



HOUSE OF LORDS

Committee for Privileges and Conduct

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2nd Report of Session 2017–19

# The conduct of Lord Lester of Herne Hill

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### *The Committee for Privileges and Conduct*

The Committee for Privileges and Conduct is appointed each session by the House of Lords to consider questions regarding its privileges and claims of peerage and precedence and to oversee the operation of the Code of Conduct.

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The members of the Committee for Privileges and Conduct are:

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Further information about the House of Lords and its Committees, including guidance to witnesses, details of current inquiries and forthcoming meetings is available at <http://www.parliament.uk/business/lords>

### *Contact details*

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Correspondence relating to the work of the Sub-Committee on Lords' Conduct should be addressed to the Clerk of the Sub-Committee on Lords' Conduct, House of Lords, London SW1A 0PW (telephone 020 7219 5307).

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# The conduct of Lord Lester of Herne Hill

## REPORT FROM THE COMMITTEE FOR PRIVILEGES AND CONDUCT

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### Background

1. The Committee for Privileges and Conduct has considered a report by the House of Lords Commissioner for Standards (“the Commissioner”) on a complaint about the conduct of Lord Lester of Herne Hill. The Committee has also considered a report by the Sub-Committee on Lords’ Conduct on the same issue.
2. The procedure in cases such as this is set out in the *Guide to the Code of Conduct*. Under this procedure, the Commissioner investigates allegations against Members. She reports her findings to the Sub-Committee, which, if the Commissioner has found the Member to have breached the Code, recommends a sanction to the House. The Sub-Committee does not reopen the Commissioner’s findings, which are reported without amendment to the Committee for Privileges and Conduct. The Member may appeal to that Committee against the Commissioner’s findings or the Sub-Committee’s recommended sanction, or both.

### Summary of the case

3. In November 2017, the Commissioner received a complaint alleging that Lord Lester of Herne Hill had sexually harassed the complainant, had offered her a corrupt inducement to have sexual relations with her, and had warned her of unspecified consequences if she did not accept his offer. These allegations were connected to Lord Lester’s conduct of his parliamentary duties.
4. The Commissioner’s assessment of the alleged behaviour, including the alleged element of sexual harassment, was that it engaged the requirement in the House of Lords Code of Conduct that Members should act on their personal honour in the discharge of their parliamentary duties.
5. The Commissioner sought the agreement of the Sub-Committee on Lords’ Conduct to investigate the complaint as the alleged breaches of the Code of Conduct occurred more than four years previously. The Sub-Committee agreed that the Commissioner should investigate the complaint.
6. The Commissioner’s report is at Annex 2. It sets out in detail the allegations, the evidence put forward by both sides and the process of the investigation. The Commissioner concluded that:

“My decision must apply the standard of the balance of probabilities. Where the allegations are particularly serious, it is important that the evidence is suitably strong and cogent. Applying the test of the balance of probabilities I find the complaint upheld, on the basis of the strong and cogent evidence of the complainant and her witnesses. I have carefully considered the challenges to this evidence, but do not find that those

challenges undermine the strength of the evidence to any significant degree.”

7. Additionally, during the investigation, Lord Lester admitted telling another Member of the House that the complainant had been responsible for him being suspended by his political party since February 2018. The Commissioner found that this was a breach of the confidentiality requirements of the process.

### **The Report of the Sub-Committee on Lords’ Conduct**

8. The Sub-Committee on Lords’ Conduct received the Commissioner’s report and supporting documentation. Its role is to recommend an appropriate sanction. The Sub-Committee recommended that Lord Lester should be expelled from the House of Lords. The reasoning given was that the allegations taken together constituted a grave abuse of power in the performance of parliamentary duties. The Sub-Committee’s report is at Annex 1.

### **Lord Lester’s appeal**

9. Lord Lester appealed to this Committee against the findings of the Commissioner and against the sanction recommended by the Sub-Committee. His appeal set out various objections to the processes in the Guide to the Code and to the way that the Commissioner had applied those processes. He also appealed against the Sub-Committee’s recommendation for expulsion.

