Shirking Self-Regulation? Parliamentary Standards in the UK

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Shirking Self-Regulation? Parliamentary Standards in the UK

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ABSTRACT
In 2021, the UK system for regulating the conduct of parliamentarians was briefly plunged into crisis. The government responded to a proposal to sanction one of its MPs—who had been found to have egregiously breached the Code of Conduct and accompanying rules—by threatening to change the whole system. This highly unusual interference by the executive branch, though withdrawn within 24 h, violated the axiom that the executive should not have a say in disciplining members of the legislature because this might compromise parliament’s ability to hold the government to account. Yet the ensuing debate has prompted calls to move the UK system yet further away from self-regulation and grant more powers of oversight to “external” roles and bodies. This article draws on interviews with MPs to analyze whether this longstanding trajectory of reform is in line with how these “rule makers” perceive the system’s flaws. It concludes that, over the years, MPs have to a large extent forfeited the right to regulate their own conduct by repeatedly shirking their responsibilities to regulate themselves effectively. Moreover, the constant focus on “fixing” the procedures for investigating and sanctioning misconduct has crowded out a more constructive discussion about how to promote ethical behavior.

KEYWORDS
Ethics, parliament, ministers, codes of conduct, self-regulation

Introduction
In autumn 2021, the system for regulating the conduct of Members of Parliament in the UK House of Commons was briefly plunged into crisis. The catalyst was a vote in the Commons chamber intended to approve sanctions on one individual Member, Owen Paterson MP, on the recommendation of the Committee on Standards. Paterson had been found to have breached the Code of Conduct for MPs and accompanying rules—in particular the ban on paid advocacy—by lobbying on behalf of two companies for which he worked as a paid consultant. Although the sanction recommended for this “egregious” breach of the rules was only a 30-day suspension, it could also have triggered a recall petition, whereby 10% of a constituency’s voters can force an MP to give up their seat, prompting a by-election. If this had occurred, Paterson would have been entitled to stand in the election, thereby giving voters the chance to voice their opinion on his conduct and demonstrate whether or not he maintained their confidence. Bearing in mind his 2019 majority of more than 20,000, Paterson might have had good prospects of re-election.

However, the vote to suspend Paterson never took place. Instead, the government brought forward an amendment calling for the creation of a new committee that would review the case against Paterson and, more broadly, the current standards system. This marked the first time in history that the Commons had blocked the recommendations of a Committee on Standards report into the...
conduct of an MP. Moreover, the government’s amendment implied that the existing system for regulating standards was not fit for purpose and should be replaced. It sought to establish a new committee to undertake that review, chaired by an MP from the government benches; this would have subverted the normal procedure for reviewing the system through a Committee on Standards inquiry once in each parliament—an inquiry that was already underway and due to report imminently. As such, the amendment constituted a major breach of convention. In the words of Lord Evans, chair of the Committee on Standards in Public Life (CSPL), an independent ethics body, it was “an extraordinary proposal… deeply at odds with the best traditions of British democracy.”

Within 24 h, the government withdrew its proposal. This had become inevitable once the opposition parties made clear that they refused to sit on the proposed new committee, meaning that it would lack the minimum legitimacy of cross-party membership. Paterson subsequently resigned as an MP. Leader of the House Jacob Rees-Mogg would later say that the government had made a mistake in introducing the amendment, arguing that his own individual judgment had been colored by sympathy for Paterson whose wife had died the previous year. While the crisis was short-lived, it prompted a media storm of investigations into many aspects of MPs’ conduct, especially their engagement in lobbying and holding outside or “second” jobs in addition to their parliamentary roles. As well as heightening scrutiny of the conduct of certain individuals, this added fuel to calls for reform of the standards system that were already coming from other quarters—in particular, from a CSPL report focusing on central government, which had been published just before these events (CSPL, 2021), and from the Committee on Standards’ review of the Code of Conduct, which published its first report in late November 2021 (Committee on Standards, 2021b).

The controversy raised two issues that are particularly pertinent to debates around self-regulation and are therefore considered in more depth here. First, the fundamental question of whether parliament should regulate its own Members or rather subject them to a more independent and external adjudication process has once again resurfaced. Second, the Paterson affair and subsequent media revelations about the prevalence of MPs holding second jobs prompted discussion about whether the regulation of outside interests is adequate and whether MPs can be trusted to manage their own conflicts.

