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Regulating the Conduct of MPs. The British Experience of Combating Corruption

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This chapter is concerned with the definition and regulation of proper standards of conduct in the British Parliament. Our purposes are to explore the limits and advantages of political self-regulation as a means of combating corruption and lesser evils such as slackness[1] and ethical lassitude in public life,[2] and the conditions in which self-regulation can be effective. Although our focus is on the British Parliament it is hoped that some points of more general application can be drawn from Britain's recent history of parliamentary self-regulation.

Self-regulation can be a more effective device for controlling activity than externally imposed regulation, but only if the body in question is genuinely committed to upholding proper standards of conduct. First, a self-regulating body derives status, respect and self-respect from the fact that it is trusted to regulate itself, and these considerations may provide the motivation for the body to make a system of self-regulation work, improving it where necessary to avoid having control transferred to an outside body. Second, a body in charge of its own standards and their enforcement is well placed to find appropriate and workable methods to maintain standards, whereas externally imposed regulation may turn out to be inappropriate, inflexible or unworkable.

But self-regulation works best where there is (merited) public confidence in the system, a degree of external involvement and separation or independence from the affected interests. Standards and principles need to be clear, appropriate sanctions must be available, the system should be responsive to changing expectations and circumstances, and there must be effective public accountability.[3] In considering the working of the British Parliament's system of self-regulation we shall bear these points in mind.

The Background: Concern about Standards of Conduct in Public Life in the United Kingdom

In the last two decades or so there has been growing public concern about standards of conduct in public life generally in the United Kingdom. This was not recognized initially as a problem of endemic corruption, but was viewed as ethical lassitude or sleaze coupled with the occasional atypical instance of the offering or taking of bribes. It is only since about 1995 that a problem of real

[1] 'Slackness', was used in relation to standards in public life in the Nolan Committee's first report.

[2] 'Ethical lassitude', is used by M. Mancuso in 'Ethical attitudes of British MPs', *Parliamentary Affairs* 46 (1993), p. 180.

[3] List adapted from the National Consumer Council report *Self-Regulation*, 1986; see also C. Graham 'Self-regulation', in G. Richardson and H. Genn (eds), *Administrative Law and Government Action* (1994).

corruption in British public life has been recognized to exist – though it is not yet in my view endemic throughout the system, and it has so far not done great damage to the general public interest. It has, however, contributed to the undermining of the legitimacy and authority of certain public bodies, particularly Parliament, government, the civil service and local government (in which last institution there has been a problem of bribery in various forms for many years, which does not appear to be paralleled in other public institutions).

Concerns have centred round the conduct of Members of Parliament, ministers, civil servants, those working in the National Health Service, local government and even universities. Often problems have arisen because of conflicts between the public duties and private interests of public bodies and their members. There has also been controversy surrounding appointments to various public or semi-public organizations – non-departmental public bodies and quasi autonomous non-governmental organizations – where there has been suspicion of abuse of patronage by government ministers responsible for making these appointments.[4]

The climate of concern about standards of conduct in public life in Britain was exacerbated by the Matrix Churchill affair of 1992, a major scandal which intensified public and press pressure for action to be taken to restore proper ethical standards in many areas of public life. In this affair a number of defendants were prosecuted for the unlawful export of defence equipment to Iraq. Government ministers had claimed the right to refuse to disclose public documents in the trial on grounds of public interest immunity. Ultimately the trial judge insisted on inspecting the documents and ordering their disclosure to the defence. A government minister who was a witness at the trial admitted that the government knew about the purposes for which the equipment was being exported to Iraq, namely for possible use as defence equipment. The prosecution was then abandoned. But it was widely felt that the defendants had only narrowly avoided being wrongfully convicted, and that members of the government had acted dishonourably in permitting the prosecution to go ahead and putting the defendants at risk. A senior judge, Sir Richard Scott, was appointed to conduct a lengthy inquiry into this matter, and his report, published in February 1996,[5] found a range of faults in conduct, including the misleading of Parliament by ministers and civil servants, excessive secrecy, and a willingness to cover up sensitive matters by withholding documents from the courts.[6]

But there had also been a series of scandals in the late 1980s and early 1990s involving MPs and ministers who had accepted gifts, fees, hospitality and services from outside interests in circumstances which raised the question whether they had been given in return for favours. After leaving office civil servants and ministers commonly found remunerative positions in the private sector working in organizations with which they had dealt in office. This raised

[4] This latter set of concerns was expressed by the Nolan Committee, and resulted in a Commissioner for Public Appointments being appointed in 1996: see First Report of the Committee on Standards in Public Life, Cm 2850 (1995), Second Report of the Committee on Standards in Public Life, *Local Public Spending Bodies*, Cm 3270 (1996) and Second Report of the Public Service Committee 1996–97, *The Work of the Commissioner for Public Appointments*, HC Paper (1996–97) 141.

[5] Sir Richard Scott, *Report of the Inquiry into the Export of Defence Equipment and Dual-use Goods to Iraq and Related Prosecutions*, HC Paper (1995–96) 115.

[6] See I. Leigh [1993] P.L. 630 and [1996] *Public Law*, 357–527.

suspicions that they might have exercised their functions in office with a view to finding favour with the bodies with whom they dealt. There was also concern that they might make improper use of information and contacts gained in office for the benefit of private sector organizations.

The Legal Regulation of Standards of Conduct

The standards of conduct in British public life are set and regulated in a variety of ways – through the civil and criminal law, common law and statute, and codes of practice. However, as we shall see, Members of Parliament are exempt from most legal provisions. It is for this reason that the system of parliamentary self-regulation is particularly important.

Before turning to that system, let us summarize the law relating to standards of conduct in public life. The common law has long forbidden certain kinds of misbehaviour. For instance, misfeasance in a public office is a tort.[7] However actions for misfeasance are rare, and members of the two Houses of Parliament are not regarded as holders of public offices for these purposes and so they cannot be liable for the tort. Misbehaviour in or misuse of a public office is a common law (i.e. non-statutory, judge-made) criminal offence in English law[8] – but again prosecutions are very rare, and as persons who are not regarded as holders of public offices MPs are not subject to this form of regulation. It is an offence at common law to bribe a privy councillor,[9] and it is a crime for a judicial or ministerial officer to take a bribe[10] or to offer a bribe to the holder of a public office.[11] But it is probably[12] not an offence to bribe or offer a bribe to a Member of Parliament or for a Member of Parliament to accept a bribe.[13]

[7] *Jones* v. *Swansea C.C.* [1990] 1 WLR 1453; *Dunlop* v. *Woollahra Municipal Council* [1982] AC 158, [1981] 1 All ER 1202, P.C.; *Three Rivers District Council* v. *Governor and Company of the Bank of England (No. 3)* [1996] 3 All ER 558. See also De Smith, Woolf and Jowell, *Judicial Review of Administrative Action* (5th edn, 1995) pp. 783–785; *Clark and Lindsell on Tort*, (17th edn, 1995) p. 134; and C. Hadjiemmanuil 'Civil liability of regulatory authorities after the *Three Rivers* case', [1996] *Public Law* 32.

