared their interests, should contribute to debate on issues to which these interests are relevant.

“14. At the same time, in their parliamentary work, and whenever they act in their capacity as parliamentarians, Members are required to base their actions solely upon consideration of the public interest. Members thus have a responsibility to maintain a clear distinction between their outside interests and their parliamentary work. It is incompatible with the maintenance of this distinction for a Member, by offering parliamentary services or advice to paying clients, to seek to profit from membership of the House.”

45. The phenomenon of what were variously described to us as “peers for hire” or “peers on the cab rank” is not acceptable. Membership of the House should not be a source of profit. However, we do not believe that it is practicable to address this issue by means of the existing “no paid advocacy” rule. As the Second Report of the Committee for Privileges<sup>9</sup> demonstrates, the present rule requires a labour-intensive, case-by-case approach to investigations, involving minute analysis of and judgment on individual Members' actions and motives. A simpler and more readily enforceable approach is to ban outright what might be called “parliamentary consultancies”.
46. We understand that defining the scope of such a ban will be by no means straightforward. We have sought, in paragraphs 15 to 17 of the Guide, to explain how the ban will work in more detail. In particular, we draw Members' attention to the definition of “parliamentary advice and services” given in paragraph 15: “*Advice* means that Members may not act as paid parliamentary consultants, advising outside organisations or persons on how they may lobby or otherwise influence the work of Parliament; *services* means that Members may not, in return for payment, assist outside organisations or persons in influencing Parliament.” We do not wish to inhibit Members from advising in general terms on how Parliament works, or on the legislative process. The key factor in the definition we have proposed is that Members should not assist outside bodies in lobbying or otherwise influencing Parliament, either personally or indirectly (for instance, by the giving of advice), in return for a financial incentive. To assist Members further, we have also included two criteria (see the Guide, paragraph 16) which they

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<sup>9</sup> See Committee for Privileges, 2nd Report, session 2008-09 (HL Paper 88-I and 88-II).

should aim to satisfy in assessing whether any contractual or employment relationship they enter into is acceptable. Clearly the implementation of the ban, and the accompanying guidance, will need to be kept under close review.

47. The last change in this section of the Code comes in paragraph 9. We recommend that the Code, like its Commons counterpart, should make it explicit both that Members are expected to observe the seven general principles of conduct identified by the CSPL (the “Nolan principles”), and that these principles will “be taken into consideration when any allegation of breaches of the provisions in other sections of the Code is under investigation”. The Nolan principles were drafted as a “re-statement of the general principles of conduct underpinning public life”<sup>10</sup>—that is, all public life—not as rules of conduct for use in what could be very specific circumstances. Indeed, the CSPL, in its First Report, recommended that codes of conduct “should be drawn up within each organisation concerned, so that they will be appropriate to their circumstances and will form part of the culture of the organisation. But they should all be based on the principles”.<sup>11</sup>
48. We believe that the approach we have adopted is consistent with this recommendation. It makes it clear that the Nolan principles underpin the Code of Conduct as a whole and set the ethical context against which Members’ conduct will be judged, but avoids possible confusion between these general principles and the specific rules appropriate to the House of Lords, for instance those governing registration of interests, which Members are required to observe.

*Paragraphs 10 to 15: rules of conduct*

49. The section of the Code dealing with specific rules of conduct is given in Box 3.
50. This section is both much shorter and more wide-ranging than paragraphs 4(d) and 7 to 18 of the present Code, to which it corresponds. It is shorter because it describes the key rules of conduct in general terms, leaving the detailed exposition of how these rules are applied in practice to the Guide to the Rules. It is more wide-ranging in that it includes references to certain rules of conduct which have not hitherto been part of the Code. The key differences are described in the following paragraphs.
51. Paragraphs 10(a) and 10(b) on the surface correspond closely to paragraphs 8(a) and 8(b) of the present Code (which can be found in Appendix 4). However, there are several key differences.
52. First, we do not include within this section any list of the various categories of relevant interest. This is given in the accompanying Guide. The categories themselves are fewer in number, and wider in scope. The intention is to reduce as far as possible any doubt as to the category under which a particular interest should be registered. Because we have, in paragraph 8(d), prohibited Members from profiting from membership by offering parliamentary advice or services for money, there is no need to create subtle distinctions between “parliamentary” and “non-parliamentary” consultancies, and employment in businesses involved in lobbying. Instead,

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<sup>10</sup> CSPL, *The First Seven Reports: a Review of Progress* (2001), p. 8.

<sup>11</sup> First Report of the CSPL, *Standards in Public Life* (1995), p. 18.

we propose two broad categories of registrable employment interest: on the one hand directorships; and on the other remunerated employment, office, profession etc.—terms we use in a broad rather than a technical sense. In addition, we propose a third category, clients, under which all provision under the previous two categories to clients of services which *depend substantially upon or arise out of* membership of the House should be registered. We believe this third category is necessary, in the interests of transparency. It of course does not require disclosure of Members' clients in their non-parliamentary work.

### BOX 3

#### *Rules of Conduct*

10. In order to assist in openness and accountability Members shall:

(a) register in the Register of Lords' Interests all relevant interests, in order to make clear what are the interests that might reasonably be thought to influence their parliamentary actions;

(b) declare when speaking in the House, or communicating with ministers or public servants, any interest which is a relevant interest in the context of the debate or the matter under discussion.

(c) act in accordance with any rules agreed by the House in respect of financial support for Members or the facilities of the House.

11. The test of relevant interest is whether the interest might be thought by a reasonable member of the public to influence the way in which a Member of the House of Lords discharges his or her parliamentary duties: in the case of registration, the Member's parliamentary duties in general; in the case of declaration, his or her duties in respect of the particular matter under discussion.

12. The test of relevant interest is therefore not whether a Member's actions in Parliament will be influenced by the interest, but whether a reasonable member of the public might think that this might be the case. Relevant interests include both financial and non-financial interests.

13. Members are responsible for ensuring that their registered interests are accurate and up-to-date. They should register any change in their relevant interests within one month of the change.

14. A Member must not act as a paid advocate in any proceeding of the House; that is to say, he or she must not seek by parliamentary means to confer exclusive benefit on an outside body or person from which he or she receives payment or reward.

15. Members are not otherwise debarred from participating in proceedings in regard to which they possess relevant interests, financial or non-financial; but such interests should be declared fully. Members of the House should be especially cautious in deciding whether to speak or vote in relation to interests that are direct, pecuniary and shared by few others.

53. The remaining categories of interest correspond closely to those found in the present Code: shareholdings, land and property, sponsorship, overseas visits and gifts. We have added a category of "miscellaneous financial interests" to cover those interests that do not readily fall into the earlier categories; and we have sought in category 10 to define more clearly the limited range of non-financial interests which are required to be registered. Non-financial interests not specified in category 10 should not in future be registered.
54. We propose that all financial interests, unless otherwise stated, should be subject to a threshold, set by reference to whatever financial support arrangements are introduced following the SSRB review, but roughly

equivalent to £150 at current prices.<sup>12</sup> Cumulative benefits which, over a calendar year, exceeded this threshold, would be registrable.

55. We also propose a revised definition of “relevant interest”. Instead of the present test, that an interest “might *reasonably be thought by the public* to affect the way in which a member ... discharges his or her parliamentary duties”, we propose that the test be that the interest “might *be thought by a reasonable member of the public* to affect the way in which a Member ... discharges his or her parliamentary duties”. The present definition is, we believe, too vague and too generic. There is no identifiable individual or set of individual characteristics corresponding to “the public” as a whole. In proposing the words “a reasonable member of the public”, we have sought to echo more closely the “objective” test that is familiar in the courts, implying by the word “reasonable” that the person is impartial and well-informed, and judges all the relevant facts in an objective manner.
56. We have also sought to clarify the difference between the test of relevance as it applies to registration and declaration of interests. The Register is a published document of record; its purpose is the disclosure of all those interests which might influence a Member’s conduct of his or her parliamentary duties in general. Declaration, on the other hand, is a broader duty, relating to the particular matters under discussion at a given moment. A Member may have an interest of no general relevance, and thus inappropriate for the Register, which is nevertheless a significant factor in the context of the particular topic of debate.
57. Members will wish to look carefully at the proposed Guide to the Rules, which contains several proposals for change. For instance, we clarify that the duty of registration covers, in certain circumstances, not only a Member’s interests, but those of his or her spouse (the term being taken to include a civil partner or cohabitee). However, we specifically exclude the interests of a “relative or friend” (words which appear in paragraph 13(c) of the present Code). Members may decide in certain circumstances to declare the interests of a relative or friend, but we do not regard such interests as appropriate for inclusion in the Register.
58. We now turn to three key changes in this section of the Code. First, paragraph 10(c), which provides that Members are to “act in accordance with any rules agreed by the House in respect of financial support for Members or the facilities of the House”. We do not believe that such rules should themselves be incorporated in the Code—but we do firmly believe that breaches should be investigated by the same procedure as breaches of the Code itself.
59. The current position is that complaints of misuse of the existing Members’ expenses are investigated by the Clerk of the Parliaments, as Accounting Officer for the House of Lords Administration, but “in exceptional circumstances he may request the Sub-Committee [on Lords’ Interests] to assist him in investigating a complex or serious complaint”.<sup>13</sup> However, recent events have presented him with complex, difficult investigations, comparable to those that have arisen under the Code of Conduct itself. It

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<sup>12</sup> In our proposed Guide to the Rules we have included this figure in square brackets, [£150], on the assumption that the figure will be replaced by a suitable formula following publication of the SSRB report, so avoiding the need for annual up-rating in line with inflation.

<sup>13</sup> Committee for Privileges, 4th Report, Session 2007–08 (HL Paper 205), pp. 4–5.

does not seem to us appropriate that a member of the House Administration, however senior, should be tasked with investigating such matters. In the interests of transparency, there should be a single investigatory process for all complaints against Members, involving a single, independent Commissioner for Standards.

60. Bringing such complaints within the scope of the Code would also mean that compliance with the rules governing financial support would be judged henceforth within the context of the general requirement in the Code that Members should “act always on their personal honour”. As our proposed Guide states, this means that Members are required “not only to obey the letter of the rules, but to act in accordance with the spirit of those rules and the sense of the House”.
61. Such a change would have the further benefit that Members whose claims for financial support were under investigation would in future have the same formal guarantee of procedural fairness, including a right of appeal to the Committee for Privileges, as Members investigated for breaches of the Code itself.
62. Secondly, we propose in paragraph 14 a new definition of the “no paid advocacy rule”, replacing that found in paragraph 4(d) of the present Code, which is quoted above. Our definition is modelled closely on that in the House of Commons Code of Conduct: the Member “must not seek by parliamentary means to confer exclusive benefit on an outside body or person from which he or she receives payment or reward”.
63. The current “no paid advocacy rule” is, we believe, a source of uncertainty. The rule itself is drafted narrowly: it refers to specific actions (“vote on any bill or motion” etc.), and to specific bargains reached (“in return for payment or any other material benefit”). It would, in reality, be very difficult to prove a breach of the rule as presently drafted. These difficulties led the Sub-Committee on Lords’ Interests, in its recent investigation, to focus instead on the much broader paragraph 4(c) of the Code (Members “must never accept any financial inducement as an incentive or reward for exercising parliamentary influence”). In the Sub-Committee’s interpretation, “Paragraph 4(d) gives examples of the kind of activities falling under the no-paid-advocacy rule, which is more generally described by paragraph 4(c).”<sup>14</sup>
64. Paragraph 4(c) is a statement of general moral principle (and was explicitly described as such in the 1995 Resolution of the House on registration of interests). It thus invites analysis, not of actions or facts, but motivation. The Sub-Committee acknowledged this: “In the case of all four Lords one of the key questions is: what were his intentions and motives?”<sup>15</sup> We in no way seek to challenge the outcome of the Sub-Committee’s investigation—in that exceptional case, the abundance of tape-recorded evidence meant that there was ample material to assist in analysing the motives of the four Members. However, as a general rule, we believe that a fact-based approach to future investigations would be preferable.
65. The definition that we propose thus sets out an offence which, if committed, could be clearly and factually proved: the Member “must not seek by parliamentary means to confer exclusive benefit on an outside body or person

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<sup>14</sup> Committee for Privileges, 2nd Report, Session 2008–09, p. 30.