This article reviews the background to the existing regulatory arrangements in these areas, before analyzing the debate about the need for change and specific reform proposals. Moreover, since MPs are “rule makers” as well as “rule takers” (Streeck & Thelen, 2005), it is important to understand how parliamentarians view the current system and how opinions differ on the potential options for reform. The article, therefore, considers evidence from interviews with 26 MPs that were conducted by the author in April–June 2021 as part of the Committee on Standards inquiry into the Code of Conduct, drawing on the summary of this research that has been published by the Committee (Committee on Standards, 2021b). Of the total, 17 were Conservatives (65%), seven Labour (27%), one SNP (4%), and one Liberal Democrat (4%), broadly in line with party shares of seats following the 2019 election.1 Eight respondents were female and 18 male, while three were from ethnic minority groups. They were drawn from eight different electoral cohorts, having first entered the House at various points during the period 1987–2019. At least six of the participants had personal experience of being the subject of a complaint to the Standards Commissioner. The interview data shed light on MPs’ readiness to confront and accept the trade-off of “tangible restrictions and potential losses in return for diffused and uncertain systematic gains” (de Sousa & Coroado, 2021) which is implicit in the current direction of travel away from self-regulation.

Who should regulate parliamentary conduct?

Designing a good system for regulating the conduct of individual parliamentarians is complex because of the role of legislatures in the constitution, specifically their function in providing
scrutiny of the executive and acting as a check on its power. This has meant that traditionally, the task of judging whether an individual MP has engaged in misconduct has been left to elected members themselves. This doctrine of “exclusive cognizance” is a corollary of parliamentary privilege, reiterated in 2013 by the Joint Committee on Parliamentary Privilege which commented, “the work of Parliament is central to our democracy, and its proceedings must be immune from interference by the executive, the courts or anyone else who may wish to impede or influence those proceedings in pursuit of their own ends.” Since parliaments are supposed to hold governments to account, elected members should not be exposed to punishment by a system that is controlled by the executive. If they were, the executive might use its power to crack down on legislators who were simply doing their job by challenging the exercise of executive power. Put another way, the executive should not have the power to disable the scrutiny function of the legislature. Given that the Paterson case involved the government using its parliamentary majority to intervene in an individual case, as well as proposing to create a government-dominated committee to review the current system, this risk is not as remote as is sometimes assumed.

Yet the UK system for regulating parliamentary conduct has included some independent elements since 1995 and has moved further from pure self-regulation in several ways in the intervening years. The first steps on this path were taken following the recommendations of the Nolan Report, itself a response to revelations that some MPs had taken cash payments in return for asking parliamentary questions on behalf of their sponsors—the so-called “cash for questions” affair (Doig, 1998). The Nolan Report made eleven recommendations to improve the regulation of standards in the House of Commons, including the introduction of a Code of Conduct and the establishment of a Parliamentary Commissioner for Standards. The recommendations were initially resisted by many Members, with the argument centering around whether such measures would constitute an unacceptable encroachment on parliament’s sovereignty and scrutiny powers (David-Barrett, 2015; Oliver, 1997). Ultimately, however, there was a high degree of consensus among MPs on the need for a more robust system, and parliament appointed the first Commissioner for Standards2 in 1995, before finalizing the Code of Conduct3 in 1996.

The Commissioner is appointed by parliament following an open competition, and the post is held by a professional who typically has experience in the regulation of conduct in other spheres of public service. She is independent of parliament and responsible for overseeing the Code. The Commissioner’s Office plays a role in (i) preventing misconduct, by maintaining the registers of interests and advising MPs on what they need to declare, both in the registers and in their parliamentary activities; and (ii) detecting misconduct, investigating alleged breaches of the Code of Conduct that are reported to her and exercising the power to initiate her own investigations. She advises the Committee on Standards on the findings of her investigations and, as in the Paterson case, it is the Committee that decides whether it agrees or not and what sanctions to recommend to the House.