[8] *R.* v. *Bowden* [1995] 4 All ER 505; *Henley* v. *Lyme Corporation* (1828) [1824–34] All ER Rep 503, 131 ER 1180, HL; *R.* v. *Bembridge* (1783) 3 Doug 327, 99 ER 679; *R.* v. *Dytham* [1979] QB 722; *R.* v. *Hall* [1891] 1 QB 747; *R.* v. *Llewellyn-Jones* [1968] 1 QB 429; *R.* v. *Whitaker* [1914] 3 KB 1283.

[9] *R.* v. *Vaughan* (1769) 4 Burr. 2494.

[10] *R.* v. *Vaughan*, supra.

[11] *R.* v. *Lancaster and Worrall* (1890) 16 Cox 737.

[12] Although it is commonly asserted that MPs cannot be prosecuted for bribery in *R.* v. *Currie, Jurasek, Brooks, Greenway and Plasser Railway Machinery (GB) Ltd*, 1992, unreported, Buckley J said:

> That a Member of Parliament against whom there is a prima facie case of corruption should be immune from prosecution in the Courts of law is to my mind an unacceptable proposition at the present time. I do not believe it to be the law. (Quoted in the Note on *Payments to Members of Parliament for Parliamentary Services*, prepared for the Committee on Standards in Public Life by Sir Clifford Boulton, GCB, August 1994.)

The Nolan Committee – see below – recommended that this question be clarified (Cm 2850-I, p. 43) and the government agreed to consider referral to the Law Commission (Cm 2931, p. 2), which examined the position in its consultation paper 145 *Legislating the Criminal Code: Corruption.*

[13] See Royal Commission on Standards of Conduct in Public Life (the Salmon Commission) Cmnd 6524; HC Deb. vol. 917, col. 1446; Zellick 'Bribery of Members of Parliament and the criminal law' [1979] Public Law 31; [1981] Public Law, 287; S. Williams, *Conflict of Interest*, 1985, pp. 85–6. The Home Office Discussion Paper *Clarification of the law relating to the Bribery of Members of Parliament*, December 1996 summarizes the position. And see Law Commission consultation paper 145, n. 12 supra.

Corruption of or by members or servants of public bodies is a statutory offence under the Prevention of Corruption Acts 1889–1916. By section 1(1) of the 1906 Act, which applies not only to private employees but to public bodies:

> any agent corruptly accepting, obtaining, or attempting to obtain from any person any gift or consideration as inducement or reward for doing or forbearing to do, or for having done or forborne to do, any act, or for showing or forbearing to show favour or disfavour in relation to his principal's affairs or business, is guilty of an indictable offence, and so also is any person who knowingly gives to any agent, or any agent who knowingly uses with intent to deceive his principal, any false, erroneous, or defective receipt, account, or other document.

However, Parliament is not regarded as a 'public body' for these purposes, and MPs are not regarded as 'agents' under this provision. In any event the section is difficult to enforce: no prosecution can be instituted under the Act of 1906 without the consent of the Attorney-General or the Solicitor-General.[14] And 'corruptly' is not defined, so there is likely to be uncertainty about the chances of conviction in cases other than those involving blatant bribery. Again, prosecutions are very rare. Further, Article Nine of the Bill of Rights of 1689 (to which we return later) prevents the calling in question of the freedom of speech and debates and proceedings in Parliament in the courts, and this provides an additional barrier against criminal or civil liability of MPs for their conduct in that capacity.

Parliamentary Self-regulation in the United Kingdom

Instead of the courts and prosecuting authorities dealing with the setting and enforcement of the standards of conduct of MPs or peers, the two Houses of Parliament assume the responsibility, and indeed over a wide range of activity the exclusive right, to define and maintain their own standards of conduct. The system is one of self-regulation.

The two Houses of the British Parliament have ancient rights to protect their own 'privileges' and to punish 'contempts' of Parliament.[15] This jurisdiction of the two Houses derives from their historical status as courts of record.[16] The privileges of Parliament and the regime of self-regulation were developed to protect the Houses from external pressures, principally from the monarch. Members of the two Houses had shared interests in protecting themselves against such pressures. It is significant, however, that nowadays the executive function is exercised not by the monarch, but by members of the government who are, by convention, members of one or other of the two Houses. Party discipline is strong in the two Houses, particularly the Commons. Hence pressure on Parliament from the executive is not nowadays perceived as external pressure that threatens the rights of the Commons, but as part of the accepted political and intra-parliamentary climate. In practice a distinction is not always made between executive influence on MPs that is designed to secure the approval of substantive party policy, legislation and decisions – and is normally

[14] Public Bodies Corrupt Practices Act 1889, ss. 1,2,3,(2),4,7.

[15] See Erskine May, *Parliamentary Practice* (21st edn: London, 1989), chs 5–11.

[16] Today the ordinary courts of record still have the right to commit individuals for contempt of court.

acceptable – and executive or party pressure that is designed to interfere with the self-regulatory and often quasi-judicial functions of the House in upholding standards of conduct.

The self-regulation of the two Houses of Parliament extends beyond standards of conduct into matters such as standing orders, membership and terms of reference of committees and the allocation of parliamentary time between government business and opposition interests.

The management of business in the two Houses is based strongly on trust, as is much of British political life. The 'usual channels' – arrangements reached by the whips of the parties in the House of Commons – facilitate the pairing of MPs who are unable to attend the House to vote and the operation of the parliamentary timetable. Where necessary, leaders of opposition parties are briefed 'on privy council terms' on matters of national security. Outside Parliament politicians and other public figures take part in discussions under 'Chatham House rules' which guarantee that views expressed will not be attributed to named persons outside the occasion of the discussion.

As far as standards of conduct in Parliament are concerned, although, as we have seen, MPs probably cannot be prosecuted for bribery, bribery of a Member of either House of Parliament is a breach of the privilege of the House in question.[17] In addition there are longstanding understandings in the two Houses that, for instance, it would be a contempt of Parliament and a breach of privilege for an MP to agree to limit his or her own freedom of action as a Member of Parliament by entering into contractual agreements with outside bodies which purport so to limit that freedom.[18] The punishment of an MP by an outside body which disapproves of a Member's actions (for instance by breaking contractual sponsoring arrangements),[19] or the assertion by outside bodies that they have a right to dictate to or mandate an MP are also contempts of Parliament.[20] But it is not contrary to the law of Parliament for an MP to enter into contractual arrangements with outside bodies which do not so limit the MP's freedom of action. (Under recently introduced reforms such contracts must be deposited with the Parliamentary Commissioner for Standards, and disclosure of interests is required.)

