
Parliamentary Standards - The Code of Conduct

Position Paper - A Campaigner's Comment

Frank Brehany - frankbrehany.com - 21 October 2020



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Index:

| Section: | Page Number: |
|--|---------------------|
| Introduction | 3 |
| About the Author | 3 |
| General Observations on the Code of Conduct and related matters: | 4 |
| Comment and Solutions: | 4 to 5 |
| Conclusion: | 5 |

Introduction:

I have only become aware of this Consultation, instituted by the Committee on Standards (in liaison with the Parliamentary Commissioner for Standards), in recent days and therefore cannot contribute in the detail I would like before the deadline of 22 October 2020.

The comments that follow have been reviewed and supported by Mrs Stephanie Trotter OBE, President of The Carbon Monoxide & Gas Safety Society, who intends to submit similar comments in the Society's name.

I would stress that between 2004 to the present day, I have met some outstanding Members of Parliament, clearly operating professionally and ethically.

However, as pressure has mounted upon various professions to improve their own standards and conduct, many of whom are subject to a contractual and legislative obligation, that goal of improving standards and service is long overdue insofar as Members of Parliament are concerned.

I have considered the guidance document and consider that I can best contribute to this Consultation by limiting my observations to the following points detailed in that document:

- a) *What values, attitudes and behaviours should the Code of Conduct for MPs seek to encourage or discourage?*
- d) *How can the requirements of the Code be communicated better to MPs and to the wider public?*
- l) *How can the Code and Guide be effectively enforced?*
- m) *How can Member, staff and public confidence in the Code and its operation be improved?"*

About the Author:

I am a retired Police Officer and a self-funded Solicitor. I work extensively in the media, providing comment on Travel Consumer related issues. I am not connected to nor do I work within or with any Law Firm or other Legal entity; my role has been confined to Consumer Advocacy.

In the last 15 years, I have provided extensive comment to the UK & EU about Travel Consumer issues, creating over 70 reports to highlight the detriment they suffer.

For 14 years, I was the Consumer Director of the Independent Travel Consumer Organisation, HolidayTravelWatch (HTW), until I left that post in July of 2017.

I have some 20 years experience, both in the handling of holiday claims and latterly as a Consumer Campaigner, helping Consumers deal with their Travel Complaints. Whilst at the helm of HTW, we proudly aided 97.5% of holidaymakers to self-resolve their complaints and worked with specialist lawyers to help progress less than 2% of holidaymakers cases, where it was clear that they would not be capable of settlement by self-resolution methods.

I am currently active in the work of creating an Aviation Standard for Cabin Air Quality. I am the BSI's UK Representative on the CEN TC436 Committee and I also sit as a Passenger Representative on the USA's ASHRAE SSPC161 Committee.

I do not receive any funding from any source and my continuing work to independently advocate the Consumer position is entirely self-funded, with the exception of a contribution to my travel expenses by the BSI in my work representing the UK and occasional media fees.

General Observations on the Code of Conduct and related matters:

I note by reference to general research and to the current Code of Conduct that upon entering Parliament, Members are not considered to be employees and therefore no contract of employment exists.

This is presumably based upon the notion that if any contract exists, then it is between the Member of Parliament and those who voted positively in favour of the said Member.

Each Member of Parliament is then required to take an Oath of Allegiance, which then finalises their official entry into Parliament and with that, they are then expected to agree to and comply with various Codes of Conduct.

Within the Code of Conduct subject to this Consultation, there are many '**aspirations**' to guide Conduct, for example, at 'III - Duties of Members (7)':

"Members should act on all occasions in accordance with the public trust placed in them. They should always behave with probity and integrity, including in their use of public resources".

At 'IV - General Principles of Conduct', it sets out the key obligations taken from the Nolan Principles of Standards in Public Life. But, if Parliament wishes to build confidence that elected Members will follow such expectations, it fails by using, within its opening sentence, the following words:

"Members will be expected to observe the following general principles..."