The Committee has since 2010 included some non-Members of the House,4 initially three “lay members” sitting alongside ten MPs, adding a further aspect of external scrutiny. In 2015, the number of lay members was increased to seven such that they now constitute 50% of committee members, giving them an effective majority because the Chair does not typically vote. The lay members are recruited through open and fair competition, come from diverse backgrounds, with good gender balance (currently four women, three men) and possess significant external regulatory experience (having been involved, for instance, in regulating the conduct of the medical profession and the police).

These and other moves toward a “hybrid” system (see Table 1) have largely been made in response to political corruption scandals, a common motivation for ethics reform in parliaments and bureaucracies around the world (Bolleyer et al., 2020; David-Barrett, 2015; Gay & Winetrobe, 2008). Revelations in 2009–10 about MPs’ systematic abuse of their expenses and allowances, following a leak of information about claims in the preceding years, were perhaps the most
significant. The scandal prompted six ministers to resign their office and many more to resign from the role of MP or decide not to stand for re-election in 2010. In addition, a total of six MPs (all Labour) were found guilty of crimes including false accounting, expenses fraud, false claims, and forgery; two members of the House of Lords were also imprisoned for false accounting (one Conservative and one unaffiliated). Another major scandal broke in June 2013, the result of a joint investigation of BBC television documentary Panorama and the Daily Telegraph in which journalists posed as lobbyists for fictitious groups in a “sting operation.” Three peers and one MP agreed to perform various services, including asking parliamentary questions and establishing all-party parliamentary groups, in exchange for payment—prompting allegations that they had breached codes of conduct in their respective chambers. And in 2017 a series of allegations emerged about MPs bullying and sexually harassing their staff members.

These scandals exacerbated concerns among the public that MPs could not be trusted to judge the conduct of their peers and parliament responded with a series of reforms, each moving the system a little further away from a self-regulatory model (see Table 2). The expenses scandal led to the creation of a new Independent Parliamentary Standards Authority (IPSA), mandated to regulate MPs’ business costs and expenses, determine their salaries and pensions, and provide financial support to MPs in carrying out their parliamentary functions. The lobbying allegations prompted Cameron’s government to introduce a new bill, subsequently passed into law as the Transparency of Lobbying, Non-Party Campaigning, and Trade Union Administration Act 2014. The harassment claims, meanwhile, prompted the House to endorse a new Behavior Code in

| Table 1. The system for regulating the conduct of MPs, as of January 2022. |
|---|---|---|
| **Norm-setting** | **Oversight** | **Enforcement** |
| Code of conduct | Standards Committee (comprising MPs and lay members) reviews and recommends changes to the Code | Independent Parliamentary Commissioner for Standards investigates alleged breaches of the Code and advises Standards Committee on her findings, and can initiate her own investigations; also maintains registers of interests | Standards Committee recommends sanctions, which can include suspensions |
| Salary and expenses | Independent Parliamentary Standards Authority (IPSA) sets pay and pensions of MPs and their staff as well as the rules on expenses | IPSA regulates and manages MPs’ expenses claims | IPSA does not apply sanctions but recovers public monies owed by MPs |
| Bullying and harassment | MPs define guidelines for how MPs and staff should be treated and should treat others in the Behaviour Code | Independent Complaints and Grievance Scheme conducts investigations, overseen by independent Parliamentary Commissioner on Standards | Independent Expert Panel hears appeals and recommends sanctions in ICGS cases, which can include suspension or expulsion |

<table>
<thead>
<tr>
<th>Year</th>
<th>Reform</th>
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<tbody>
<tr>
<td>1995</td>
<td>Independent Parliamentary Commissioner for Standards</td>
</tr>
<tr>
<td>2010</td>
<td>Independent Parliamentary Standards Authority</td>
</tr>
<tr>
<td>2013</td>
<td>Introduction of lay members to Committee on Standards</td>
</tr>
<tr>
<td>2015</td>
<td>Increase in number of lay members on Committee on Standards (giving them effective voting majority)</td>
</tr>
<tr>
<td>2018</td>
<td>Independent Complaints and Grievances System</td>
</tr>
<tr>
<td>2020</td>
<td>Independent Expert Panel</td>
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2018 as well as a set of policies and procedures framed under the umbrella Independent Complaints and Grievance Scheme (ICGS); and in 2020, the House further agreed to establish an Independent Expert Panel to consider cases against MPs raised under the ICGS.