Under the law of parliamentary privilege the two Houses have *exclusive* cognizance of their own procedures: the courts have no jurisdiction to inquire into or call into question proceedings in Parliament. This position has been reached partly in the case law as it has been developed by the courts over the centuries,[21] and partly as a result of the statutory provision of Article Nine in the Bill of Rights of 1689. In effect a settlement has been reached between the courts and Parliament that the two will not interfere in each other's spheres, a form of limited separation of powers designed to prevent conflict between the courts and Parliament that could result in questioning by Parliament of the political neutrality of the courts and their authority.

[17] Erskine May, n. 15 supra, pp. 119, 128.

[18] See the Committee of Privileges Report HC Paper (1946–47) 118 and House of Commons Resolutions on the W. J. Brown affair, H.C. Deb., Vol. 440, col. 365, July 15, 1947.

[19] See the W. J. Brown case, n. 18 supra.

[20] See *Second Report from the Committee of Privileges: Complaint concerning a Resolution of the Yorkshire Area Council of the National Union of Mineworkers* (HC Paper (1974–75) 634).

[21] Notably *Stockdale* v. *Hansard* (1839) 9 Ad & E 1; *The Case of the Sheriff of Middlesex* (1840) 11 A & E 273; *Bradlaugh* v. *Gossett* (1884) 12 QBD 271.

Standards of conduct required of British MPs rest on a number of often unspoken assumptions which reflect the underlying theory of representative democracy. They can be summarized as follows: it is the duty of MPs (and ministers) to exercise their functions in the general public interest and not in their own interests or those of any particular individual or section of society – unless of course to do so would be in the general public interest as, for instance, when rights for the disabled or other disadvantaged groups are in question. This central concept of public interest is a difficult one, and it is often easier to determine what is not in the public interest in this context than what is. But the difficulty in defining the public interest is partly resolved by the position that it is for the member of the House of Commons, in principle, to exercise his or her own judgment about the public interest and not to be mandated by outside interests. Members of Parliament are accountable to the electorate for their conduct, and this is assumed, perhaps optimistically, to be a sufficient guarantee that the representative will exercise his or her functions in the public interest rather than in favour of partisan or private interests.

The established basic theory of representation in the UK is that expressed by Edmund Burke in his Letter to the Electors of Bristol in 1774:

> Parliament is not a congress of ambassadors from different and hostile interests; which interests each must maintain, as an agent and advocate, against other agents and advocates; but Parliament is a deliberative assembly of one nation, with one interest, that of the whole; where, not local purposes, not local prejudices ought to guide, but the general good, resulting from the general reason of the whole. You choose a member indeed; but when you have chosen him, he is not member of Bristol, but he is a member of Parliament.

Here, however, a problem is posed by the operation of the party system, especially the whip system, in Parliament. Party discipline is what Bagehot would have regarded as an 'efficient' part of the British constitution, whereas the 'dignified' constitution requires independence on the part of MPs.[22] In practice MPs are guided, if not intimidated, by party whips in the exercise of their judgment. Our concern here is principally with standards of conduct, and it is suggested that whatever the position where MPs are called upon to make decisions about substantive matters of policy (which is where the whip system is inevitably and generally rightly most relevant), on matters to do with the self-regulation functions of the Houses of Parliament and the upholding of standards in public life and combating corruption, the 'dignified' principles of the constitution remain of real importance and should not be merely facades behind which the unpleasant realities of political bargaining take place. As we shall see in due course this is not always appreciated by MPs, but it is suggested that without a separation of party and parliamentary interests in such matters the self-regulatory tradition which is central to the relations between Parliament and the courts and the status of Parliament will be threatened.

The upholding by the two Houses of standards of conduct which they have developed over the centuries is also designed to preserve the dignity of the Houses and the respect in which they are held, which in turn maintain their legitimacy and authority.

[22] See Walter Bagehot *The English Constitution* (1867, repub. with intro. by R. H. Crossman, 1963).

A Decline in Parliamentary Standards?

It became known in the early and mid-1990s that Members of Parliament were accepting payments in return for asking questions of ministers in Parliament. The going rate for asking a question seemed to be one thousand pounds. The Committee of Privileges of the House of Commons investigated a number of these allegations and found them proved in three cases. They recommended, and the House of Commons resolved, that one member be formally reprimanded and suspended from the service of the House for ten sitting days with suspension of his salary, that another be reprimanded and suspended for twenty sitting days without salary, and in the third case that no action be taken.[23]

Many MPs were being paid retainers or salaries by individual clients or by multi-client lobbying organizations to look after their interests. This involved, for instance, arranging for delegations to meet ministers, tabling amendments to bills as they passed through the House, making speeches in Parliament and taking other opportunities to put the interests of their clients forward, and generally looking after those interests.

It is worth pausing at this point to ask ourselves what was wrong with the various matters about which the press and others were expressing concern – was this corruption or some lesser form of misconduct? Indeed, was it objectionable at all? It was not the mere fact that Members of Parliament were receiving payment from outside bodies that gave rise to objections. Generally it is accepted as legitimate for MPs to receive some payments from outside sources, for instance if they are authors, barristers or journalists – or shareholders in companies etc. So what was it that caused public concern about these matters?

Let us take the complaints about the conduct of MPs one by one. First, the acceptance of cash in return for asking questions in Parliament. It is a convention of the British constitution that ministers are accountable to Parliament: in principle they should therefore be willing to answer questions asked by MPs and peers in Parliament. As there is no general legal right of access to official information in the UK, the duty of ministers to answer parliamentary questions is a valuable and useful way of extracting information from government. Often it is the only way in which information can be obtained.

The normal expectation is that MPs will form a view about what information ought to be disclosed by government, and if necessary they will table parliamentary questions to extract that information. The underlying assumption is that the MP will be seeking information, when asking parliamentary questions, in what s/he conceives to be the general public interest or the interest of his or her constituents or constituency. Often the decision to table a parliamentary question will be in response to concerns expressed by constituents, or because an MP has a particular interest in a special area of policy.