<sup>15</sup> *Ibid.*, p. 34.

from which he or she receives payment or reward.” The existence of a payment and the conferring of an exclusive benefit are the two key components; there is no need to demonstrate that the payment was made specifically in return for that benefit—it is enough that it has been made. At the same time, the rule protects Members who, having registered and declared relevant interests, wish to give the House the benefit of their expertise in general debates of whatever kind. From the public’s as well as the House’s point of view it is desirable that a Member who is Chairman of, say, an energy company, should be entitled to speak on energy matters, as long as there is no intention to confer exclusive benefit on that one company.

66. Members will of course still need to exercise judgment. Thus paragraph 15 follows on directly from the “no paid advocacy rule”: “Members are not otherwise debarred from participating in proceedings in regard to which they possess relevant interests, financial or non-financial; but such interests should be declared fully. Members of the House should be especially cautious in deciding whether to speak or vote in relation to interests that are direct, pecuniary and shared by few others.” The second part of this paragraph is taken verbatim from the Resolution of the House of 1995; it was lost from the 2001 Code, but this omission was subsequently rectified when it was included in *The Companion to the Standing Orders*.<sup>16</sup> It should now be restored to the Code itself.

#### *Paragraphs 16 to 21: enforcement of the Code of Conduct*

67. Our conclusions on enforcement are represented by paragraphs 16–21 of the Code, reproduced in Box 4.
68. We believe that a demonstrably independent investigatory function is now needed to reinforce public confidence in the House’s ability to regulate the conduct of its Members. We therefore recommend the appointment of an independent House of Lords Commissioner for Standards, and this recommendation is embodied in paragraph 16 of our proposed Code. This was also a key recommendation of the Committee on Standards in Public Life: “To ensure public confidence in the impartiality of any investigations the Committee now believes that there should be a permanent Parliamentary Commissioner for Standards in the House of Lords.” We agree: the House should appoint a fully independent officer to conduct investigations, to make findings of fact and to draw conclusions as to possible breaches of the Code, and to report these to the existing committee structure.
69. We acknowledge that the appointment of a House of Lords Commissioner would involve significant additional expenditure, and that there may be times, when no investigations are in progress, when this expenditure might appear difficult to justify. Undoubtedly efforts should be made to keep additional expenditure to a minimum. One option might be to appoint a part-time Commissioner, possibly paid on a *per diem* basis. We look to the House administration to ensure that the House and the public get value for money from this new appointment.
70. We are clear however that the process of appointment should be open and independent, though it is not for this Group to specify the composition of the appointing board. The appointment itself would not take effect until confirmed by Resolution of the House as a whole.

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<sup>16</sup> *The Companion to the Standing Orders* (2007), p. 61.

**BOX 4***Enforcement of the Code of Conduct*

16. A House of Lords Commissioner for Standards is appointed to investigate alleged breaches of this Code, or of the rules governing Members' financial support or use of parliamentary facilities. Any such investigation is conducted in accordance with procedures set out in the Guide to the Rules.

17. After investigation the Commissioner reports his findings to the Sub-Committee on Lords' Interests; the Sub-Committee reviews the Commissioner's findings and, where appropriate, recommends a disciplinary sanction to the Committee for Privileges. The Member concerned has a right of appeal to the Committee for Privileges against both the Commissioner's findings and any recommended sanction.

18. The Committee for Privileges, having heard any appeal, reports its conclusions and recommendations to the House. The final decision rests with the House.

19. In investigating and adjudicating allegations of non-compliance with this Code, the Commissioner, the Sub-Committee on Lords' Interests and the Committee for Privileges shall act in accordance with the principles of natural justice and fairness.

20. Members shall co-operate, at all stages, with any investigation into their conduct by or under the authority of the House.

21. No Member shall lobby a member of the Committee for Privileges or the Sub-Committee on Lords' Interests in a manner calculated or intended to influence their consideration of a complaint of a breach of this Code.

71. We have also concluded that the existing committee structure should continue notwithstanding the appointment of a Commissioner. The task of the Commissioner will be limited to making findings of fact, and offering conclusions on whether or not the Code has been breached. He will present his report to the Sub-Committee on Lords' Interests, which will resolve any remaining contested issues of fact. If an allegation had been upheld, the Sub-Committee will also recommend the appropriate sanction to the Committee for Privileges. The Member concerned will have a formal right of appeal, as at present, to the Committee for Privileges, against either the conclusions of the Commissioner and Sub-Committee on whether or not the Code has been breached, or against the recommended sanction.<sup>17</sup> The final decision, as now, would be made by the House, on consideration of the Committee for Privileges report.
72. Paragraph 19 states that each stage of the process should be conducted "in accordance with the principles of natural justice and fairness". We heard considerable evidence in the course of our inquiry, not least from the Sub-Committee on Lords' Interests itself, that the procedural safeguards required under the present Code place an almost impossible burden upon the Sub-Committee, and should be reviewed. We endorse the comment of the Hansard Society, in its recent briefing paper, that the safeguard found in the present Code "in practice amounts to a lawyers' charter".<sup>18</sup> This is a self-regulating House, and a better guarantee of natural justice lies in the impartiality and wisdom of the Members of the House, reinforced by successive rights of appeal to the Committee for Privileges and to the House as a whole.

<sup>17</sup> At present a Member has no right of appeal against the penalty imposed upon him or her, or opportunity to make a "plea in mitigation". The Sub-Committee on Lords' Interests decided in the case of the recent allegations against four Members to leave the task of recommending penalties to the Committee for Privileges; as a result penalties were only decided *after* the appeals had been considered.

<sup>18</sup> Hansard Society, Briefing Paper 1: *Restoring Trust in the House of Lords* (July 2009), p 8.

73. Moreover, we are persuaded by the arguments put in the debate on the Committee for Privileges reports on 20 May, that the decisions of the Committee for Privileges do not represent the determination of either criminal charges or civil rights, and that therefore there is no prospect of any possible breach of the European Convention on Human Rights that might need to be remedied by more elaborate procedural safeguards.<sup>19</sup>
74. We are therefore confident that a clear requirement that all stages of an investigation are conducted in accordance with the principles of natural justice strikes the right balance.
75. Finally, in paragraphs 20 and 21 we clarify, for the avoidance of doubt, the duties of Members to co-operate with investigations, and to refrain from lobbying the Committee for Privileges or the Sub-Committee on Lords' Interests. These paragraphs echo paragraphs 18 and 19 of the House of Commons Code of Conduct.

*Paragraphs 22 to 25: advice and review*

76. Paragraphs 22 to 25 of our proposed Code, reproduced in Box 5, deal with the advisory responsibilities of the Registrar, and establish a requirement for regular review.

**BOX 5**

*Advice and review*

22. The operation of the Register is overseen by the Sub-Committee on Lords' Interests, assisted by the Registrar of Lords' Interests. The Registrar is available to advise Members of the House, and may consult the Sub-Committee when necessary.

23. A Member who acts on the advice of the Registrar in determining what is a relevant interest satisfies fully the requirements of the Code of Conduct in that regard. However, the final responsibility for deciding whether or not to participate in proceedings to which that interest is relevant rests with the Member concerned.

24. The Sub-Committee on Lords' Interests reviews the Code of Conduct once each Parliament. Its findings, along with any recommended changes to the Code, are reported to the Committee for Privileges and the House.

25. The Sub-Committee also keeps the Guide to the Rules under regular review; any recommended changes are reported to the House. The updated Guide to the Rules is available online and in printed form from the Printed Paper Office.

77. Paragraphs 22–23 closely follow paragraph 18 of the present Code. We envisage that the Sub-Committee on Lords' Interests, in addition to its role in the enforcement procedures, will continue to oversee the Register of Lords' Interests and support the Registrar. The Registrar, as at present, will be available to advise Members, and will keep a written record of such advice. He will be authorised to consult the Sub-Committee as necessary, and in the event of any investigation his written records will be made available to the Sub-Committee and the Commissioner.
78. Paragraph 23 also clarifies the extent to which Members may rely on the Registrar's advice: the present Code states that a Member who acts on the advice of the Registrar *in determining what is a relevant interest* satisfies fully the requirements of the Code of Conduct, but says nothing of the status of that advice insofar as it concerns participation in proceedings. The onus here must fall upon the individual Member: no officer of the House can take

<sup>19</sup> See for instance the remarks of Lord Lester of Herne Hill, at HL Deb., 20 May 2009, cols 1410–1411.

responsibility for a Member's decision whether or not to speak in a particular debate or table an amendment to legislation.

79. Paragraphs 24–25 provide for the Sub-Committee on Lords' Interests to review the Code itself once each Parliament, and to review the Guide to the Rules as necessary. The Sub-Committee would, of course, consult the Commissioner and the Registrar in the course of such reviews. Any changes to either document would be reported to the Committee for Privileges, and would not take effect unless agreed by the House as a whole.

### **Conclusion**

80. In parts 2 and 3 of our report we set out our proposals for a new Code of Conduct and accompanying Guide to the Rules in full.

## PART 2: TEXT OF A PROPOSED NEW HOUSE OF LORDS CODE OF CONDUCT

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### *Introduction*

1. The House of Lords is the second Chamber of the United Kingdom Parliament. As a constituent part of Parliament, the House of Lords makes laws, holds government to account, and debates issues of public interest.
2. Membership of the House is not an office, and does not constitute employment; most Members' primary employment is or has been outside Parliament. In discharging their parliamentary duties Members of the House of Lords draw substantially on experience and expertise gained outside Parliament.
3. The purpose of this Code of Conduct is
  - (a) to provide guidance for Members of the House of Lords on the standards of conduct expected of them in the discharge of their parliamentary duties; the Code does not extend to Members' performance of duties unrelated to parliamentary proceedings, or to their private lives;
  - (b) to provide the openness and accountability necessary to reinforce public confidence in the way in which Members of the House of Lords perform their parliamentary duties.
4. This Code applies to all Members of the House of Lords who are not either
  - (a) on leave of absence;
  - (b) suspended from the service of the House; or
  - (c) statutorily disqualified from active membership.
5. Members are to sign an undertaking to abide by the Code as part of the ceremony of taking the oath upon introduction and at the start of each Parliament.

### *General principles*

6. By virtue of their oath, or affirmation, of allegiance, Members of the House have a duty to be faithful and bear true allegiance to Her Majesty The Queen, Her heirs and successors, according to law.
7. In the conduct of their parliamentary duties, Members of the House shall base their actions on consideration of the public interest, and shall resolve any conflict between their personal interest and the public interest at once, and in favour of the public interest.
8. Members of the House:
  - (a) must comply with the Code of Conduct;
  - (b) should act always on their personal honour;
  - (c) must never accept or agree to accept any financial inducement as an incentive or reward for exercising parliamentary influence;

- (d) must not seek to profit from membership of the House by accepting or agreeing to accept payment or other incentive or reward in return for providing parliamentary advice or services.
9. Members of the House should observe the seven general principles of conduct identified by the Committee on Standards in Public Life. These principles will be taken into consideration when any allegation of breaches of the provisions in other sections of the Code is under investigation:
- (a) *Selflessness*: Holders of public office should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.
  - (b) *Integrity*: Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might influence them in the performance of their official duties.
  - (c) *Objectivity*: In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.
  - (d) *Accountability*: Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.
  - (e) *Openness*: Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.
  - (f) *Honesty*: Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.
  - (g) *Leadership*: Holders of public office should promote and support these principles by leadership and example.