This series of piecemeal reforms have made the overall regulatory framework into another “patchwork quilt,” as Heywood has termed the ethics regulation framework for the civil service (Heywood, 2012). The parliamentary system has also become more “compliance-based” in the sense of being managed increasingly through formal rules, laws, and codes rather than “values-based,” where the focus would be more on promoting integrity and acting on principles (Heywood & Rose, 2015). Seen together, these measures mark a considerable divergence from a self-regulatory system. Within Coroado and de Sousa’s framework, while MPs continue to set the rules through the Code of Conduct and Behavior Code, the oversight function has largely been externalized, as have aspects of enforcement (Coroado & de Sousa, 2022).

Given that these reforms have considerably reduced the role of MPs in regulating their own conduct, it is reasonable to ask whether MPs are comfortable with the way that the system has developed. Recent qualitative research with a cross-party sample of 26 MPs, conducted by the author in April–June 2021 for the Committee on Standards Code of Conduct inquiry found that most were comfortable with the “hybrid” nature of the system (Committee on Standards, 2021b). Some talked about the risk of being seen to be “marking our own homework,” and thought the lay members and Commissioner were critical to the credibility of the system. However, Members often emphasized how reassuring they found it to have their peers, elected Members, on the committee that decided sanctions, because they felt strongly that only other MPs could truly understand the nature of the role. One suggested that,

“I’m not certain that a lay member would understand the passion with which most members of parliament fight for their constituents […] It worries me that on a panel of people who will consider our case, 50% of them will not be qualified to understand why we think and act in the way we do.”

Another argued,

“With the best of intentions, lay members might impose judgements that don’t actually work when you’ve lived in two different places for a week and run around being the property of others.”

The same MP proposed that there should be a “supermajority of elected members,” and that the records should report the opinions of elected members and lay members separately. A few MPs also expressed suspicion about how lay members were appointed and/or what “agenda” they might serve. One argued that “ultimately no-one is truly independent and there are axes to grind.” By contrast, one Member of the Standards Committee has taken the view that it is untenable for MPs to judge the conduct of their peers. Writing in “The House” magazine on 2 November 2021, Sir Bernard Jenkin argued,

“MPs adjudicating on the conduct of their own colleagues, whom they know, can never command public confidence. It would never be allowed in the General Medical Council or the Bar Council. The fact that Standing Orders make no provision for a member of the committee to recuse themselves underlines how 19th Century our system is.” (Jenkin, 2021)

These comments suggest that individual members serving on the Standards Committee sometimes find it personally difficult to judge the conduct of their peers, particularly those with whom they may have longstanding professional or personal relationships. Further discomfort arises because committee members are sometimes lobbied by their peers to take certain views on individual cases, despite such behavior being explicitly prohibited. Yet such issues exist for any professional taking on a role in regulating the conduct of their peers, which includes compliance officers in public and private-sector organizations as well as those assuming regulatory roles in professional associations. Allowing Members to recuse themselves from discussions about the misconduct of individuals because of personal connections would, moreover, distort the party
composition of the Committee, raise considerable practical problems about whether or how to replace the Member, and could potentially be abused to strategically alter the nature of the judgment process.

Another argument against more external regulation of MPs’ conduct focuses on the primacy of voters, suggesting that the ballot box provides sufficient accountability and that the only proper test of confidence in an MP is whether or not they are re-elected. This view emphasizes that MPs are not employees and should not be subject to the kinds of disciplinary arrangements that exist in public- and private-sector organizations. In the qualitative research, several members placed great store on electoral accountability as the most appropriate check on their power. One said, “You are judged either by the electorate or by the courts. Having a code of conduct neither makes it more difficult nor easier,” while another emphasized,

“I just want to reiterate my concern that not enough store is given to the fact that we are elected by our constituents and ultimately they should be the arbiters of our behaviour. I worry about mission creep which in effect starts telling us how we should behave.”

Another MP used such an argument as a basis for dismissing the Code, Rules, and the whole system for regulating conduct, suggesting, “I don’t think we need all of this personally. The public is more than capable of regulating politicians’ behavior.”