Answering parliamentary questions inevitably imposes costs on the government. One reason that is sometimes given by a minister for refusing to answer a question is that it would be too expensive to seek out the information to do so – and commonly this reason is accepted as legitimate. The answers to parliamentary questions are published in the reports of parliamentary proceedings,

[23] *Complaint concerning an article in the 'Sunday Times' of 10 July 1994 relating to the conduct of members*, H.C. Paper (1994–95) 351; H.C. Deb., April 20, 1995, col. 382. See also D. Oliver 'Standards of conduct in public life: what standards?' [1995] *Public Law*, p. 497.

and so a client who has paid an MP to ask a question is not obtaining exclusive or privileged access to the information sought.

We can see that in many ways the asking of questions which must be answered by ministers is beneficial and in the interests of open government. But we can also see that it is inconsistent with principle and unfair for an MP to ask a parliamentary question in return for a fee. The fee undermines the MP's independence so that s/he is not exercising his or her judgment of what information it is in the public interest to have disclosed when deciding to ask a question. And s/he is imposing a cost on the public purse – the cost of answering the question – at the behest of a client and not because s/he personally judges the question to be worth the cost. The payment of fees also means that ability to obtain information may be denied to those who cannot afford to pay an MP to seek it, and this would clearly have become the case if MPs had taken to refusing to ask questions unless a fee was paid. In practice this was not the position and many MPs were and still are willing to ask questions that they consider will extract useful information at the invitation of outside interests without even considering accepting a fee (indeed, accepting a fee is now forbidden). Additionally the practice of charging for asking questions undermined the reputation and standing of the House.

Where an MP arranges for a delegation to see a minister, he is appropriating a scarce resource – the time of the minister – for the benefit of the client. By convention MPs may have access to ministers in the interests of their constituents. This is regarded as an aspect of representative democracy and the theory that ministers, as part of their responsibility to Parliament, should note and respond to the grievances of the people. So the use of the limited time of ministers to attend to the constituents or constituency interests of an MP is consistent with general constitutional theory. But for an MP to arrange for a delegation to see a minister because he or she is beholden to a client and not as an exercise of independent judgement is not compatible with representative constitutional theory as set out above. And the use of the minister's time and attention for the benefit of a partisan body which obtains it through payment and not, as charities might do for instance, through persuasion or appealing directly to reason or the sympathies of ministers, is not compatible with our constitutional theory. But it should be noted that it has not been suggested that the judgment of ministers has in practice been compromised by such delegations – it is MPs, not ministers, who have attracted criticism for these arrangements.

There was growing concern in the early 1990s that MPs were tabling amendments to Bills in Standing Committee in the Commons in return for payments received by clients. Only MPs may table amendments to bills, and again I suggest what was improper here was for MPs to table amendments for payment rather than in the exercise of their own judgments. It was not suggested that the judgments of other members of Standing Committees were compromised by such tabled amendments. Their time and attention – limited resources – were, however, taken up and the person desiring the amendment has privileged access to opportunities to influence the legislative process. There were also reports that MPs were tabling amendments in the names of other MPs in order to avoid having to disclose their interests.[24]

[24] In one case raised in the House an amendment was tabled in the name of another MP, Sebastian Coe: see H.C. Deb., Vol. 260, Col. 612, May 22, 1995. The MP in question apologized to the House.

Lastly, there was concern that MPs were advocating the causes of clients in Parliament for payment, and, again, not in exercise of their independent judgment. Here an objectionable element was that advocacy takes up valuable and limited time in the House, thus depriving others of the opportunity to make their own points.

In sum the objections to the various activities listed above were that they affected the exercise by MPs of their judgment in various ways that were contrary to the Burkean theory of representation set out above, and that they imposed arbitrary burdens or costs on limited public resources – a common problem with a range of forms of corruption.

These illustrations raise the question whether and in what way such conduct amounts to political or public corruption as opposed to mere slackness. A useful definition of corruption in the *Shorter English Dictionary* is 'Perversion of integrity by bribery or favour'. A relevant meaning of integrity is 'Soundness of moral principle; the character of uncorrupted virtue; uprightness, honesty, sincerity'. If we take corruption to be any interference with the free judgment in the public interest that should be exercised by a Member of Parliament (or indeed any public body or official or private body exercising a public function), then these matters were, indeed, examples of corruption. But in my view they were not as serious as many instances of corruption which result in governmental decisions being taken, resources being allocated or laws being passed which are partisan and subordinate the public interest to other interests.

The transgressions of MPs were relatively minor instances of struggles for resources in politics – the resources being information, and access to the time and attention of ministers rather than concrete or material benefits. This is probably because British MPs have, in practice, relatively little power, especially if they are operating individually rather than in party or other groupings. Despite the glamour and prestige attaching to the two Houses of Parliament with their historic and grand buildings and archaic and picturesque procedures, MPs have little influence against a determined government, they do not handle public money – and so they cannot misapply it – and they do not have direct control of many resources. In reality they do not have much to offer clients. And the benefits available to individual MPs in return for abuse of their powers are minor as compared to the loss of the trust of their colleagues and the loss of status and respect to the whole House of Commons that they stand to suffer if misbehaviour becomes public knowledge. This is a major consideration in the exercise of the self-regulatory function – most MPs condemn abuse of power by individuals because of the damage it does to the reputation of them all.

Mancuso, in research in which a cross-section of MPs were interviewed about how they would deal with a set of hypothetical dilemmas, found that there was a high proportion of MPs who took the view that conflicts of interest did not pose ethical problems and that 'what is not legally forbidden is acceptable'. Mancuso found that there was not the ethical consensus that is needed for a system of either individual or institutional self-regulation to work effectively.[25] This ethical dissensus no doubt goes a long way to explain the conduct of MPs about which complaints have been made.

[25] M. Mancuso, at note 2 supra.

The Nolan Committee Investigation into 'Sleaze'

In response to public concern about the standards of conduct and 'sleaze' in public life generally, the Committee on Standards in Public Life was appointed in November 1994.[26] Its chairman, Lord Nolan, is a Law Lord, and its other members include 'elder statesmen' MPs from the major parties, a retired civil servant, the retired Clerk of the House of Commons, a Professor of Politics and others with experience in public service. The Committee was appointed to inquire into standards in public life generally and not to investigate individual cases. Its first report was dedicated to Members of Parliament, ministers, civil servants and non-departmental public bodies and National Health Service bodies. The Committee was concerned to find solutions to problems and not, for instance, with economic analysis or 'public choice' *explanations* for breaches of standards.[27] In that respect its remit was strictly limited.