### *Rules of Conduct*

10. In order to assist in openness and accountability Members shall:
- (a) register in the Register of Lords' Interests all relevant interests, in order to make clear what are the interests that might reasonably be thought to influence their parliamentary actions;
  - (b) declare when speaking in the House, or communicating with ministers or public servants, any interest which is a relevant interest in the context of the debate or the matter under discussion;
  - (c) act in accordance with any rules agreed by the House in respect of financial support for Members or the facilities of the House.
11. The test of relevant interest is whether the interest might be thought by a reasonable member of the public to influence the way in which a Member of the House of Lords discharges his or her parliamentary duties: in the case of registration, the Member's parliamentary duties in general; in the case of

declaration, his or her duties in respect of the particular matter under discussion.

12. The test of relevant interest is therefore not whether a Member's actions in Parliament will be influenced by the interest, but whether a reasonable member of the public might think that this might be the case. Relevant interests include both financial and non-financial interests.
13. Members are responsible for ensuring that their registered interests are accurate and up-to-date. They should register any change in their relevant interests within one month of the change.
14. A Member must not act as a paid advocate in any proceeding of the House; that is to say, he or she must not seek by parliamentary means to confer exclusive benefit on an outside body or person from which he or she receives payment or reward.
15. Members are not otherwise debarred from participating in proceedings in regard to which they possess relevant interests, financial or non-financial; but such interests should be declared fully. Members of the House should be especially cautious in deciding whether to speak or vote in relation to interests that are direct, pecuniary and shared by few others.

#### *Enforcement of the Code of Conduct*

16. A House of Lords Commissioner for Standards is appointed to investigate alleged breaches of this Code, or of the rules governing Members' financial support or use of parliamentary facilities. Any such investigation is conducted in accordance with procedures set out in the Guide to the Rules.
17. After investigation the Commissioner reports his findings to the Sub-Committee on Lords' Interests; the Sub-Committee reviews the Commissioner's findings and, where appropriate, recommends a disciplinary sanction to the Committee for Privileges. The Member concerned has a right of appeal to the Committee for Privileges against both the Commissioner's findings and any recommended sanction.
18. The Committee for Privileges, having heard any appeal, reports its conclusions and recommendations to the House. The final decision rests with the House.
19. In investigating and adjudicating allegations of non-compliance with this Code, the Commissioner, the Sub-Committee on Lords' Interests and the Committee for Privileges shall act in accordance with the principles of natural justice and fairness.
20. Members shall co-operate, at all stages, with any investigation into their conduct by or under the authority of the House.
21. No Member shall lobby a member of the Committee for Privileges or the Sub-Committee on Lords' Interests in a manner calculated or intended to influence their consideration of a complaint of a breach of this Code.

#### *Advice and review*

22. The operation of the Register is overseen by the Sub-Committee on Lords' Interests, assisted by the Registrar of Lords' Interests. The Registrar is available to advise Members of the House, and may consult the Sub-Committee when necessary.

23. A Member who acts on the advice of the Registrar in determining what is a relevant interest satisfies fully the requirements of the Code of Conduct in that regard. However, the final responsibility for deciding whether or not to participate in proceedings to which that interest is relevant rests with the Member concerned.
24. The Sub-Committee on Lords' Interests reviews the Code of Conduct once each Parliament. Its findings, along with any recommended changes to the Code, are reported to the House.
25. The Sub-Committee also keeps the Guide to the Rules under regular review; recommended changes are reported to the House and will not take effect until agreed by the House.

## **PART 3: TEXT OF A PROPOSED GUIDE TO THE RULES ON THE CONDUCT OF MEMBERS OF THE HOUSE OF LORDS**

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### **Introduction**

1. The purpose of this Guide is to assist Members of the House of Lords in discharging the duties placed upon them by the Code of Conduct.
2. The operation of the Code is overseen by the Sub-Committee on Lords' Interests, a sub-committee of the Committee for Privileges. The Sub-Committee is supported by the Registrar of Lords' Interests, who is responsible for maintaining the Register of Lords' Interests.
3. No written guidance can provide for all circumstances: when in doubt Members should seek the advice of the Registrar of Lords' Interests. The Registrar may consult the Sub-Committee when necessary. A Member who acts on the advice of the Registrar in determining what is a relevant interest satisfies fully the requirements of the Code of Conduct in that regard. However, the final responsibility for deciding whether or not to participate in proceedings to which that interest is relevant rests with the Member concerned.
4. The procedures for enforcing the Code of Conduct are described later in this Guide. In summary, responsibility for investigating alleged breaches of the Code rests with the House of Lords Commissioner for Standards, who is an independent officer appointed by the House as a whole. Following his investigation, the Commissioner reports findings of fact to the Sub-Committee on Lords' Interests, and offers his own conclusion on whether the Code has been breached. The Sub-Committee reviews the Commissioner's findings, and may, where appropriate, recommend a sanction. The reports of the Commissioner and Sub-Committee are presented to the Committee for Privileges, and the Member concerned has a right of appeal at this stage against both the Commissioner's findings and the recommended sanction. Having heard any appeal, the Committee for Privileges reports the matter to the House; the final decision rests with the House alone.
5. The Code of Conduct, and the contents of this Guide, derive their authority from Resolutions of the House, rather than from statute or common law; responsibility for their enforcement rests with the House of Lords.
6. Ministers of the Crown who are Members of the House of Lords are subject to the rules of registration and declaration in the same way as all other Members. However, the restrictions imposed by the ban on providing parliamentary advice or services in return for payment or other incentive do not apply to ministers. In addition, ministers are subject to further guidelines and requirements laid down in the "Ministerial Code". These requirements are not enforced by the House of Lords and are beyond the scope of the Code of Conduct and this Guide.
7. The remainder of this Guide is divided into six sections dealing with:
  - general principles and rules of conduct;
  - registration of interests;
  - declaration of interests;

- use of facilities of the House;
- financial support for Members;
- enforcement.

### General principles and rules of conduct

#### *Personal honour*

8. In accordance with paragraph 5 of the Code of Conduct, Members sign an undertaking to abide by the Code as part of the ceremony of taking the oath, both upon Introduction and at the start of each subsequent Parliament.
9. Members are required both “to comply with the Code of Conduct” (paragraph 8(a)), and to act always “on their personal honour” (paragraph 8(b)). The term “personal honour” has been explained by the Committee for Privileges as follows:

“The term ‘personal honour’ has been used within the House for centuries to describe the guiding principles that govern the conduct of Members; its meaning has never been defined, and has not needed definition, because it is inherent in the culture and conventions of the House. These change over time, and thus any definition of ‘personal honour’, while it might achieve temporary ‘legal certainty’, would quickly become out-moded ... the term ‘personal honour’ is ultimately an expression of the sense of the House as a whole as to the standards of conduct expected of individual Members ... Members cannot rely simply on their own personal sense of what is honourable. They are required to act in accordance with the standards expected by the House as a whole. ‘Personal honour’ is thus ... a matter for individual Members, subject to the sense and culture of the House as a whole.”<sup>1</sup>

10. The Code of Conduct has been agreed by resolution of the House, with a view to providing guidance for Members and the public as to the standards of conduct the House expects of its Members in the discharge of their parliamentary duties. But a written Code can never cover every eventuality. Paragraphs 8(a) and 8(b) of the Code, taken together, mean that Members are required not only to obey the letter of the rules, but to act in accordance with the spirit of those rules and the sense of the House.

#### *Financial inducements and parliamentary influence*

11. Paragraph 8(c) states that Members “must never accept or agree to accept any financial inducement as an incentive or reward for exercising parliamentary influence”. Members are required under paragraph 7 to base their actions upon consideration of the public interest. Acceptance of financial inducement as an incentive or reward for exercising parliamentary influence would necessarily contravene this principle, creating an unresolved conflict between public and personal interests.
12. Paragraph 8(d) describes the specific application of the principles described in paragraph 7 and 8(c): Members “must not seek to profit from membership of the House; in particular, they must not accept or agree to

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<sup>1</sup> Committee for Privileges, 2nd Report, session 2008–09 (HL Paper 88), page 11.

accept payment or other incentive or reward in return for providing parliamentary advice or services”.

13. Members of the House of Lords have a wide range of outside interests and careers. The Code in no way seeks either to curtail these interests or careers, or to discourage Members from drawing on the knowledge and expertise so gained in their parliamentary work. It is thus entirely appropriate for a Member of the House also to work in any non-parliamentary sphere of activity, for example as Chairman or Director of a major company; as Chief Executive of a Non-Departmental Public Body; as officer of a Trade Union; as a doctor or lawyer. Moreover, it is not only permissible, but desirable, that such Members, having declared their interests, should contribute to debate on issues to which these interests are relevant.
14. At the same time, in their parliamentary work, and whenever they act in their capacity as parliamentarians, Members are required to base their actions solely upon consideration of the public interest. Members thus have a responsibility to maintain a clear distinction between their outside interests and their parliamentary work. It is incompatible with the maintenance of this distinction for a Member, by offering parliamentary services or advice to paying clients, to seek to profit from membership of the House.
15. The Code therefore prohibits Members from accepting payment in return for parliamentary *advice* or *services*. *Advice* means that Members may not act as paid parliamentary consultants, advising outside organisations or persons on how they may lobby or otherwise influence the work of Parliament; *services* means that Members may not, in return for payment, assist outside organisations or persons in influencing Parliament. This includes seeking by means of participation in proceedings of the House to confer exclusive benefit upon the organisation (the “no paid advocacy rule”); making use of their position to arrange meetings with a view to lobbying members of either House, ministers or officials; or sponsoring promotional functions on behalf of companies in which they have a financial interest.
16. The dividing line between legitimate outside activity and the prohibited provision of parliamentary advice or services is not always obvious. The rule is not intended to inhibit Members from advising in general terms on how Parliament works, or on the legislative process. Members may also work for organisations such as representative bodies or trade associations, which, as part of their normal activity, lobby Government or Parliament. Alternatively, they may advise companies on matters of general policy, including government relations, in the role of non-executive director. In judging whether outside interests of this kind are permitted, Members should ensure that they satisfy the following criteria:
  - That they can demonstrate that they do not receive payment or benefit in return for the provision of parliamentary advice or services, as defined above. Members should, if challenged, be able clearly to show that their payment or benefit stems from some non-parliamentary service they provide; they should, where possible, ensure that contractual agreements specifically exclude the provision of parliamentary advice or services.
  - That any payment or benefit does not derive solely or mainly from their position in the House; and that they were, or could have been, in receipt of the payment or benefit without being a Member of the House.

17. Members who have an outside financial interest are, as paragraph 15 of the Code makes clear, not debarred from participating in proceedings to which that interest is relevant. However, such interests should be declared fully, and “Members of the House should be especially cautious in deciding whether to speak or vote in relation to interests that are direct, pecuniary and shared by few others.” Thus Members should take all relevant factors into account when deciding whether or not to participate in such proceedings, including:
- The nature and scale of the pecuniary interest.
  - How many others possess the same interest (for instance, in the case of shareholdings).
  - The nature of the proceeding itself. There would, for instance, be more latitude in the case of a general debate than in discussion of an amendment to legislation. Members with a pecuniary interest that is relevant to private legislation should exercise particular caution, and seek advice before deciding to participate in proceedings on that legislation.
  - The nature of the Member’s intended contribution. A speech urging Government investment in a sector in which the Member had a pecuniary interest might be open to misconstruction, whereas a speech canvassing issues of more general interest would not.
18. Members may consult the Registrar on these matters, but as paragraph 23 of the Code makes clear, “the final responsibility for deciding whether or not to participate in proceedings to which that interest is relevant rests with the Member concerned”.