Here lies the problem with this Code, it simply delivers notice to any Member as to what is expected of them; **it is light-touch regulation** in action and provides no solid requirement of compliance thus making any enforcement subject to a subjective ad-hoc analysis.

In the section of the Code entitled: 'Parliamentary Behaviour Code', it again presents the Member with the comment that they are "**also expected to observe..**". It provides no strong sense of purpose, obligation and consequences.

Then, under 'V - Rules of Conduct, we can see the range of '**offences**' that Members could be deemed to have committed. At point 10, the sentence commences with the words, "**Members are expected to observe...**". It simply reinforces the light-touch position of the Code.

If you then refer to the section, 'VI - Upholding the Code', the reader can see that it contains the word '**may**'. This discretion is offered to the Commissioner and The House. I do not doubt that both exercise their discretion to investigate and where appropriate take sanctions, but it does not build confidence with the Public that there is a robust system in place to govern behaviour. It is the end product of a light-touch regulatory system.

I have read the remaining document and it provides a similar vein of "**recommendations**" and generally leaves the reader that what has been produced is a simple Standard document, that would be recognisable within the Standards-making community.

Comment and Solutions:

If Parliament is to resolve the many years of reported breaches or scandals, then in my opinion it needs to address the the following:

1. Determine and provide for a definition of a Member of Parliament;
 1. Within that definition, there is a need to define the role of the said Member;

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2. I have noted the Recall of MP's Act 2015 and how the '**contract**' between the Member and the electorate can be rescinded;
 3. I would suggest that if Parliament wishes to create a greater enforceability upon Members of Parliament, which would include the obligations contained in the various Codes, then the 'Recall' Act could be amended as follows:
 1. To include new sections, dealing with:
 1. The definition of an MP and the MP's role;
 2. There is an argument that such a definition should be extended to incorporate roles held within government;
 3. That the Code of Conduct and other associated rules, be annexed to the amended Act, with reference made to those expectations in law of Members of Parliament;
 4. An Independent Investigatory Body should be created (as discussed in (5) below);
 2. To provide this depth of detail would create a new atmosphere, accountability and produce a greater awareness of what is expected within Public life;
 3. I would suggest that the Act's title could be amended to: **The Work, Conduct, Enforcement and Recall of MP's (amended) Act 2015;**
 4. In the alternative, if no appetite exists to place into law the radical changes required to govern the work and behaviour of MP's, then as those Members of Parliament work within the Palace of Westminster, as legislators, then whatever the issue of a "**contract**" existing between the Member and the Electorate, I would strongly recommend that a **contract be created** between the Member and the Parliamentary premises or indeed the House itself. In many respects an ad-hoc contract already exists, evidenced by the Code of Conduct, ultimately enforceable by the House. If the issue is broken down into simple terms, the House is the ultimate 'member's' association. Its membership is limited by entry conditions by contrast to those that exist outside the Parliament. The House or the Parliamentary premises are uniquely governed and therefore there needs to be a unique solution, not the current at arms length, light-touch regulatory environment. This contractual relationship should be formally recognised which would then include Codes or Rules.
 5. My final concern relates to investigation and enforceability. In order to build Public confidence in the institution, the role of investigation needs to be visibly separate from parliament. A robust Independent body needs to be created, funded by the taxpayer. One key example will be recognised by many Members as they are Solicitors. Solicitors Conduct is governed by the Solicitors Regulatory Authority which sits separately from The Law Society. A similar Independent structure should be considered and encouraged for Parliament and its Members and given powers within the proposed amended Act that I have referred to above.

Conclusion:

This is a golden opportunity for radical reform of the relationship between Members, the Public and Parliament. If the fundamentals of status and obligation are not resolved through contract or amended legislation, then I fear we shall all return to yet another Consultation without end!

Frank Brehany
Consumer Campaigner & Media Commentator
www.frankbrehany.com

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