An important general finding of the Nolan Committee's first report[28] was that

> We cannot say conclusively that standards of behaviour in public life have declined. We can say that conduct in public life is more rigorously scrutinized than it was in the past, that the standards which the public demands remain high, and that the great majority of people in public life meet those high standards. But there are weaknesses in the procedures for maintaining and enforcing those standards. As a result people in public life are not always as clear as they should be about where the boundaries of acceptable conduct lie. This we regard as the principal reason for public disquiet. It calls for urgent remedial action.[29]

So the Committee's concern was not in that inquiry about deliberate breaches of known standards, which did not seem to be an issue, but about slackness and ignorance of standards.

In its First Report the Committee set out 'Seven Principles of Public Life', which should apply to all areas of public life. These principles are:

> *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.
> *Integrity*. Holders of public office should not place themselves under any financial or other obligation to outside individuals or organizations that might influence them in the performance of their official duties.
> *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.
> *Accountability*. Holders of public office are accountable for their decisions and actions to the public and must subject themselves to whatever scrutiny is appropriate to their office.
> *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.

[26] H.C. Deb. 25 October 1994, Cols. 757–9.
[27] See T. C. Daintith 'Regulating the market for M.P.s' services' [1996] *Public Law*, 179.
[28] *First Report of the Committee on Standards in Public Life*, Cm 2850 (1995).
[29] *First Report of the Committee on Standards in Public Life*, Cm 2850 (1995), p. 3.

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.
Leadership. Holders of public office should promote and support these principles by leadership and example.[30]

We can see how concealing interests and compromising one's judgment by entering into relationships with outside bodies, as many MPs had done, runs counter to the spirit of most of these values.

The Committee found that the standards required by Parliament's own law were not generally understood in Parliament. This may have been partly because, since the rules about the registration of the interests of Members had been brought into effect for the Commons in 1975 (the Lords have only recently introduced a similar system)[31] some MPs had come to assume that, as long as they registered any interests and declared them where necessary, they were free to enter into contractually binding arrangements with outside bodies. This illustrates Mancuso's point that many MPs felt that whatever was not legally forbidden was acceptable. This, the Nolan Committee found, was clearly wrong. The House of Commons itself in due course accepted that to be the case and in fact introduced even stricter controls than Nolan proposed (see below).

If registration of interests in contractual arrangements had legitimated them, this would have been contrary to an important resolution passed by the Commons in 1947 about trade union sponsorship of MPs and comparable contractual arrangements: then the Commons Committee of Privileges – its principal self-regulatory body at the time – had found that though contractual arrangements between MPs and outside bodies were not necessarily improper, such arrangements should never seek to limit the freedom of action of MPs, and contractual relationships should not be used to punish MPs who had displeased the other contracting party – for instance by terminating them.

The Nolan Report made a number of important recommendations, all of which have been implemented, in one case more stringently than Nolan had proposed. We consider them shortly. The Committee also indicated which reforms it felt should be implemented immediately, and which should be implemented in due course. It also indicated that it would revisit some of the issues at a later date, thus putting pressure to comply on the House of Commons and others to whom its recommendations were directed.

Initially there was hostility, especially among Conservative MPs, to some of the proposals in the Nolan Report. It was directed mainly to concern that the House's right of self-regulation was under attack, as was manifested in the expression of fears that its 'sovereignty' might be undermined if independent outsiders were involved in policing the conduct of MPs and that the settlement reached between the courts and Parliament in the nineteenth century might be undermined by any departure from the self-regulation tradition. It is possible to detect here a fear that MPs would lose their ownership of the system, an important consideration in many liberal professions. There was also resentment at the implication some MPs detected that members were, to use the words of

[30] See First Nolan Report, n. 4 supra, at page 14.
[31] Select Committee on Procedure of the House, Third Report 1994–95 *Declaration and Registration of Interests*, H.L. Paper 90; H.L.Deb., 1 November 1995, vol. 566, col. 1428; *Register of Lords Interests 1996*, H.L. Paper 34, 14 February 1996.

one MP, 'a bunch of crooks' – although the Committee went out of its way to observe that:

> Taking the evidence as a whole, we believe that the great majority of men and women in British public life are honest and hard working, and observe high ethical standards.[32]

Most of the Nolan committee's proposals for MPs were implemented within a few months of publication of the report. The internal arrangements in the House of Commons for regulating standards of conduct, including the requirement for the registration and declaration of interests, have been tightened up in various ways.

A new Select Committee on Standards and Privileges has taken over the functions of the old Privileges and Members' Interests Committees.[33] A Parliamentary Commissioner for Standards was appointed by the House of Commons in the Autumn of 1995, who reports to this committee. He is an officer of the House of Commons appointed by it under its inherent powers. His duties include maintaining the Register of Members' Interests, advising Members on matters relating to registration, advising the Committee on Standards and Privileges and individual members on the interpretation of the new code of conduct and on questions of propriety, monitoring the operation of codes and registers, investigating complaints of breach of standards, and making recommendations to the Standards and Privileges Committee.[34]

The office of Parliamentary Commissioner for Standards is not truly comparable to others with which there is a superficial similarity. The Parliamentary Commissioner for Administration, or 'Ombudsman', is statutory and monitors government, not the House of Commons. The Comptroller and Auditor General is also statutory and monitors government bodies, not Parliament. The new Commissioner is, therefore, *sui generis* and forms part of a self-regulatory, not regulatory, system. The first Commissioner is Sir Gordon Downey, former Comptroller and Auditor General.

It is now a requirement that any MP who has an existing agreement or who proposes to enter into a new agreement involving the provision of services in his or her capacity as a Member of Parliament must reduce it to writing and deposit it with the Parliamentary Commissioner for Standards. MPs also have to disclose the payments they receive in bands.

The rules on sponsorship, consultancies and the registration of interests have been clarified and tightened up. The current version of the 1947 resolution of the House of Commons in the W. J. Brown case, amended in the light of the Nolan report, now reads as follows:

> That this House declares that it is inconsistent with the dignity of the House, with the duty of a Member to his constituents, and with the maintenance of the privilege of freedom of speech, for any Member of this House to enter into any contractual agreement with an outside body, controlling or limiting the Member's complete independence and freedom of action in Parliament or stipulating that he shall act in any way as the representative of such outside body in regard to any matters to be transacted in Parliament; the duty of a

[32] First Nolan Report, supra note 4, at para 1.
[33] House of Commons Standing Order no. 121A.
[34] House of Commons Standing Order no. 121B.