Yet other MPs argued that elections are flawed as a mode of accountability because some seats are safe or party selection procedures are so influential. One said, “Elections are not a powerful check on behavior. Politics is ethnic, tribal. The biggest checks are really the party, members” while another took the view that, “whether it’s the least bad system or not, first-past-the-post [the electoral system] does not give you a nuanced reflection of how is the world actually thinking about politics.” Indeed, research conducted after the expenses scandal also suggests that elections are a rather blunt tool for holding politicians to account. Vivyan et al found that, while voters presented with information about their MPs being implicated in the scandal did regard such conduct as wrongdoing, they nonetheless largely failed to punish implicated incumbents (Vivyan et al., 2012). Eggers (2014) found that electoral accountability was less effective in constituencies where the partisan stakes of the local contest were higher: not only did corrupt MPs in these constituencies suffer smaller punishments, but they were also more likely to be implicated in the scandal in the first place (Eggers, 2014). The apparent weakness of electoral accountability may partly reflect the electoral system in the United Kingdom, where single-member seats mean that any vote against an individual carries high stakes, while a preponderance of safe seats means that voters wishing to vote against the incumbent may feel that there is little chance of their having an impact on the candidate’s chances.

The Paterson debacle has prompted calls for tighter and more external regulation of MPs’ conduct, yet the arguments for reform sometimes appear rather contradictory. The government’s critique of the standards system, for example, rested on the Commissioner having too much power vis a vis the individual being investigated. The government suggested that MPs should have a more robust opportunity to appeal both the Commissioner’s findings and the Committee’s recommended sanctions. The current system does in fact provide for MPs to challenge the facts set out by the Commissioner in her report to the Standards Committee and to challenge her conclusions in front of the committee, but the government argued that there should be a more judicial form of determination and appeal. This might, for example, follow the model of the Independent Expert Panel (IEP), established in 2020 as part of the ICGS, to deal with complaints of bullying and harassment. The IEP comprises independent qualified legal and Human Resources professionals who sit in panels of three to decide what punishment to impose on MPs found guilty of bullying or harassment, and to hear any subsequent appeal—from either the complainant or the accused. It has been argued that it would be more legitimate for such professionals to judge MPs’ conduct because they are unaffected by partisan or personal considerations. Moreover, the panel’s
conclusion is subject to a final parliamentary vote, albeit without a prior debate, thereby retaining for parliament some control over the process.

The Committee on Standards in its December 2021 report disputed the need to formalize appeals, however, arguing,

“there already exists what is effectively a right of appeal to the Committee against the Commissioner’s findings. We have not hitherto used the language of ‘appeal’ but the reality is that Members who are dissatisfied with those findings have a right to seek to persuade the Committee that they are in the right. This process contains the key elements of an appeal: a fresh consideration of the case by a separate body which has not been involved in the original investigation, with power to seek further evidence, and with a right on the part of the Member to submit written and oral evidence. We believe it is correct, therefore, to say that Members currently have a right of appeal against the Commissioner’s findings, even if that is not how it is described.” (Committee on Standards, 2021b, paragraph 229)

The Committee further warned that a move to a quasi-judicial process might introduce new barriers by making Members feel that they needed formal legal assistance or deterring them from making representations that might assist the Committee in the consideration of their case. Currently, the lack of specified “grounds for appeal” enables a Member to provide the Committee with any information at all, in defense or mitigation, and to challenge any aspect of the Commissioner’s investigation. The Committee, therefore, argued that “formalization of the right to appeal against findings, if it were to include specified grounds for appeal, might reduce rather than expand a Member’s rights by contrast with the existing system” (Committee on Standards, 2021b, paragraph 231). With regards to sanctions, though, the Committee accepted that there is no current way of appealing its recommendations, unlike under the ICGS, and has suggested that this be rectified. Its December 2021 report outlined four potential options and invited comments. The Committee also said that it wished to consult more broadly on whether its current functions with respect to individual cases should be transferred to an independent body similar to the IEP, raising the prospect that the enforcement part of its role also be externalized. It did caution, however, that this risked removing Members’ valuable knowledge and experience of parliamentary life from the process, which might be more important to adjudicating cases related to interests and lobbying, for example, than for cases of bullying and harassment (Committee on Standards, 2021b, paragraph 200).