*The “general principles of conduct”*

19. Paragraph 9 of the Code requires Members of the House to observe the seven general principles of conduct identified by the Committee on Standards in Public Life. These principles apply to all aspects of public life, and provide the context within which the House of Lords Code of Conduct should be read and implemented.
20. Complaints will not be entertained solely on the basis of alleged failures to abide by the seven principles (for instance, a general failure in “honesty” unsupported by specific evidence of a breach of the other provisions within the Code). However, these principles will be taken into account when investigating any alleged breach of the provisions in other sections of the Code. Thus an allegation that a Member failed to register a relevant interest would be investigated in the context of the general duty of “honesty”, namely that “Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest”.

*“Paid advocacy”*

21. Paragraph 14 of the Code states: “A Member must not act as a paid advocate in any proceeding of the House; that is to say, he or she must not seek by parliamentary means to confer exclusive benefit on an outside body or person from which he or she receives payment or reward.”
22. The “exclusive benefit” principle would mean, for instance, that a Member who was paid by a pharmaceutical company would be barred from seeking to

confer benefit exclusively upon that company by parliamentary means. The way in which the benefit is conferred should be interpreted broadly. All proceedings of the House are included, for instance:

- tabling an amendment to legislation;
  - voting in a division;
  - speaking in a general debate;
  - asking written or oral questions;
  - deliberation within a Select Committee.
23. The nature of the “exclusive benefit”, on the other hand, should be interpreted narrowly. The same Member would not be debarred from tabling an amendment, speaking or voting on matters relevant to, for instance, the pharmaceutical sector as a whole; National Health Service spending on drugs; or Government policy on drug licensing and patents.
24. The term “outside body” includes any registrable client of such a body (see below, paragraph 48).
25. A Member who has a financial interest in a representative organisation, such as a trade association, staff association, professional body or charity, may not advocate measures for the exclusive benefit of that organisation; nor speak or act in support of a campaign exclusively for the benefit of the representative organisation or its membership (e.g. a campaign for special tax relief, or for enhanced pay and numbers). But the Member may speak or act in support of a campaign that is of interest to the representative organisation, but is also of wider application (for instance, in the case of a charity for cancer research, a campaign for the prohibition of smoking).

### **Registration of interests**

26. Under the Code Members are required to register in the Register of Lords' Interests all relevant interests. The compilation and maintenance of the Register is undertaken by the Registrar of Lords' Interests.
27. The purpose of the Register is to assist in openness and accountability by enabling Members to make clear what are the interests that might be thought by a reasonable member of the public to influence their actions, speeches or votes in Parliament, or actions taken in their capacity as Members of the House of Lords. The registration form specifies 10 categories of registrable interest, which are described below.
28. Relevant interests may be financial or non-financial. The key consideration in determining relevance in respect of both registration and declaration of an interest is that the interest might be thought by a reasonable member of the public to influence the way in which a Member of the House of Lords discharges his or her parliamentary duties. In the case of registration, this means the Member's parliamentary duties in general; in the case of declaration, his or her duties in respect of the particular matter under discussion.
29. A “reasonable member of the public” is taken to mean an impartial and well-informed person, who judges all the relevant facts in an objective manner.
30. Members of the House of Lords are required to complete a registration form and submit it to the Registrar of Lords' Interests within one month of taking

their seat. Thereafter it is the responsibility of Members to notify changes in their registrable interests within one month of each change occurring.

31. Any Member having a registrable interest which has not at the time been registered shall not undertake any action, speech or proceeding of the House (save voting) to which the registration would be relevant until notification has been given to the Registrar of Lords' Interests. In cases where Members vote in a division where they have a relevant interest which they have yet to register, and which they have not been able to declare, they should register that interest within 24 hours of the division.
32. Members are responsible for making a full disclosure of their interests, and if they have relevant financial interests which do not fall clearly into one or other of the specific categories, they are nonetheless expected to register them, if necessary under category 9 (Miscellaneous financial interests).
33. Any reference in this Guide to a spouse includes a Member's civil partner or cohabitee. Registration of a spouse's interests is required in certain cases. However, registration of the interests of a relative or friend is not required. Members may, at their discretion, declare such interests where they consider them to be relevant to the particular matter in hand; but they are not generally relevant to a Member's parliamentary conduct as a whole, and are thus excluded from the Register.

*The value of interests required to be registered*

34. Interests the value of which does not exceed [ $\pounds 150$ ]<sup>2</sup> are not required to be registered, unless a) they fall into one of various categories of non-financial interests for which registration is mandatory; or b) they could be thought by a reasonable member of the public to affect the way in which a Member of the House of Lords discharges his or her parliamentary duties. The Registrar is available to advise in cases of uncertainty.
35. All single benefits of whatever kind which fall into any of the following categories, and which exceed the threshold of [ $\pounds 150$ ], should be registered in the appropriate category (unless a higher threshold is specified in the relevant category). All benefits received from the same source in the course of a calendar year, which cumulatively amount to more than [ $\pounds 150$ ], should also be registered. When there is uncertainty as to whether a single benefit or cumulative benefits exceed the threshold, Members should err on the side of registration.
36. Notwithstanding the preceding paragraph, if Members consider that any benefit they have received could be thought by a reasonable member of the public to affect the way in which they discharge their parliamentary duties, even though it falls below the threshold, they should register it in the appropriate category.

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<sup>2</sup> This is an indicative figure, and we anticipate that wherever it appears it will in due course be replaced by a formula linked to whatever financial support arrangements are agreed following the SSRB review. Elsewhere in the text we have specified higher thresholds in respect of particular categories of interest: we have set these at what seems to us to be an appropriate level, on the basis that the Sub-Committee on Lords' Interests will in due course keep them under regular review.

*Preparation and publication of the Register*

37. The Register is printed and published soon after the beginning of a new Parliament, and annually thereafter. Between publications the Register is regularly updated in a loose leaf form and, in that form, is available for inspection by Members at the Table of the House, in the Table Office, and in the Library; and by the public in the Search Room of the Parliamentary Archives. The Register is also available online on the parliamentary website at <http://www.publications.parliament.uk/pa/ld/ldreg.htm>. The text is updated fortnightly, and lists of amendments and previous printed texts of the Register are also available.
38. As part of his preparation for reprinting the Register the Registrar sends a circular to all Members of the House inviting them to check and update their Register entry. Between annual publications Members themselves are responsible for ensuring that their registered interests are accurate and up-to-date. They should register any change in their relevant interests within one month of the change occurring.

*Categories of registrable interest**Category 1: Directorships*

*Remunerated directorships in public and private companies, including non-executive directorships, and including directorships which are not directly remunerated, but where remuneration is paid through another company in the same group.*

39. In this category, and in others, “remuneration” includes not only salaries and fees, but also the receipt of any taxable expenses, allowances, or benefits, such as the provision of a company car. Members should register the name of the company in which the directorship is held and give a broad indication of the company’s business, where this is not self-evident from its name.
40. In addition to any remunerated directorships, Members are required to register under this category any directorships which are themselves unremunerated but where either a) remuneration is paid through another company in the same group where the companies in question are associated; or b) the companies concerned are subsidiaries of another company or companies in which the Members concerned do hold remunerated directorships. Other unremunerated directorships should be registered under category 10 (Non-financial interests).
41. The amount of remuneration in respect of interests falling within this category shall not be disclosed.

*Category 2: Remunerated employment, office, profession etc.*

*Employment, office, trade, profession, or vocation (apart from membership of the House) which is remunerated or in which the Member has any pecuniary interest. Membership of Lloyd’s should be registered under this category.*

42. All employment outside the House and any sources of remuneration which do not fall clearly within any other category should be registered here. When registering employment, Members should state the employer company, the nature of its business (where this is not self-evident) and the nature of the

post that they hold in the company. The amount of remuneration in respect of interests falling within this category shall not be disclosed.

43. Members who have paid posts as consultants or advisers should indicate the nature of the consultancy or advice given, for example “management consultant”, “legal adviser” or “public affairs consultant”. They should, in the case of public affairs consultancies, give careful consideration to paragraph 8(d) of the Code and the accompanying guidance, and should also list their clients under category 3.
44. Occasional income from speeches, lecturing, broadcasting or journalism, which exceeds, from a single source, £1,000<sup>3</sup> in the course of a calendar year, should be registered under this category.
45. Members who have resigned from Lloyd’s should continue to register their interest as long as syndicates in which they have participated continue to have years of account which are open or in run-off. Members of Lloyd’s are also required to disclose the categories of insurance business which they are underwriting.
46. Members who have previously practised a profession may wish to register that profession under this category with a bracketed remark such as “[non-practising]” after the entry.
47. Members are not required to register pension arrangements, unless conditions are attached to the continuing receipt of the pension that a reasonable member of the public might regard as likely to influence their conduct as parliamentarians.

### *Category 3: Clients*

*In respect of remunerated interests registered in categories 1 or 2, any provision to clients of services which depend substantially upon or arise out of the Member’s position as a Member of the House of Lords should be registered under this category.*

48. The types of services covered here are those falling under the broad heading of “public affairs consultancy”. The provision by Members of advice on public affairs cannot readily be isolated from their membership of the House. Thus where a Member receives remuneration from a company or partnership engaged in such consultancy, the Member should list any of those clients to whom he or she personally provides services or advice either directly or indirectly.
49. All such clients should be listed, along with a broad indication of their business, where this is not self-evident.
50. A Member who has clients in a non-parliamentary professional capacity (for example, as a doctor, solicitor or accountant) is not required to register those clients, provided that the Member can demonstrate, if challenged, that the services being provided do not arise out of or relate in any manner to membership of the House.
51. Employment or other financial interest in businesses involved in parliamentary lobbying on behalf of clients, such as public relations and law firms, is permitted. However, in accordance with paragraph 8(d) of the Code

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<sup>3</sup> See above, p 34, footnote 2.

of Conduct, Members themselves are prohibited from personally offering commercial lobbying advice or services to clients, and should take care to ensure that, if challenged, they can demonstrate that the services they themselves provide do not arise out of or relate in any manner to membership of the House or parliamentary lobbying.

*Category 4: Shareholdings*

*Any shareholding either a) amounting to a controlling interest, or b) not amounting to a controlling interest, but exceeding £50,000<sup>4</sup> in value.*

52. Members should include all such shareholdings held, either personally, or with or on behalf of their spouse or dependent children, in any public or private company or other body. Members should not specify the value of the shares, or the percentage of shares in a company that are owned, other than by indicating whether the shareholding falls under category 4(a) or 4(b).
53. For each registrable shareholding, the entry should state the name of the company, and briefly indicate the nature of the company's business, where this is not self-evident.
54. The value of a shareholding is determined by the market price of the share on the preceding 5 April; but if the market price cannot be ascertained (e.g. because the company is unquoted and there is no market in the shares), the Member should decide whether to register it on the basis of its estimated value. Interests in shareholdings include share options.
55. It may sometimes be appropriate, in order to assist in openness and accountability, to register shareholdings that do not meet the criteria set out in this category. In such cases, the Member should register the shareholding under category 9.
56. Holdings in a collective investment vehicle (including unit trusts, investment companies with variable capital (ICVCs) and investment trusts) are not generally registrable. Members may, however, consider registration in this category in appropriate cases, such as sector-specific vehicles. Members who are beneficiaries of trusts should treat them in the same way.
57. Pensions are not in themselves registrable (see above, paragraph 47), but identifiable holdings in a self-invested personal fund, if of registrable value, are registrable in either this category or category 5 as appropriate.