> Member being to his constituents and to the country as a whole, rather than to any particular section thereof, and that in particular no Member of the House shall, in consideration of any remuneration, fee, payment, reward or benefit in kind, direct or indirect, which the Member or any member of his or her family has received is receiving or expects to receive–
>
> (i) advocate or initiate any cause or matter on behalf of any outside body or individual, or
> (ii) urge any other Member of either House of Parliament, including ministers, to do so,
>
> by means of any speech, Question, Motion, introduction of a Bill or amendment to a Motion or Bill.[35]

The House further resolved on 6 November 1995 that:

> ... a Member with a paid interest should not initiate or participate in, including attendance, a delegation where the problem affects only the body from which he has a paid interest.[36]

A Code of Conduct, drafted by the Standards and Privileges Committee was adopted by the House in July 1996.[37] This incorporates the Seven Principles of Public Life drafted by the Nolan Committee and stresses the duty of MPs to act in the interests of the nation as a whole, with a special duty to their constituents. The adoption of a code is the preferred method of self-regulation across a wide range of public life in Britain (even where criminal sanctions and civil liability are also available). In many cases codes are drawn up by the body concerned, and are therefore 'owned' by it. In such cases it is believed to be more likely that the body concerned will be committed to the codified standards than if they are imposed from outside. For instance, the British Cabinet's standards of conduct are set out in a document entitled *Questions of Procedure for Ministers*, which deals with matters such as divesting of investments, what to do with gifts, and so on. This has been developed by the Cabinet Office and successive prime ministers over the years, with provisions added in response to scandals and controversies from time to time. Government departments and civil servants appearing before select committees are governed by guidelines produced by government itself, *Departmental Evidence and Response to Select Committee*.[38] The new Civil Service Code,[39] drawn up by the government after consultation with the First Division Association (which represents senior civil servants) and in the light of comments from the Committee on Standards in Public Life (the Nolan Committee – see below), also lays down standards for relationships between ministers and civil servants. In local government, by contrast, new codes of practice have been drawn up by the Department of the Environment (and so are not 'owned' by local authorities). These codes are monitored by senior local government officials. In this field, then, self-regulation does not

[35] To be known as the Resolution of 6 November 1995 Relating to the Conduct of Members.

[36] H.C. Deb., 6 November 1995, vol. 265, col. 681.

[37] See H.C. Official Report vol. 282, 24 July 1996, col. 392; Third Report from the Committee on Standards and Privileges, *The Code of Conduct and the guide to the Rules Relating to the Conduct of Members*, H.C. Paper (1995–96) 604.

[38] Cabinet Office, 1994.

[39] The Code is to be found at Annex A, para 4.1 of the Civil Service Management Code (1996) issued under the Civil Service Order in Council 1995, art. 10(b); the text is set out at 566 HL Official Report (5th series) 30 October 1995, written answers, cols. 146–8.

operate. Codes also regulate appointments to Quangos, and the taking of employment by former ministers.

The new rules inevitably reduced the incomes of MPs who had been relying on consultancy arrangements to top up their parliamentary salaries. Thus the reforms put the question of MPs' pay on the agenda.[40] In July 1996 the House voted to increase the salaries of MPs substantially. As from 1 July 1996 the annual salary was set at £43,000 (plus secretarial and other allowances). As from 1 April 1997 it is to be linked to senior civil service pay.[41]

To summarize the present position, the two Houses continue to determine and regulate their own standards of conduct, but these have been clarified and codified; procedures for declaration and registration of interests have been improved, procedures for monitoring standards have been made fairer and more effective, a semi-independent element has been introduced in the Commissioner for Standards, and the substantive rules are stricter than they were. Paid advocacy is prohibited in formal matters (though not in informal contacts, for instance) and the purchase of access to ministers and civil servants via an MP is also prohibited. While there is no prohibition on entering into contracts, only on acting as an MP for consideration, contracts must be deposited with the Parliamentary Commissioner for Standards.[42] The courts are still not involved. These measures are designed both to prevent corruption in the sense of interference with the exercise of judgment by MPs, and to combat other forms of misconduct such as failure to disclose or register interests and entering into relationships which expose MPs to conflicts of interest which could in due course compromise their independent judgment. In sum an eclectic approach, still based on self-regulation and ownership by the House of Commons, has been adopted, combining clarification of the rules, the prohibition of certain types of activity and relationships, improved monitoring and increased transparency.

The new stricter regime for controlling standards in the House of Commons is still settling down. A major problem is the lack of clarity in the revised rules about the duty to register interests (the first register since Nolan was published on 3 April 1996)[43] but the position is being clarified on a case by case basis as complaints are dealt with by the Commissioner.[44] Some MPs claim that outside

[40] For an economic analysis see T. C. Daintith 'Regulating the market for MPs' services' [1996] *Public Law* 179, at p. 186. The remuneration of MPs was referred to the Senior Salaries Review Body, which reported in June 1996: Cm 3330 (1996). See H.C. Deb., Vol. 271, written answers, cols. 101–2, February 6, 1996.

[41] See 281 HC Official Report (6th series), 10 July 1996, col. 533. The previous salary had been £34,500.

[42] See T. C. Daintith, note 40 supra, at p. 180.

[43] *Register of Members' Interests*, 1996 edition, HC Paper (1995–96) 345.

[44] The Parliamentary Commissioner for Standards and the Committee for Standards and Privileges have investigated and reported on a number of complaints about failures to register interests. For instance, in the *Complaint against Marjorie Mowlam* (H.C. Paper (1995–96) 636) the Committee accepted the Parliamentary Commissioner for Standards' finding that although there had not been a breach of the letter of the rules, the spirit of the rules would have been better served by disclosure of the source of funding. The MP accepted the findings and offered her apologies to the House. In the *Complaint against Dr Charles Goodson-Wickes* (HC Paper (1995–96) 679) the Committee accepted the Parliamentary Commissioner for Standards' finding that the present obligation to declare interests on written notices was not wholly understood by Members, but that the MP should have declared an interest. The MP disagreed with the conclusion, but agreed to abide by it. In the *Complaint against Mr Jonathan Aitken* (HC Paper (1995–96) 243) the Committee accepted the Commissioner's finding that there had been a breach of the 1990 Rules on the Registration of Interests, and recommended that the House accept the MP's apology.

activities for which they receive payment do not involve the provision of services *in their capacity as MPs* and so have not deposited them. Sometimes they are challenged on this. The Register of Interests is 'to provide information of any pecuniary interest or other material benefit which a Member receives which might reasonably be thought by others to influence his or her actions, speeches or votes in Parliament, or actions taken in his or her capacity as a Member of Parliament'. This definition leaves scope for disagreement about the duty to register. Some MPs object to having to disclose more information than hitherto on grounds of privacy.

The Hamilton, Willetts and Mitchell Affairs – some Lessons about Self-regulation

In the Autumn of 1996 the House of Commons Committee for Standards and Privileges and the Parliamentary Commissioner for Standards returned to the investigation of matters which had arisen before the implementation of the Nolan reforms. We can draw some lessons for the conditions in which parliamentary self-regulation can or cannot be effective from these events.