While the trajectory continues to be toward more external and independent regulation, the research findings cast doubt on whether MPs will be comfortable with such an outcome or believe in its effectiveness. When asked about the purpose of the Code and overall system, many of the MPs interviewed expressed skepticism about whether such rules helped to achieve behavioral change. One argued, “My general concern is that as we move more and more into rules, it gives licence to move further away from principles. Philosophically, it’s a mistake. The concept of honor in office is something we should move back to—and principles are core to that.” This echoes the findings of Heywood and Rose who, in their research on UK civil servants, find a strong appetite for greater use of a values-based rather than rules-based approach (Heywood & Rose, 2015). Many Members saw the Code negatively, as something that was there to catch them out or was “written from a prosecutor’s point of view, not a defendant’s, more about stopping bad behavior than promoting good behavior,” which suggests frustration with the rules-based approach. A few Members conversely used the Code as a form of protection and recalled citing it in conversations with constituents, to explain how their conduct was in fact in line with the rules.

Second jobs and lobbying

Paterson was found to have breached the rules by acting as a paid advocate, which is explicitly prohibited in paragraph 11 of the 2015 Code of Conduct for Members. Paterson had been a paid
consultant to two companies, Randox, a clinical diagnostics company, from which he received £8,333 per month, and Lynn’s Country Foods, from which he was paid £12,000 per year; these sums exceeded his salary as an MP. His advocacy consisted in making three approaches to the Food Standards Agency (FSA) relating to Randox and the testing of antibiotics in milk; four approaches to Ministers at the Department for International Development relating to Randox and blood testing technology; and seven approaches to the FSA relating to Lynn’s Country Foods. Paterson breached the rules not by holding these consultancy positions or receiving payment for them since MPs are permitted to hold paid employment outside their parliamentary role as long as they are not ministers. Rather, his conduct broke the rules about lobbying, which prohibit MPs from making approaches to Ministers, Members, or public officials on matters that seek to confer or would have the effect of conferring a financial or material benefit on companies from which they receive an outside reward (as set out in Paragraph 8 of Chapter 3 of the 2015 Guide to the Rules).

In the wake of the Paterson scandal, much media attention focused on the prevalence and nature of MPs’ second jobs, raising questions about whether they pose conflicts of interest. The public debate focused largely on how much MPs earn from such roles and how much time they spend on them. MPs are required to register earnings from employment outside the House (above a certain, fairly low, threshold), making it straightforward to collect data about earnings. Analysis of registers revealed that almost one-third of MPs had received some income from outside earnings in the previous year, but these ranged from £50 to almost £1 million. More than four-fifths of those holding second jobs were from the Conservative Party. The highest-earner, former attorney general Sir Geoffrey Cox, had declared a total of £6 million in outside income since entering parliament.

Given the lack of any reporting on how MPs spend their time and the huge variation in the way that MPs carry out the role—with some focusing largely on constituency work while others engage heavily in policy debates—it is difficult to determine whether having a second job seriously inhibits MPs from carrying out their duties (White, 2021). But Cox was found to have missed at least 12 parliamentary votes because of a trip to the British Virgin Islands for one of his paid roles. Cox’s claim that it was up to the electorate to judge whether they found his conduct problematic was treated with skepticism given that he holds a very safe seat with a majority of 25,000. Indeed, research by think tank Best for Britain found that three-fifths of MPs holding second jobs had a majority of 10,000 or more, casting further doubt on the power of electoral accountability as a check on conduct in this area.

The slew of press coverage of second jobs focused public attention on the potential conflicts of interest involved in holding outside employment and consultancies, prompting responses from both the opposition and the government. The Labour Party used its opposition day motion on 17 November 2021 to propose that the House of Commons adopted a 2018 CSPL recommendation that MPs should be banned from paid work as a parliamentary adviser, strategist, or consultant. The government recommended that the Commons also adopt a second CSPL recommendation that would place “reasonable limits” on the time that MPs could spend on outside interests, although it also loosened the timetable for implementing these changes. But while the House committed to tighten the rules on second jobs, it left important questions about how to define the limits to a later date (White, 2021).