*Category 5: Land and property*

*Any land or property a) which has substantial value (but excluding personal residences of Members and their spouses), or b) from which a substantial income is derived.*

58. Only the nature of the property and a general indication of its location should be indicated (e.g. "farm in Norfolk", "residential holdings in Birmingham", and so on); the value of the property and the income received need not be registered. No property that is used for personal residential purposes need be

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<sup>4</sup> See above, p 34, footnote 2.

registered, unless it falls under category b). For the purposes of category b), “substantial income” means a sum in excess of £5,000<sup>5</sup> per annum.

*Category 6: Sponsorship*

*Any form of financial or material support as a Member of the House of Lords the value of which amounts to more than [£150] from a single source, whether as a single donation, multiple donations, or services in kind.*

59. This category covers sponsorship or other forms of support by companies, trade unions, professional bodies, trade associations, charities, other organisations and individuals. It covers any support from which the Member receives financial or material benefit in his or her role as a Member of the House of Lords. The types of support which should be registered include the services of a research assistant or secretary whose salary, in whole or in part, is met by an outside organisation or individual; and the provision of accommodation.

*Category 7: Overseas visits*

*Overseas visits made by the Member or the Member's spouse or partner relating to or in any way arising out of membership of the House, except where the cost of the visit was wholly borne by the Member or by United Kingdom public funds.*

60. The Member should enter in the Register the date, destination and purpose of the visit and the name of the government, organisation, company or individual which met the cost. Where only part of the cost was borne by an outside source (for example the cost of accommodation but not the cost of travel), those details should be stated briefly. When an overseas visit was arranged by a registered All-Party or parliamentary group or by a party backbench group, it is not sufficient to name the group as the sponsor of the visit: the government, organisation, company or person ultimately meeting the cost should be specified.
61. The following categories of visit, which are mainly paid for from United Kingdom public funds or which involve reciprocity of payment with other governments or parliaments, together with any hospitality associated with such a visit and available to all participants, are exempt from registration:
- Visits which are paid for by, or which are undertaken on behalf of, Her Majesty's Government, or which are made on behalf of an international organisation to which the United Kingdom Government belongs;
  - Visits abroad with, or on behalf of, a Select Committee of the House;
  - Visits undertaken on behalf of, or under the auspices of, the Commonwealth Parliamentary Association, the Inter-Parliamentary Union, the British-Irish Parliamentary Assembly, the British American Parliamentary Group, the Council of Europe, the Western European Union, the Westminster Foundation for Democracy, the NATO Parliamentary Assembly or the OSCE Parliamentary Assembly;

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<sup>5</sup> See above, p 34, footnote 2.

- Peers' Representative Travel, paid for by the House of Lords Overseas Office; visits to EU parliaments and institutions paid for by the House on the authority of the Clerk of the Parliaments;
  - Visits arranged and paid for wholly by a Member's own political party;
  - Visits paid for wholly by an institution of the European Union or by a political group of the European Parliament.
62. The categories of visit included in the above list shall be kept under review by the Sub-Committee on Lords' Interests. Visits which are entirely unconnected with membership of the House, or the cost of which does not exceed [£150], are also exempt from registration.
63. An entry made in this category will remain on the Register for a period of one year from the date on which the visit was made.

*Category 8: Gifts, benefits and hospitality*

*Any gift to the Member or the Member's spouse or partner, or any other material benefit, of a value greater than [£150], from any company, organisation or person, within the UK or overseas, which in any way relates to membership of the House.*

64. Any gift, or other benefit, which in any way relates to membership of the House and which is either given free of charge, or provided at a cost below that generally available to members of the public, should be registered whenever the value of the gift or benefit is greater than [£150]. Any similar gift or benefit which in any way relates to membership of the House and is received by the company or organisation in which the Member, or the Member and the Member's spouse or partner jointly, have a controlling interest should also be registered. The date of receipt should also be registered.
65. Gifts and other benefits from the same source in the course of a calendar year which in any way arise out of membership of the House and which cumulatively are of a value greater than that specified in the preceding paragraph should be registered, even if each single gift or benefit is of lesser value.
66. Hospitality provided by Her Majesty's Government, any of the devolved institutions in Scotland, Wales or Northern Ireland, the Greater London Authority, or non-departmental public bodies, including local authorities or health authorities, is exempt from registration.
67. Gifts and material benefits that do not relate in any way to membership of the House are exempt from registration.
68. Gifts and material benefits should be registered within one month of receipt; the entry will remain on the Register for a period of one year from the date of receipt.

*Category 9: Miscellaneous financial interests*

*Any relevant financial interest not falling within one of the above categories, but which might be thought by a reasonable member of the public to influence a Member's parliamentary conduct.*

69. The main purpose of this category is to enable Members to enter in the Register any financial interests that they consider to be relevant, but which do not obviously fall within any of the other categories. The advice of the Registrar should be sought before entering any interest in this category.

*Category 10: Non-financial interests*

70. Certain non-financial interests may reasonably be thought to affect the way a Member of the House of Lords discharges his or her public duties, and must therefore be registered in this category. The following non-financial interests are always relevant and therefore must be registered:
- (a) Unremunerated directorships or other regular employment;
  - (b) Membership of public bodies such as hospital trusts, the governing bodies of universities, colleges or schools, local authorities and other spheres of government;
  - (c) Trusteeships of museums, galleries or similar bodies;
  - (d) Acting as an office-holder or trustee in pressure groups or trade unions;
  - (e) Acting as an office-holder or trustee in voluntary or not-for-profit organisations.
71. Other non-financial interests are not normally registered, though it may be necessary in certain circumstances to declare them. Such interests include: other trusteeships, for example of private estates; unpaid ordinary membership of voluntary organisations or pressure groups; membership of Churches or other religious bodies or organisations. The Registrar is available to advise Members in cases of uncertainty.
72. The post of Patron should not be registered; nor should *ex officio* positions in voluntary organisations (for instance, those held by bishops) be registered. There may however be occasions on which such interests should be declared.

**Declaration of interests**

73. The Code of Conduct states that Members must “declare when speaking in the House, or communicating with ministers or public servants, any interest which is a relevant interest in the context of the debate or the matter under discussion.”
74. This provision should be interpreted broadly. Thus the term “speaking in the House” covers Members’ participation in the work of Select Committees of the House. The term “public servants” includes servants of the Crown, civil servants, employees of government agencies or non-departmental public bodies, and members, officers and employees of local authorities or other governmental bodies.
75. However, the provision should also be read in the context of paragraph 3(a) of the Code, which states that “the Code does not extend to Members’ performance of duties unrelated to parliamentary proceedings, or to their

private lives”. Where a Member writes to a Minister or other public servant in a private capacity, about matters unrelated to parliamentary proceedings, no declaration is required.

#### *Differences between registration and declaration*

76. The House has two distinct but related methods for the disclosure of the relevant interests of its Members: registration of interests in a Register, which is open for public inspection; and declaration of interest in the course of debate in the House and in other contexts (for instance, when communicating with ministers). The main purpose of the Register is to give public notification on a continuous basis of those interests held by Members that might reasonably be thought to have a general influence upon their parliamentary conduct or actions. The main purpose of declaration of interest is to ensure that fellow Members of the House, ministers, officials and the public are made aware, at the point at which the Member participates in proceedings of the House or otherwise acts in a parliamentary capacity, of any present or expected future interest that might reasonably be thought relevant to that particular action by the Member.
77. Thus declaration, like registration, is compulsory. Moreover, given the wide range of issues that may be the subject of debate, the duties imposed upon Members in respect of declaration are in some respects broader than those in respect of registration. However, whereas Members are required by the Code of Conduct to publish all interests that might be thought to have a general influence upon their conduct in the Register, Members are under no obligation to speak in the House, or to communicate with Ministers or public servants. Thus the duty to declare relevant interests, while it is broader than the duty of registration, is ultimately subject to the Member's decision to speak in a debate or write to a Minister or public servant.

#### *Form of declaration*

78. Members should declare interests briefly, usually at the beginning of their speech. However, declarations should wherever possible be comprehensible and unambiguous, without either demanding prior knowledge of their audience or requiring reference to other documents. Members should not normally make a declaration simply by referring to “my interests which are published in the Register”.
79. An exception to the rule in the preceding paragraph may be made at Oral Questions or other time-limited proceedings, where it may be for the convenience of the House that Members should not take up time by making lengthy or repeated declarations of interest. On such occasions a brief reference to the published Register may be appropriate.
80. In addition, Members should not take up the time of the House, particularly during time-limited proceedings, by declaring trivial or frivolous interests. They should bear in mind that the test of relevance is “whether the interest might be thought by a reasonable member of the public to affect the way in which a Member of the House of Lords discharges his or her parliamentary duties”.
81. The subject-matter against which the relevance of an interest must be judged is normally the item of business as it appears on the Order Paper. Thus in the case of a bill, the subject-matter is the bill as a whole. During the stages

following second reading, in particular during Committee or Report stage, constant repetition of declarations of interest is unnecessary. But a full declaration of any interests relevant to a bill should be made at least on the occasion of the first intervention at each stage of the bill's progress.<sup>6</sup> There may be circumstances in which further declarations may be appropriate—for example, if an interest which is tangential to the bill as a whole nevertheless has a strong relevance to a particular amendment.

### *Divisions*

82. For the purpose of taking part in any division in the House or in Committee, it is sufficient for the relevant interest to be disclosed in the Register of Members' Interests. A Member should seek to ensure prior to a vote taking place that any relevant interest is registered, or, where it is not, should register the interest within 24 hours of the vote.

### *Potential or future interests*

83. The House has agreed that: “For the purposes of declaration of interests, relevant interests include future interests, that is to say interests where a Member's expectation has passed beyond vague hope or aspiration and reached the stage where there is a clear prospect that the interest will shortly arise.”<sup>7</sup>

### *Declaration of interest in respect of written notices<sup>8</sup>*

84. Declaration of relevant interests is required when tabling the following types of business:
- Questions (for oral or written answer);
  - Motions or amendments to motions;
  - Amendments to legislation.
85. When such an interest is declared, the symbol “[I]” is printed after the Member's name in *House of Lords Business* or on the marshalled or other list of amendments. The Table Office and the Public Bill Office cannot accept questions, motions or amendments unless they have received from the Member concerned a written or emailed declaration to the effect that he or she has or does not have an interest relevant to that question, motion or amendment.
86. “Relevant interests” which should be declared in this context include any interest which the Member is required to register in the Register of Members' Interests, or which the Member would be required to declare in asking the question or debating the motion.

### *Select Committees*

87. A Member serving on a Select Committee should declare any interests relevant to an inquiry or any other activity undertaken by that Committee. The declaration should be made in writing to the committee clerk, and orally

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<sup>6</sup> Committee for Privileges, 3rd Report, 2007–09 (HL Paper 189), paragraph 17.

<sup>7</sup> Committee for Privileges, 3rd Report, 2007–09 (HL Paper 189), paragraph 17.

<sup>8</sup> The implementation of this section will require further consideration by the Procedure Committee.

the first time the Member speaks in public in the inquiry. A list of declared relevant interests is also published as an appendix to the Committee's report.

88. The principle contained in paragraph 15 of the Code of Conduct, that "Members of the House should be especially cautious in deciding whether to speak or vote in relation to interests that are direct, pecuniary and shared by few others", applies also to participation in the work of Select Committees. Members should consider carefully whether to take part in an inquiry if they have a direct, relevant, financial interest which goes to the heart of the subject of the inquiry.
89. Further advice on Select Committee work should be sought from the Committee Clerk in the first instance.