The story starts in 1994 when *The Guardian* newspaper published allegations that Neil Hamilton MP, a trade minister at the time, had accepted unregistered payments. This allegation was one of a number made against various MPs at that time and was part of the background to the appointment of the Nolan Committee. The allegation was referred to the Select Committee on Members' Interests by the House of Commons, as part of the complaint was that Hamilton had not registered the payment as would have been required by the rules on registration of interests. Hamilton resigned as a minister.

By convention all select committees in the House of Commons have a majority of members on the government side of the House. No distinction is made in this respect between committees concerned with regulating standards of conduct in the House, and others, although it might be thought that investigations of allegations about standards of conduct ought to be conducted free from party political pressure and in an impartial manner, not only to protect the interests of parties against whom allegations are made, but also to secure that the regulation of standards is not tainted by considerations of political advantage. The fact that the party affiliations of members of these self-regulatory select committees are taken into account seems to imply that the members of these committees may legitimately take party advantage into account in their work on the committees. If this is in fact the rationale for the rule, then public confidence in the self-regulation system is bound to be undermined and there will be an almost complete lack of the separation and independence from affected interests that a good system of self-regulation requires.

At about the same time as the matter was referred to the select committee Hamilton (and Ian Greer, who owned a consultancy firm through which, it was alleged, Hamilton had received payments) commenced libel proceedings against *The Guardian* newspaper. The Members' Interests Committee decided to defer investigation of the complaint pending the determination of the libel action. The allegation was embarrassing to the Conservative government at the time, and it was in their interests to minimize the damage done to their reputation by the investigation and its outcome. In the event the libel action was abandoned in the Autumn of 1996 – another story, to which we shall return shortly – and the

Parliamentary Commissioner for Standards then recommenced the investigation of the allegations.

In the course of the discovery of documents in preparation for the abortive libel action a handwritten note by Mr David Willetts MP, a Conservative whip at that time, was disclosed. This note revealed that a conversation had taken place on 20 October 1994, at the time when the Select Committee on Members Interests was investigating the allegation against Hamilton, between the chairman of the Committee (a distinguished and senior Conservative backbencher, Sir Geoffrey Johnson Smith) and Mr Willetts which, it was found in due course, represented an attempt by Mr Willetts to influence the investigation by the Committee by advising them to stop the investigation because the matter was *sub judice*. Another approach that had been considered by Willetts was to advise the Committee to investigate the matter quickly, 'exploiting good Tory majority' – the implication being that the Conservative majority of members of the committee would act in a politically partisan way and see to it that Hamilton was cleared. This clearly raised question-marks over the integrity of the exercise by the House of its self-regulation, its corporate commitment to upholding standards, and the extent to which it was appropriate for this system to be manipulated by the political parties in their own interests.

When Willetts' note revealing his conversation with Sir Geoffrey Johnson Smith came to light in 1996, just before the libel action was withdrawn, the matter was referred to the new Committee for Standards and Privileges as a complaint of alleged improper pressure brought to bear by Willetts on the Select Committee on Members' Interests in 1994. The Standards and Privileges Committee found that Willetts, a party whip, ought not to have discussed the work of the Members' Interests Committee with its Chairman nor raised a matter critical to the future deliberations of the Committee with its chair. But they felt there was no clear evidence that Willetts set out to influence the Chairman or that he succeeded in doing so; he did, however, take the opportunity during the conversation to influence the Chairman by reinforcing his inclination to stop the inquiry. They also found that Sir Geoffrey Johnson Smith ought not to have participated in such a discussion, and that the conversation went beyond what should properly have taken place. The Committee were also concerned that Willetts had 'dissembled' in giving evidence to them and they indicated that in future they would take evidence on oath – a truly damning conclusion indicating a breakdown in the trust that usually exists between MPs in these matters.[45] On publication of the Committee's report in December 1996 Willetts resigned from his government post as Paymaster General.

This story reveals a serious lack of appreciation in the House of Commons of the importance of maintaining independence from the government and party interests when exercising its self-regulatory functions. A system of self-regulation can only be effective if it is clearly understood by the participants that it is supposed to be operated in the public interest and not in the partisan interests of any of the parties. This much was recognized explicitly by Mr Andrew Miller MP, who submitted a memorandum to the committee with the comment: 'I do think there is a significant difference between the whips

[45] First Report of the Committee on Standards and Privileges, *Complaint of Alleged Improper Pressure Brought to Bear on the Select Committee on Members' Interests in 1994,* HC Paper (1996–97) 88.

facilitating the day to day passage of Government business and them interfering in the self-regulatory mechanisms which currently govern our activities'.[46] But it is not generally articulated in this way. Self-regulation cannot be effective in an institution which has been captured by interested parties. The 'Chinese walls' on which self-regulation must rely are too permeable in the House of Commons.

During the course of the Standards and Privileges Committee's investigation of the Willetts affair it was drawn to their attention that another government whip, Andrew Mitchell, had actually been an influential and active member of the Members' Interests Committee at the time of its investigations into the Hamilton affair, had had discussions about registration rules with the Registrar of Members Interests, and had written a note to the chief whip about a newspaper article about Hamilton. He was summoned to appear before the new Committee on Standards and Privileges in January 1997 to explain why he had acted in this way, apparently combining his roles as whip and member of the Committee. His explanation, which was accepted by the Committee, was that he was separating his activities as a whip from those as a member of the Committee by treating what took place in the Committee as confidential. In the upshot the Committee exonerated him but recommended that the House should never in future appoint a whip of one of the main parties to any 'quasi-judicial' Select Committee.[47] The appointment of a whip to such a committee is another example of the absence of proper Chinese walls in the Commons at that time.

The full truth about the allegations that Hamilton had accepted money in relation to his parliamentary activities, and that he had failed to register the payment (not that registering such a payment would nowadays necessarily make accepting it legitimate) had not emerged at the time of writing (April 1997). The Parliamentary Commissioner for Standards had spent time devising fair procedures for the investigation with the assistance of leading counsel in the Autumn of 1996. He had reportedly[48] hoped to write his report to the Committee for Standards and Privileges over the Christmas break, but delays prevented him from interviewing some of the twenty-five MPs who were alleged to have accepted cash for asking questions, and in particular from examining Hamilton and Greer as he wished, and so he was unable to complete his report before the dissolution of Parliament prior to the 1 May general election. Completion of his inquiry and authorization of publication of his report were further delayed after the election as the Committee on Standards and Privileges (and other committees) could not be reconstituted until after the Conservatives had elected a new leader who could form a Shadow Cabinet. Membership of Committees depends in part on whether an MP is a backbencher and is largely determined by party whips.