Prior research on the outside earnings of MPs holding office during the period 2010–2016 found a partisan skew in the prevalence of second jobs and the income earned from them (Weschle, 2021). While only 20–30% of MPs earned income from second jobs in that period, 30–40% of Conservative MPs had additional earnings compared to only 10–20% of Labour MPs. Moreover, of those MPs with outside income, Conservatives earned on average £50,000 per year while Labour MPs received an average of £11,500. The same research found that holding a second job had little influence on loyalty to the party whip in parliamentary voting, but that
Conservative MPs holding second jobs did tend to submit significantly higher numbers of parliamentary questions—which ministers are compelled to answer. There are no changes in vote attendance for Labour MPs when they have second jobs, and Conservative MPs are about 3 percentage points more likely to attend votes (Weschle, 2021).

Rules around second jobs were also the most contentious issue among MPs interviewed in the Committee on Standards’ 2021 qualitative research (Committee on Standards, 2021b). Several of the 26 Members interviewed, from different parties, held strong views that second jobs should be banned, but equally many held strong views that second jobs were very valuable. Those MPs arguing that second jobs were valuable highlighted the risk that banning second jobs might deter talented candidates from running for office. They often supported this argument by highlighting the situation of individuals from certain professions—law and medicine, for example, who needed to practice to keep their skills current. Indeed, lawyers constitute a large share of parliamentarians, around 10–15% of all MPs on average over the period 1992–2015, and there have always been at least five—sometimes as many as 10—qualified doctors sitting in the House over the same time (Cracknell & Tunnicliffe, 2022). The MPs with second jobs in the legal profession tend also to be among the highest earners.

Another argument made by some MPs for permitting second jobs was that individuals in some sectors were required to take major pay cuts when becoming an MP, and hence it would be unwise to restrict their access to outside earnings for fear that such candidates would be deterred from running for office. A few MPs also made a case that outside interests help MPs gain experience of the “real world” that they “bring back to policy-making,” one Member even advocated on these grounds for second jobs to be compulsory (Committee on Standards, 2021b). This line of argument recalled the findings of the Nolan Report in 1995, that “a Parliament composed entirely of full-time professional politicians would not serve the best interests of democracy. The House needs if possible to contain Members with a wide range of current experience which can contribute to its expertise” (paragraph 19) (CSPL, 1995). More broadly, it aligns with a strand of thinking that it is undesirable for parliament to be comprised largely of “professional politicians” who have never worked in any other role (Börchert, 2003).

Of those MPs who saw second jobs as a problem, several argued that having a second job was problematic because it competed for time or interest with the responsibilities of being an elected MP, which was already onerous and time-consuming. Some even expressed the view that Members with second jobs could not possibly also carry out their duties well. A less commonly heard argument was that holding second jobs led to Members establishing contacts and networks that then made them vulnerable to influence. In other words, relatively few Members raised this risk that an outside interest might constitute a conflict of interest that a Member would be unable to resolve, or that would lead a Member to breach the paid advocacy rule. Such risks would, however, gain more salience later that year when the Commissioner’s report on Paterson was published and in the subsequent fallout.

Paterson did not dispute that he had approached the FSA and government ministers on behalf of the companies for which he acted as a paid consultant, but sought to argue that his behavior fell under one of two exemptions to the paid advocacy rule because he was seeking to right a “serious wrong.” This exemption was inserted into the Guide in 2012 and described as a “whistleblowing provision,” defined carefully to ensure narrow application—including, for example, a requirement that any benefit to a third party accruing from the advocacy could only be “incidental.” However, the Commissioner found that Paterson’s approaches to the regulator on behalf of Randox went beyond presenting evidence of a serious wrong and would have conferred benefits on the company, while his approach on behalf of Lynn’s Country Foods sought to have one of Lynn’s competitors forced to re-label their product so as not to compete with Lynn’s products, meaning that the benefit was not incidental but integral to the approach (Committee on Standards, 2021a).
The Paterson controversy prompted the Committee on Standards to recommend a new requirement for Members taking on outside work to obtain a written contract from the employer or client “detailing their duties, in particular, making explicit that these duties cannot include lobbying Ministers, Members or public officials on behalf of that employer and that the employer will give an undertaking not to ask them to do so.” The Committee further specified that the contract “should also include an exclusion on providing advice about how to lobby or influence Parliament (see paragraphs 172–179 below)” and stated that Members would be expected to make such a contract available to the Commissioner on request if needed during an investigation.