### **Use of facilities of the House**

90. The House provides various facilities to Members, the cost of which is either met in full or subsidised by the public purse. These facilities include:
- Accommodation within the Parliamentary Estate, including rooms, furniture and works of art;
  - Research support (mostly provided by the Library);
  - ICT (including hardware, such as laptops, services such as telephones, email and Internet access, and general ICT support);
  - Refreshment facilities;<sup>9</sup>
  - Stationery.
91. All these facilities are provided primarily in order to assist Members in their parliamentary work. They should be used appropriately, in such a way as to ensure that the reputation of the House is not put at risk.
92. It is of course impossible, for purely practical reasons, to create a watertight distinction between parliamentary and non-parliamentary use of facilities. For instance, a Member who has a parliamentary email account cannot be expected to exclude every personal email from that account. Similarly, a Member who has to be in the House, for instance because an important vote is expected, may have no choice but to use a room within the Palace to conduct non-parliamentary business. However, at the other extreme, it would clearly be unacceptable, and would risk bringing the House into disrepute, if a Member were to use office space, ICT equipment and headed stationery, all provided by the House at public expense, to run his or her own business.
93. The various facilities listed above are the responsibility of the various domestic committees. The House Committee has responsibility for strategic oversight of all aspects of internal administration, and approves major items of expenditure, budgets and financial plans. At the next level there are four committees:
- The Administration and Works Committee, which considers matters relating to accommodation; the precise allocation of accommodation is in

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<sup>9</sup> The rules governing Refreshment Department functions are set out in the House Committee, 3rd Report, session 2008–09 (HL Paper 144), agreed by the House on 20 October 2009. They are included in this Guide at annex 2.

practice a matter for the usual channels, who sit on the Accommodation Steering Group;

- The Information Committee, which is responsible for information services generally, including the Library, the Information office, as well as for Members' ICT;
  - The Refreshment Committee, which oversees the Refreshment Department;
  - The Works of Art Committee, which oversees the work of the Curator of Works of Art, who in turn provides and maintains works of art within the Parliamentary Estate.
94. These Committees are responsible for proposing rules on the use of facilities by Members, which are reported to and agreed by the House. Where such rules have been agreed, they are annexed to this Guide; they are also summarised in the *Handbook on facilities and services for Members*, which is updated every two years. Where no published rules are available, Members should seek the advice of the Chairman or Clerk of the appropriate Committee.
95. Paragraph 10(c) of the Code of Conduct states that Members shall “act in accordance with any rules agreed by the House in respect of ... the facilities of the House”. A breach of such rules therefore constitutes a breach of the Code of Conduct, and could lead to an investigation by the House of Lords Commissioner for Standards.

### Financial support for Members

96. Paragraph 10(c) of the Code of Conduct states that Members shall “act in accordance with any rules agreed by the House in respect of financial support for Members”. A breach of such rules therefore constitutes a breach of the Code of Conduct, and could lead to an investigation by the House of Lords Commissioner for Standards.
97. Arrangements governing financial support for Members of the House of Lords are currently under review by the Senior Salaries Review Body, whose recommendations will be published in autumn 2009. No changes will take effect until agreed by the House as a whole, and until that time, the rules to which paragraph 10(c) refers are those found in the *General Guide to the Members' Reimbursement Scheme* (8th edition, April 2009), copies of which are available from the Printed Paper Office and online.
98. This section may be revised in light of any changes to financial support arrangements.

### Enforcement

99. What follows is a brief summary of the procedure for enforcing the Code of Conduct and investigating alleged breaches of the Code. A fuller description of the procedure is contained in the [4th Report of the Committee for Privileges for 2007–08].<sup>10</sup>

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<sup>10</sup> Committee for Privileges, 4th Report, session 2007–08, HL Paper 205. A new procedure will have to be agreed, modelled on the existing procedure, but taking account of the changes we have proposed. This reference should then be updated.

### *Making a complaint*

100. The House of Lords Commissioner for Standards “may investigate a Member’s conduct if he has reason to believe that the Member has breached either this Code, or the separate rules governing Members’ financial support or use of parliamentary facilities.” Normally this will be as a result of a complaint reaching him. However, in exceptional circumstances, and with the approval of the Sub-Committee on Lords’ Interests, he may initiate an investigation in the absence of a complaint, either at the request of the Member concerned, or if by other means he becomes aware of evidence sufficient to establish a *prima facie* case that the Code of Conduct has been breached.
101. If the complainant is a Member of the House of Lords, as a courtesy the complaint should normally be raised in the first instance with the Member complained against, or otherwise with that Member’s party Leader or Chief Whip, or with the Convenor of the Crossbench Peers. Non-Members wishing to make a complaint should also consider whether they have made their dissatisfaction known to the Member concerned, and given him or her an opportunity to respond.

### *Initial assessment*

102. As a first step in the process, the Commissioner conducts a preliminary assessment of all complaints. He screens out complaints which are manifestly frivolous, or which fall outside the scope of the Code. If a complaint appears to fall within the scope of the Code, the Commissioner will then undertake a more detailed assessment, in order to determine whether there is sufficient evidence to establish a *prima facie* case that the Member has breached the Code, so justifying formal investigation. The criteria against which complaints will be assessed will be those agreed by the House on 18 December 2008, as amended from time to time (see annex 1).
103. Following his assessment, the Commissioner will inform both the complainant and the Member concerned of the outcome. If he has decided that the complaint does not merit investigation, he will provide the complainant with a brief explanation of the reasons for dismissing the complaint.

### *Parliamentary privilege*

104. A complaint is not regarded as covered by parliamentary privilege, and complainants are not protected from legal action (for example, for defamation), unless and until the Commissioner has decided to undertake an investigation.
105. However, from the point that the Commissioner decides to undertake an investigation all evidence and correspondence relating directly to the inquiry is covered by parliamentary privilege. It must remain confidential unless and until it is published by the Committee for Privileges. If such evidence or correspondence were to be published or disclosed to anyone else without the Committee’s agreement, this would be a contempt of the House. Any attempt to obstruct an investigation may also be treated as a contempt.

*Investigation*

106. In every case in which a formal investigation has been launched, the outcome will be reported to the Sub-Committee on Lords' Interests and the Committee for Privileges. The decision on whether or not to report the matter to the House will be taken by the Committee for Privileges in each case.
107. The Commissioner will first inform the Member concerned of the nature of the complaint and will provide copies of the evidence offered in support of it. He will set out the particular provisions of the Code that appear, either on the basis of the complaint, or his preliminary assessment of the facts, to have been breached, at the same time inviting the Member to respond in writing with a full and accurate account of the matters in question.
108. After considering the Member's written submission the Commissioner may decide either to dismiss the complaint, or to agree remedial action with the Member. Remedial action may be agreed if the complaint, though justified, is minor and is acknowledged by the Member concerned. Remedial action will involve "putting the record straight", for instance by making an amendment to the Register; the Member will also normally be expected to make a formal apology, either in writing or by means of a personal statement in the House.
109. If the Member's written response is not sufficient to enable the Commissioner either to dismiss the complaint or agree remedial action, it is open to him to pursue the investigation by seeking further information, either from the Member concerned or others, including the original complainant, third parties, or public or private bodies. Such information will be requested in writing in the first instance, though in some circumstances the Commissioner may decide to interview one or more witnesses, either informally or by means of formal oral evidence.
110. The Committee for Privileges, like all House of Lords' committees, has the power to send for persons and papers. It will exercise this power as necessary in support of any investigation by the Commissioner.

*Procedural safeguards*

111. The Code of Conduct states that "In investigating and adjudicating allegations of non-compliance with this Code, the Commissioner, the Sub-Committee on Lords' Interests and the Committee for Privileges shall act in accordance with the principles of natural justice and fairness".
112. Proceedings are not adversarial, but inquisitorial in character. The Commissioner is an independent and impartial investigator, appointed by the House, whose task is to establish the facts of a case and report these, along with his conclusions as to whether or not there has been a breach of the Code, to the Sub-Committee on Lords' Interests.
113. The Sub-Committee reviews the Commissioner's findings, resolves any outstanding disagreement over the facts of the case, and makes recommendations to the Committee for Privileges, including a recommendation on the appropriate sanction. The Member has a right of appeal to the Committee for Privileges against the Commissioner's findings and/or the recommended sanction. The Committee, having heard any

appeal, reports to the House, and the final decision rests with the House as a whole.

114. Members are expected to co-operate with any investigation into their conduct. They should supply written evidence as requested, and in their own names. Letters sent on their behalf by legal advisers or others will be disregarded. They may be accompanied to any meeting by a colleague, friend or legal adviser, but every effort is made to keep proceedings informal, and there is no expectation that they should be so accompanied. If they do choose to bring a friend or adviser, they will be free to consult him or her off the record, but will be expected to answer for themselves (and not through their friend or adviser) any questions put to them.
115. Complainants have no formal *locus* once an investigation is under way: they have no right to be called as witnesses, though they are expected to co-operate with any investigation and to supply all the evidence in their possession when asked to do so. Nor do Members accused of misconduct have any entitlement to cross-examine complainants, though they will be given an opportunity to review and, if they so wish, challenge the factual basis of any evidence supplied by complainants or others.
116. The civil standard of proof will be adopted at all stages in the enforcement process, not only by the Commissioner, but by the Sub-Committee on Lords' Interests and the Committee for Privileges. Thus in order to find against a Member, the Commissioner will require at least that the allegation is proved on the balance of probabilities. In the most serious cases, he may require particularly strong evidence before being satisfied that the allegations have been proved to this standard.

#### *Assessing the evidence*

117. If the Commissioner's investigation has uncovered material evidence that is at variance with the Member's version of events, this will be put to the Member, who will have a chance to challenge it. Before finalising his report, the Commissioner will also share with the Member a draft of those parts of his report dealing with issues of fact, so that the Member has an opportunity to comment on them.
118. If, having considered the Member's comments, the Commissioner considers that there remain significant contested issues of fact, he will prepare his own account of the facts of the case, while drawing the attention of the Sub-Committee to those points which are contested. Along with his findings of fact, the Commissioner will offer his conclusions as to whether or not the Code has been breached.

#### *Consideration by the Sub-Committee on Lords' Interests*

119. The Sub-Committee, while reviewing the Commissioner's report, will not amend it. If the Commissioner has found in favour of the Member and dismissed the complaint, the Sub-Committee will report his findings to the Committee for Privileges. If the Commissioner has upheld the complaint, concluding that there has been a breach of the Code, the tasks of the Sub-Committee are:
  - To seek to resolve any significant contested issues of fact.

- To recommend an appropriate sanction in cases where a Member has been found to have breached the Code;
120. If there are any significant contested issues of fact, to which the Commissioner has drawn attention, the Sub-Committee will seek to resolve them. In so doing, the Sub-Committee will give the Member concerned an opportunity to present his case in writing and/or in person; the Sub-Committee may also examine other witnesses, including the Commissioner himself. The Sub-Committee will then, on the balance of probabilities, either endorse the Commissioner's account of the facts, or agree its own account of the facts of the case, explaining any points of difference.
121. The Sub-Committee will then, in light of the Commissioner's report, and its own findings on any contested issues of fact, decide what sanction, if any, is appropriate. The options that are available in the case of breaches of the Code are:
- To report a breach of the Code to the House, without recommending any further punishment. This will cover the majority of breaches. In minor cases, where remedial action (such as a personal apology to the House) has been voluntarily undertaken by the Member concerned, no report is normally necessary—the remedial action itself involves public acknowledgement of the mistake. In other cases the Sub-Committee may recommend that a report be made to the House, formally drawing the House's attention to the breach. Where the Member has refused to undertake remedial action, or in more serious cases, where remedial action is not practicable, the Sub-Committee may feel that more robust “naming and shaming” is appropriate. This can represent a serious punishment: the loss of reputation, once incurred, may be irreversible.
  - In the most serious cases, the Sub-Committee may recommend suspension for a defined period not longer than the remainder of the current Parliament.<sup>11</sup> In May 2009 two Members of the House were suspended for the remainder of the 2008–09 Session (in effect, six months), after being found to have failed to act on their personal honour.<sup>12</sup>

*Report to the Committee for Privileges*

122. The Sub-Committee will present its report and that of the Commissioner to the Committee for Privileges. At the same time as the report is presented to the Committee for Privileges, a copy will be sent to the Member concerned, who will be informed of the deadline by which he or she may lodge an appeal to the Committee for Privileges.
123. If there is no appeal, the Committee for Privileges will normally agree and publish the Sub-Committee's report without further delay; where it is not possible to schedule a timely meeting the Committee may agree the report by correspondence. If the Member decides to make an appeal, he or she should do so in writing, setting out the grounds for the appeal, and enclosing such supporting material as the Member thinks appropriate. Any contested issues of fact will have been resolved by the Sub-Committee; the appeal will therefore be against either the finding of a breach of the Code, or the

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<sup>11</sup> Committee for Privileges, First Report, 2008–09 (HL Paper 87).