In the 1997 general election campaign 'sleaze' was a recurring issue. Neil Hamilton stood as the Conservative candidate in his constituency of Tatton, and the Labour and Liberal Democrat candidates agreed to stand down to allow an

[46] First Report of the Committee on Standards and Privileges, *Complaint of Alleged Improper Pressure Brought to Bear on the Select Committee on Members' Interests in 1994,* HC Paper (1996–97) 88, Appendix 2, p. 58.

[47] Third Report of the Committee on Standards and Privileges *Complaint of Alleged Improper Pressure Brought to Bear on the Select Committee on Members' Interests in 1994 [Further Report]* HC Paper (1996-97) 226.

[48] *The Times*, 30 December 1996.

independent 'anti-sleaze' candidate, Martin Bell, to stand against Hamilton. In the event, Hamilton lost what had been the fifth safest Conservative seat – in which he previously enjoyed a majority of 22,365 – by some 11,077 votes, a remarkable result notwithstanding the overall Labour landslide.

A Footnote to the Hamilton Affair – Amendment of the Bill of Rights of 1689

When Hamilton commenced his libel action against *The Guardian* newspaper, the defendants successfully applied to the court to have the action struck out on the ground that in order to defend it properly they would need to rely on evidence of Hamilton's conduct in the Commons, which was precluded by the terms of Article Nine of the Bill of Rights of 1689 and the rules of parliamentary privilege that were outlined earlier. There was a sense in the House of Commons – and in the Lords – that this was unfair as it meant that Hamilton could not clear his name of these serious allegations in the courts. Lord Hoffmann, a Law Lord, proposed the insertion of a new clause in the Defamation Bill that was then passing through Parliament, which permitted a Member of Parliament to waive Article Nine of the Bill of Rights to enable him to bring a defamation action. Lord Hoffmann was neutral about the desirability of such a change in the law as his amendment proposed. This is now section 13 of the Defamation Act 1996. In the event, as we have seen, Hamilton abandoned his libel action and hence did not need to rely on the new provision. But the measure had been hastily introduced in response to a perceived injustice, it was ill-thought out and leaves unresolved a number of problems, should it ever be used. In fact it has been suggested that the provision was unnecessary as the authority on which the judge relied when striking out Hamilton's libel action was a Privy Council case from New Zealand, *Prebble* v. *Television New Zealand*,[49] which may have been distinguishable in the Hamilton case. Be that as it may, the section became law largely for the benefit of Hamilton in his, later abandoned, civil action.

The willingness of the two Houses to legislate contrary to the long established Article Nine of the Bill of Rights without proper full consideration of the implications, for the benefit of a particular member does not, it is suggested, reflect well on their sense of responsibility in exercising their legislative powers and their self-regulatory functions.

Summary and Conclusions

It is fundamental to British constitutional theory relating to the standards of Members of the British Parliament that they should exercise independent judgment for which they are accountable to the electorate in the public interest. They should not compromise that judgment and independence in their relations with others. In effect the core meaning of political corruption, I suggest, is interference with the independence of judgment of those exercising public functions, or failure by public bodies so to exercise their judgment. In this sense there has been a problem of political corruption in the British Parliament for a number of years.

[49] [1994] 3 All ER 407, P.C. See G. Marshall 'Impugning parliamentary impunity' [1994] *Public Law* 509; A. Sharland and I. Loveland 'The Defamation Act 1996 and Political Libels' [1997] *Public Law* 113.

The system of parliamentary self-regulation has come under severe pressure in recent years as scandals have erupted involving dubious conduct, sometimes amounting to corruption, sometimes lesser forms of slackness, ethical lassitude and sleaze by Members of Parliament. It was largely because of pressure from the press and the opposition parties, together with the impeccable independence, expertise and integrity of the Nolan Committee and its promise to revisit the position in Parliament in due course, that all of that Committee's recommendations for defining and upholding standards of conduct in the House of Commons were implemented. Without such external pressure, it is suggested, the government and vested interests in Parliament would have refused to accept that problems of corruption and slackness existed, and no steps would have been taken to resolve the matter. This highlights the importance to the effectiveness of the system of self-regulation of external involvement, responsiveness to change and effective public accountability.

The status, respect and self-respect that derives from the right to regulate themselves remain important to MPs and this consideration added to pressure to reform from within, the desire being to avoid having reform imposed from outside. But if the level of corruption and other forms of misconduct in Parliament had been more serious, established and widespread than they were, those who were implicated might have been able to prevent reforms which were bound to mean that they had to forego the advantages that flowed from their relationships with outside bodies.

To return to the conditions in which self-regulation is most effective it will be seen that the established mechanisms for self-regulation in the British Parliament, until the recent reforms, fell short of requirements. There was no external involvement and no separation from affected interests; standards and principles were not clear; sanctions were not often imposed; the system had not changed for years – it had not responded to public concern about standards, the growth in the provision of consultancy and advocacy services by MPs, nor to the fact that part of the threat to the independence of the Commons came from within the House in the whip system and executive dominance; and public accountability was not effective. The post-Nolan reforms have introduced a degree of external involvement through the continued existence of the Committee on Standards in Public Life and semi-independent involvement of the Parliamentary Commissioner for Standards in the system of self-regulation; standards and principles have been clarified and a mechanism has been put in place for continued clarification as problems arise in future; the system has responded to changed conditions. However, public confidence in the system cannot be taken for granted – as the general election of 1997 shows – and it will have to be earned by the Commons as it deals with current and future complaints about conduct; it is far from clear that the House will be willing to impose severe sanctions to stress the need to maintain high standards; it is doubtful whether the Commons will continue to be responsive to changing expectations and circumstances, unless the Committee on Standards in Public Life is kept in being permanently; and public accountability is weak.

The effectiveness of the reformed system now operating in the House of Commons depends on recognition by MPs of the importance of Chinese walls separating the political from the self-regulatory and quasi-judicial activities of the House of Commons. Party whips and front benchers on all sides need to accept this fact. Its importance is by no means appreciated by many members of

the House. Indeed, there is not a strong sense of its corporate rights and responsibilities in the House when faced with conflicting loyalties to party or to outside bodies. Unless, however, the House is able to construct and respect appropriate Chinese walls, its ability to define and enforce its own standards will be called in question again and there will be pressure to subject it to control by independent external bodies.

It is too early to know whether the Nolan reforms have settled for good the issues both of definition of the standards and their enforcement. But the scandals which led to the appointment of the Nolan Committee and that Committee's continued existence should serve to keep in the minds of the public, the press and parliamentary actors the importance of making self-regulation work effectively – which most parliamentarians would wish – if external regulation is not to be imposed.