Further, the Committee acknowledged that lobbying is one of the most complex areas of the rules, and recommended the introduction of a “safe harbor” provision within the Code, meaning that a Member would not be considered in breach of the rules for an action on which they had sought and followed the advice of the Registrar. This provision seems designed to encourage Members to seek advice before acting and thus represents a step toward a more preventive approach that seeks to build in risk assessment and mitigation. As such, it is in line with other aspects of the UK’s anti-corruption laws, for example, the UK Bribery Act provides a defense against the corporate offense of failing to prevent bribery for companies that had in place “adequate procedures” to prevent bribery, thereby encouraging companies to assess corruption risks and think about how to mitigate them. This approach is still very much tied to the rules, making it more of a compliance-based rather than values-based approach, but it does place more emphasis on trying to change behavior patterns. It is also notable that there has been no movement in the UK toward requiring individual asset disclosures, which allow monitoring of any unusual increases in a public officeholder’s wealth while they are in office. This is a regulatory measure that many other countries use as a way of checking that public officeholders are not abusing their power for corrupt private gain—and indeed which politicians use to signal their integrity (Messick, 2014; Schnell, 2018).

**Conclusion**

The UK system for regulating the conduct of MPs has moved very far from a system of pure self-regulation in the past 25 years. Independent bodies now judge the conduct of MPs relating to their use of expenses and any alleged involvement in bullying and harassment. Alleged breaches of the code are investigated by an independent Commissioner and any sanctions are recommended to the House by a Committee that has an effective majority of non-parliamentarian lay members. Proposed steps toward even more external regulation are under discussion, and the House has committed to tighter regulation of outside interests, which is likely to mean relying less on individuals to judge their own conduct.

Those Members who advocate further moves toward external regulation often argue that reforms would improve impartiality and professionalism. Yet, almost all of the steps in this direction to date have been driven by efforts to restore public confidence following scandals that have revealed breaches of rules, norms, and conventions to be widespread. The expenses scandal and bullying allegations in particular suggest that MPs are not particularly good at policing their own conduct or that of their peers, and may indicate that parliament’s culture is self-affirming rather than self-critical. While there are good constitutional reasons for trusting parliamentarians to regulate themselves, with such entrusted power comes significant responsibility—what Dobel (1999) calls the “personal-responsibility” dimension of integrity, distinct from the “legal-institutional” dimension (Dobel, 1999). This includes the responsibility to examine one’s own behavior and intentions in a way that appreciates the wider context of power relations, as well as to maintain norms through modeling appropriate conduct, calling out one’s peers when they violate norms and supporting the institutions vested with powers or monitoring and enforcement.
In the current UK debate, Members advocating for more external oversight seek to portray themselves as nobly submitting to greater scrutiny. An alternative reading is that MPs have forfeited the right to regulate their own conduct by repeatedly shirking their responsibility to regulate themselves and their peers effectively. It is not so much that the various elements of the system for regulating conduct have failed, but rather that MPs have relied too heavily on them, instead of modeling good behavior themselves and being prepared to call out conduct that falls short of the Nolan principles. The constant focus on “fixing” the system for investigating and sanctioning misconduct may have crowded out a more constructive discussion about how individuals could do more to promote good behavior. The qualitative research found several Members showing an appetite for such an approach, particularly advocating more peer-policing of conduct. One said, “Obviously we should police our own behavior and recognize when we get it wrong” and “if I saw one of my colleagues behave in an inappropriate way it would be far better for me to say something to them there and then. Or also when you see someone deal with a difficult situation well...” Another argued, “There needs to be more pulling up of behavior. We shouldn’t just shrug.”

**Notes**

1. Following the 2019 election, the Conservatives held 365 seats (56%), Labour 202 (31%), the SNP 48 (7%), and the Liberal Democrats 11 (2%).
4. The Procedure Committee recommended that the participation of “lay members” should extend only to standards and not to privilege issues, thus leading to a split of what had been the “Standards and Privileges Committee” into a Committee on Standards and a Committee for Privileges.

**References**


Jenkin, B. (2021, November 2). We need a standards system that can cope with the conflicts facing MPs. *The House Magazine.*