<sup>12</sup> Committee for Privileges, 2nd Report, 2008–09 (HL Paper 88), agreed by the House on 20 May 2009.

recommended sanction. A meeting will be scheduled to hear the appeal, and as a courtesy the Member will be given an opportunity to appear in person, if he or she so wishes.

124. The Committee will not reopen the Commissioner's investigation. Rather the Members of the Committee will use their judgment to decide whether, on the balance of probabilities, they endorse the conclusions of the Commissioner and Sub-Committee; they will also consider whether or not the recommended sanction is appropriate.
125. The Committee will publish a report either upholding or dismissing the appeal, to which the reports of the Commissioner and Sub-Committee will be annexed.

## Annex 1: Assessing complaints against Members of the House of Lords

*Based on Committee for Privileges, 4th Report, session 2007-08 (HL Paper 205), agreed by the House on 18 December 2008.*

1. As a first step in the process, the Commissioner screens out complaints which are manifestly frivolous or fall outside the scope of the Code. If a complaint does appear to fall within the scope of the Code, the Commissioner will then undertake a more detailed assessment. He will consider both whether the complaint falls within the scope of the Code, and whether the evidence submitted along with the complaint establishes a *prima facie* case that the Member has breached the Code, so justifying formal investigation.
2. The complaint will be assessed against the following criteria:
  - Complaints clearly falling within the scope of the Code relate to failures either to register relevant interests, to declare such interests in the course of parliamentary business (including committee proceedings), to breaches of the “no paid advocacy” rule, and to breaches of the rules agreed by the House in respect of financial support for Members and the use of facilities of the House. Complaints relating to failure by Members’ staff to declare relevant interests in the *Register of Interests of Lords Members’ Staff* also fall within the Sub-Committee’s remit.
  - Matters not falling within the Sub-Committee’s remit include:
    - policy matters or a Member’s views or opinions;
    - the funding of political parties;
    - alleged breaches of the separate code governing the conduct of Government Ministers as Ministers;
    - Members’ non-parliamentary activities.
3. The Commissioner will not accept for investigation a complaint against a Member going back more than four years. He will not consider anonymous complaints or those not supported by evidence sufficient to establish a *prima facie* case that the Code has been breached. Nor will he consider complaints which are clearly trivial or vexatious or which substantially repeat allegations which have already been the subject of inquiry (unless there is significant fresh evidence in their support).
4. The Commissioner will not investigate complaints where no useful purpose would be served by an investigation.
5. The Commissioner will not entertain complaints which appear to involve allegations of criminal misconduct and which would more appropriately be investigated by other agencies. Similarly, if the subject-matter of the complaint is subject to proceedings in a court of law (for instance, an action for libel), the Commissioner will not accept jurisdiction over the matter, and any investigation already underway will be terminated.

## **Annex 2: Guidance on Refreshment Department functions**

*Extract from House Committee, 3rd Report, session 2008-09 (HL Paper 144), agreed by the House on 20 October 2009*

### *Guidance*

(1) Subject to the exclusions in (2), functions are not to be used for the purposes of direct or indirect financial or material gain by a sponsoring Member, political party, or any other person or outside organisation.

(2) It is acceptable for registered charities to use functions for the purposes of indirect financial or material gain, but it is not acceptable for them to ask attendees directly for financial or other kinds of support. The sponsoring Member must provide the registered charity number on the booking form.

(3) Subject to (1) above, it is appropriate for function rooms to be used for political functions or for raising parliamentary awareness of policy issues.

(4) Members may not sponsor promotional functions for companies in which they have a direct pecuniary interest.

### *Explanatory Notes*

(A) It is the responsibility of Members to ensure their own compliance with the rules. If Members are unsure whether a proposed function would comply with the guidance, they should consult the Director of Facilities. Members who proceed on the basis of his advice are deemed to have complied with the guidance.

(B) The key principle in the guidance is that functions are not to be used for the purposes of “direct or indirect financial or material gain by a sponsor, political party, or any other person or outside organisation”. In practice, this means that Members should not receive payment or any other kind of benefit, such as an offer of employment based on the ability to provide access to House of Lords facilities, in return for hosting a function. Similarly, political parties must not use functions to recruit members or seek donations, and outside organisations (with the limited exception of charities as set out in (2)) must not use functions to drum up business or as a perk for existing clients or shareholders. However, any reputational benefit that an outside organisation derives from holding a function in the House of Lords is not deemed to be a financial or material gain.

(C) Charities may not seek direct financial or other kinds of support at House of Lords functions, and the amount (if any) charged to guests must be broadly in line with the actual cost per head. However, registered charities may, with the permission of the sponsoring Member, seek indirect gain from functions. This might include, for example, lobbying guests about the value of their activities, handing out leaflets and requesting the names and contact details of attendees. Functions organised by charities may be supported by non-charitable organisations, but those organisations are subject to (1).

(D) Members may not sponsor promotional functions for companies in which they have a direct pecuniary interest, such as a paid directorship or a substantial shareholding. However, it is acceptable for Members to sponsor social functions primarily aimed at the workforce of a company in which they

have a direct pecuniary interest. It is also acceptable for Members to sponsor functions for their former employers if their only pecuniary interest is a company pension.

(E) Members may hold book launches for books written by them or primarily about them.

## **PART 4: CONCLUSION**

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**We make this report to the Leader of the House. It will be for her to decide how to take forward our recommendations and our proposals for a new Code of Conduct and Guide. We stand ready to assist this process in any way possible.**

EAMES

HAMWEE

HART OF CHILTON

JAY OF PADDINGTON

MacGREGOR OF PULHAM MARKET

## **APPENDIX 1: LIST OF MEMBERS**

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### **Leader's Group on the Code of Conduct**

Lord Eames (Chairman)  
Baroness Hamwee  
Lord Hart of Chilton  
Baroness Jay of Paddington  
Lord Kingsland (died 12 July 2009)  
Lord MacGregor of Pulham Market

### **Declaration of Interests**

No relevant interests declared.

## APPENDIX 2: LIST OF CONTRIBUTORS

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The following contributed to the Group's inquiry. Those marked \* took part in meetings with the Group; the remainder gave written contributions only.

- \* Lord Brabazon of Tara, Chairman of Committees
  - Lord Browne of Madingley
  - Lord Campbell of Alloway
  - Lord Campbell-Savours
- \* Lord Chadlington
  - Lord Clement-Jones
  - Lord Cobbold
- \* Baroness D'Souza, Convenor of the Crossbench peers
  - Baroness Flather
  - Lord Fraser of Carmyllie
  - Earl Ferrers
  - Baroness Gould of Potternewton
  - Lord Hannay of Chiswick
  - Lord Haskel
- \* Baroness Hayman, Lord Speaker
  - Lord Howe of Aberavon
- \* Lord Jay of Ewelme, Chairman of the House of Lords Appointments Commission
  - Lord Jenkin of Roding
  - Lord Judd
- \* Brendan Keith, Registrar of Lords' Interests
- \* Sir Christopher Kelly, Chairman of the Committee on Standards in Public Life
  - Lord Lipsey
  - The Earl of Listowel
  - Lord Low of Dalston
  - Lord Luce
- \* John Lyon, Parliamentary Commissioner for Standards in the House of Commons
  - Lord Mackay of Clashfern
- \* Lord McNally, Leader of the Liberal Democrat peers
  - Baroness Murphy
  - Lord Naseby
  - Lord Pearson of Rannoch

- \* Michael Pownall, Clerk of the Parliaments
- \* Peter Riddell, Chairman of the Hansard Society and Chief Political Correspondent, Times Newspapers
- \* Baroness Royall of Blaisdon, Leader of the House
  - The Earl of Sandwich
  - Lord Selsdon
  - Lord Steinberg
  - Lord Stoddart of Swindon
- \* Lord Strathclyde, Leader of the Opposition in the House of Lords
  - Lord Sutherland of Houndwood
  - Lord Taylor of Blackburn
  - Lord Tebbit
  - Lord Teverson
  - Lord Tyler
  - Lord Walton of Detchant
  - Lord Williamson of Horton
- \* Dr Brian Woods-Scawen, member of the Committee on Standards in Public Life
  - Lord Woolf
- \* Sir George Young MP, at that time Chairman of the House of Commons Standards and Privileges Committee

## APPENDIX 3: WRITTEN EVIDENCE SUBMITTED BY THE COMMITTEE ON STANDARDS IN PUBLIC LIFE

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### Introduction

This note has been produced by the Committee on Standards in Public Life to inform the Leader's Review in the House of Lords which will be looking at the current Code of Conduct. It builds on the work of the Committee in its Seventh Report, *Standards of Conduct in the House of Lords* published in 2000. That report had 23 recommendations, all of which were accepted with some modification. Since then circumstances have altered and the Committee wishes to make three further recommendations.

### Background

Concerns have been expressed about how standards of conduct are enforced in the House of Lords following allegations made in the press in early 2009 that four members of the House of Lords were prepared to accept payment for tabling amendments to legislation on the floor of the House.

The allegations were referred to the Sub-Committee on Lords' Interests. This review has now been concluded and following a recommendation from the Committee on Privileges, two of the Peers concerned have been suspended from the House until the next session of Parliament.

The Committee's seventh report made 23 recommendations in four main areas:

- Code of conduct
- Declaration and registration of Interests
- Lobbying and the ban on paid advocacy
- Compliance

In framing its recommendations the Committee relied extensively on the Seven Principles of Public Life. It also had regard to the principle of proportionality.

**Selflessness, Integrity, Honesty and Objectivity**—These principles underlie the approach of the House of Lords regime for disclosure of interests.

**Openness**—Openness about the personal position and interests of the legislator is a key ethical requirement of such importance in relation to Parliamentary proceedings that it outweighs arguments based on personal privacy.

**Accountability**—The decisions taken by peers when acting as legislators are of the highest importance. It is important that the public has access to information that enables them to understand the interests, financial and non-financial, that may inform those decisions.

**Leadership**—Members of the legislature are amongst the holders of the highest form of public office. It is important that they operate at the highest level of ethical probity and set an example.

The Seven Principles have come to be widely regarded as the touchstone for ethical standards in public life and have continued to inform every aspect of the Committee's thinking. This note and the recommendations are no exception.

## Code of Conduct

In the Seventh Report the Committee recommended that the House of Lords should adopt a short Code of Conduct.

The Code should incorporate both the Seven Principles of Public Life and the principles adopted by the House of Lords in its 1995 Resolution, viz.

Members of the House should act always on their personal honour; and Members should never accept any financial inducement or reward for exercising parliamentary influence

The Committee gave two main reasons for adopting a code of conduct

- To provide clarity for, and ensure consistency between, Members as regards standards of conduct; and
- To provide openness and accountability necessary to ensure public confidence.

A resolution to adopt a Code of Conduct was agreed by the House of Lords on 2 July 2001. The Code came into effect on 31 March 2002 and incorporated the recommendations made by the Committee. It applies to all Members of the House except for those who have taken leave of absence.

The Code provides:

- Guidance for Members of the House on the standards of conduct expected of them in the discharge of their Parliamentary and public duties; and
- The openness and accountability necessary to reinforce public confidence in the way in which Members of the House perform their Parliamentary and public duties.

Members of the House:

- Must comply with the code of conduct;
- Should act always on their personal honour;
- Must never accept any financial inducement as an incentive or reward for exercising parliamentary influence; and
- Must not vote on any bill or motion, or ask any question in the House or a committee, or promote any matter, in return for payment or any other material benefit

In the Committee's view the current code continues to reflect the required behaviours by Members of the House of Lords necessary to reinforce public confidence. The code is explicit about the behaviour expected of Members and could not reasonably cover every eventuality. But the Committee now take the view that the code should make explicit that peers should be expected to act not only on their personal honour but also to reflect the wider public good and should follow the spirit as well as the letter of the Code. **We recommend that the Code should be amended on this point.**

## Regulatory Framework

In the Seventh report the Committee recommended that Members should be encouraged to raise any allegation about breaches of the rules in the first instance

through a private communication with the Member about whom the complaint is made. Thereafter, if the complaining Member chose to pursue the matter, that Member should refer the allegation to the Sub-Committee on Lords' Interests.

The Committee also recommended that in the case of an allegation of serious misconduct the Sub-Committee might consider the appointment of an ad hoc independent investigator. This would have the practical advantage of easing the workload of the Sub-Committee. But more importantly it would place the impartiality of the adjudicating tribunal beyond doubt. The House accepted these recommendations, except that they preferred that the investigator should be a legally qualified Member of the House.

At the time the Committee did not favour the idea of having a permanent office holder in the Lords analogous to the Parliamentary Commissioner for Standards in the Commons, or extending his remit to cover the House of Lords. The Committee argued that the two Houses had a different ethos and that preserving that difference would be best served by enabling the Sub-Committee on Lords' Interests to determine for itself whether to appoint an ad hoc investigator and, if do, who to appoint.

In making these recommendations the Committee was heavily influenced by the strength of the culture of personal honour in the Lords. In the current climate, where the public appear to have less trust in politicians generally, it is harder to justify the status quo on this basis alone.

There is no evidence of which the Committee is aware to suggest that the Sub-Committee on Lord's Interests does not do a thorough job in investigating allegations. Nevertheless it is now common practice in the professions for an independent figure to investigate allegations of malpractice and to promote good standards of behaviour. To ensure public confidence in the impartiality of any investigations **the Committee now believes that there should be a permanent Parliamentary Commissioner for Standards in the House of Lords.** This could be a new post, or the remit of the House of Commons Parliamentary Commissioner could be extended to cover the Lords.

As part of its current inquiry into MPs' Expenses the Committee is looking at the current regulatory framework in the House of Commons. We will consider at the time whether any changes we recommend might be relevant in the House of Lords.

## Sanctions

It is common practice in many organisations that sanctions are applied for bad behaviour or breaches of codes of conduct—both as a punishment and as a deterrent.

In the Seventh Report the Committee accepted that for members of the House of Lords the informal sanction of 'naming and shaming' by the publication of a report by the Privileges Committee (with the further possibility of its being debated on the floor of the House) appeared to be an effective and adequate sanction. The Committee therefore made no recommendations in relation to extending the range of penalties available for failure to adhere to the Code of Conduct. At this time the prevailing view was that the House of Lords had no powers to suspend or expel a member or even allowing a member to voluntarily step down. In their recent report the Committee on Privileges took the view following legal advice that the House did have power to suspend a Member temporarily and the House took action accordingly.

The Committee takes the view that it is no longer sustainable to accept that a Member who commits a serious offence should merely be 'named and shamed'.

**The Committee therefore recommends that a range of proportionate sanctions should be introduced covering both minor and serious breaches of the code, and that if there is any remaining question about the House's power to suspend members appropriate action should be taken to put it beyond doubt.**

### **Conclusion**

It is important that the Members of both Houses of Parliament are seen to be beyond reproach in how they perform their Parliamentary duties.

However diligent Members are in performing their roles with integrity, it is essential for public confidence that there are effective mechanisms in place to ensure that when allegations of wrongdoing or breaking the Code of Conduct are made they are investigated fully and independently and that, if an allegation is proved to have substance, a proportionate and appropriate sanction is applied.

The Committee therefore recommends that:

**The Code of Conduct should be amended to make clear that Members of the House of Lords should take account of the public good in determining their actions, and should take account of the spirit as well as the letter of the Code**

**There should be a permanent Parliamentary Commissioner for Standards in the House of Lord, analogous to the equivalent post in the House of Commons.**

**A range of proportionate sanctions should be available covering both minor and serious breaches of the code.**

*Committee on Standards in Public Life*

*May 2009*

## APPENDIX 4: THE PRESENT HOUSE OF LORDS CODE OF CONDUCT

### HOUSE OF LORDS CODE OF CONDUCT

Adopted on Monday 2nd July 2001, as amended on Tuesday 24th July 2001. In force from 31 March 2002.

#### *Purpose of the Code*

1. The purpose of this Code of Conduct is:

(a) to provide guidance for Members of the House of Lords on the standards of conduct expected of them in the discharge of their parliamentary and public duties;

(b) to provide the openness and accountability necessary to reinforce public confidence in the way in which Members of the House of Lords perform their parliamentary and public duties.

2. This Code applies to all Members of the House of Lords who have not taken leave of absence.

#### *Public duty*

3. By virtue of their oath, or affirmation, of allegiance, Members of the House have a duty to be faithful and bear true allegiance to Her Majesty The Queen, Her heirs and successors, according to law.

#### *Personal conduct*

4. Members of the House:

(a) must comply with the Code of Conduct;

(b) should act always on their personal honour;

(c) must never accept any financial inducement as an incentive or reward for exercising parliamentary influence;

(d) must not vote on any bill or motion, or ask any question in the House or a committee, or promote any matter, in return for payment or any other material benefit (the "no paid advocacy" rule).

5. Members of the House should observe the seven general principles of conduct identified by the Committee on Standards in Public Life. The seven principles are:

(a) *Selflessness*: Holders of public office should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.

(b) *Integrity*: Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might influence them in the performance of their official duties.

(c) *Objectivity*: In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

(d) *Accountability*: Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

(e) *Openness*: Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

(f) *Honesty*: Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

(g) *Leadership*: Holders of public office should promote and support these principles by leadership and example.

### *Primacy of the public interest*

6. In the conduct of their parliamentary duties, Members of the House shall resolve any conflict between their personal interest and the public interest in favour of the public interest.

### *Register of Interests*

7. There shall be established a register of Lords' interests referred to in this Code. The register shall be maintained under the authority of the Clerk of the Parliaments by a Registrar appointed by him.

A Member of the House must register relevant interests before 31st March 2002 and thereafter within one month of acquiring them.

The register shall be available for public inspection in accordance with arrangements made by the Registrar. The register shall be regularly updated and shall be reprinted annually. The annual publication shall include all interests registered since the previous edition and all continuing interests unless their termination has been notified to the Registrar.

### *Registration and Declaration of Relevant Interests*

8. Members of the House must:

(a) register in the Register of Lords' Interests all relevant interests, in order to make clear what are the interests that might reasonably be thought to influence their actions;

(b) declare when speaking in the House, or communicating with ministers, government departments or executive agencies, any interest which is a relevant interest in the context of the debate or the matter under discussion. This is necessary in order that their audience may form a balanced judgment of their arguments. In cases where Members of the House vote in a division where they have a relevant interest that they have not been able to declare, they should register that interest within 24 hours of the division.

### *What is a relevant interest?*

9. The test of relevant interest is whether the interest might reasonably be thought by the public to affect the way in which a Member of the House of Lords discharges his or her parliamentary duties.

10. The test of relevant interest is therefore not whether a Member's actions in Parliament will be influenced by the interest, but whether the public might reasonably think that this might be the case.

11. Relevant interests include both financial and non-financial interests.

*Relevant financial interests*

12. The following financial interests are always relevant and therefore must be registered:

- (a) any consultancy agreement under which Members of the House provide parliamentary advice or services. A copy of any such agreement, and the remuneration received by Members for advice in relation to parliamentary matters, must be deposited with the Registrar of Lords' Interests, so that details are available for public inspection.
- (b) employment or any other financial interest in businesses involved in parliamentary lobbying on behalf of clients, including public relations and law firms but Members of the House involved with organisations that offer commercial lobbying services are not obliged to refrain from participating in parliamentary business in connection with all clients of that organisation but only their personal clients;
- (c) any remunerated service which Members of the House provide by virtue of their position as members of Parliament, and the clients of any such service;
- (d) employment as a non-parliamentary consultant;
- (e) remunerated directorships;
- (f) regular remunerated employment (excluding occasional income from speeches, lecturing, broadcasting and journalism);
- (g) shareholdings amounting to a controlling interest;
- (h) provision by an outside body of secretarial and research assistance;
- (i) visits with costs paid in the United Kingdom and overseas, made as a member of Parliament, except any visits paid for from public funds.

13. The list in paragraph 12 above is not exhaustive. For example, relevant financial interests may also include (depending on their significance):

- (a) shareholdings not amounting to a controlling interest;
- (b) landholdings (excluding Members' homes);
- (c) the financial interests of a spouse or relative or friend;
- (d) hospitality or gifts given to a Member which could reasonably be regarded as an incentive to support a particular cause or interest.

14. Except for remuneration received by Members for advice in relation to parliamentary matters, Members of the House are not required to disclose how much they earn from the financial interests set out in paragraphs 12 and 13, but they may do so if they wish.

*Relevant non-financial interests*

15. The following non-financial interests are always relevant and therefore must be registered:

- (a) membership of public bodies such as hospital trusts, the governing bodies of universities, colleges and schools, and local authorities;
- (b) trusteeships of museums, galleries or similar bodies;
- (c) acting as an office-holder or trustee in pressure groups or trade unions;
- (d) acting as an office-holder or trustee in voluntary or not-for-profit organisations.

16. The list in paragraph 15 above is not exhaustive. For example, relevant non-financial interests may also include (depending on their significance):

- (a) other trusteeships;
- (b) unpaid membership of voluntary organisations.

17. Members of the House are not obliged to register membership of Churches, religious bodies and quasi-religious organisations. But it may be necessary to declare such interests (see paragraph 8).

### *Advice*

18. The operation of the register shall be overseen by a Sub-Committee of the Committee for Privileges on Lords' Interests and the Registrar shall consult the Sub-Committee when necessary. The Registrar is available to advise Members of the House. A Member who acts on the advice of the Registrar in determining what is a relevant interest satisfies fully the requirements of the Code of Conduct.

### *Enforcement of the Code of Conduct*

19. Allegations of non-compliance with this Code are dealt with as follows:

- (a) Any allegation should normally be raised first with the Member complained against. However, there may be circumstances when it is more appropriate to raise the matter with a party Leader or Chief Whip, or the Convenor of the Cross Bench Peers.
- (b) If the complainant chooses to pursue the matter, he or she should refer the allegation in private directly to the Sub-Committee on Lords' Interests, through its chairman.
- (c) The Sub-Committee will then examine the allegation and may decide to investigate it further or to dismiss it.
- (d) In the investigation and adjudication of complaints against them, Members of the House have the right to safeguards as rigorous as those applied in the courts and professional disciplinary bodies.
- (e) If after investigation the Sub-Committee finds the allegation proved, the Member complained against has a right of appeal to the Committee for Privileges.
- (f) The conclusions of the Sub-Committee and of the Committee for Privileges are reported to the House.

20. Paragraph 7 shall have effect forthwith; the remainder of this Code shall have effect from 31st March 2002; and the resolution of the House of 7th November 1995 on the practice of the House in relation to Lords' interests shall cease to have effect on the same date.