### **The Committee’s role**

10. The role of the Committee for Privileges and Conduct when there is an appeal is set out in paragraph 144 of the *Guide to the Code*:

“On appeal, the Committee will not reopen the Commissioner’s investigation. Rather members of the Committee will use their judgment to decide whether, on the balance of probabilities, they endorse the conclusions of the Commissioner; they will also consider whether or not the recommended sanction is appropriate.”

11. Accordingly, we have considered the reports of the Commissioner and the Sub-Committee. We have also considered Lord Lester’s written appeal and heard oral evidence from him. The grounds of Lord Lester’s appeal and related papers are at Annex 3.

### **The Committee’s decision**

12. As the Guide to the Code of Conduct requires, our first task was to consider whether in our judgment, on the balance of probabilities, we endorse the conclusions of the Commissioner. We do not accept Lord Lester’s contention that the Commissioner was at fault in the way she carried out her investigation. We have also been mindful that it is not in our remit to reopen the investigation of the Commissioner. On this basis we do not uphold Lord Lester’s appeal. It is not disputed that the complaint relates to Lord Lester’s conduct in the course of his Parliamentary duties. **We endorse the conclusions of the Commissioner that in respect of that conduct Lord Lester of Herne Hill breached the provisions of the Code in failing to act on his personal honour by sexually harassing the complainant and offering her corrupt inducements to sleep with him.**

13. Our second task was to consider the Sub-Committee on Lords' Conduct recommended sanction of expulsion from the House under the relatively new provisions of the House of Lords (Expulsion and Suspension) Act 2015. Lord Lester appealed against this sanction on several grounds and we listened carefully to the points raised in his appeal.
14. In coming to our conclusion we have reflected on the nature of the complaint and the Commissioner's findings. We agree with the Commissioner that Lord Lester, in offering the complainant corrupt inducements, failed to act in accordance with his personal honour, that is in accordance with the standards of conduct expected of individual members. Lord Lester made a dishonourable promise backed up by a dishonourable threat. The Sub-Committee, in reaching its recommendation for expulsion, described this conduct as a "grave abuse of power", which is somewhat stronger than the Commissioner's own finding which we accept. She did not describe the abuse of power as grave. We have also reflected on the fact that at the time the behaviour giving rise to the complaint occurred the penalty of expulsion was not available. **We have accordingly decided that Lord Lester's appeal against expulsion should be upheld and replaced by a term of suspension, and so recommend to the House.**
15. In considering the appropriate term of suspension to reflect our considerations above, we have taken into account the length of previous suspensions as well as the seriousness of this case. Until the passage of the House of Lords (Expulsion and Suspension) Act 2015, the longest the House could suspend a Member was to the end of the Parliament in which the suspension started. This was the maximum penalty available at the time that Lord Lester breached the Code. We have concluded that taking those factors into consideration the suspension should be coterminous with the maximum expected term of the present Parliament. Under the terms of the Fixed-term Parliament Act 2011 this Parliament should be dissolved by 28 March 2022 so a period of suspension to cover this date would in effect mean that he could not return to the House until the new Parliament met in May or June 2022. This date of return should be the same whether or not this parliament lasts its maximum expected length. **We accordingly recommend that Lord Lester of Herne Hill be suspended from the House until 3 June 2022.**

#### **Identity of the complainant**

16. We conclude with some important considerations about confidentiality. The complainant is not named in this report or in any of the papers to be published. The identities of the witnesses are also redacted. As far as is consistent with justice we have removed information that could identify the complainant, or the witnesses, by triangulation. **We earnestly hope that the House and others will understand the value of offering anonymity in these circumstances and that nobody will seek to identify her or them following publication of this report. We would regard any breach of confidentiality as a potential contempt of the House, as described at paragraph 130 of the Guide to the Code of Conduct.**

17. If any member of the House, ahead of the debate, wishes to see the appendices to the Commissioner's report or the appendices to Lord Lester's appeal documentation they should contact the Clerks of the Journals.<sup>1</sup>

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<sup>1</sup> Two sets of documents have not been published. That is the appendices to the Commissioner's report and the appendices to Lord Lester's appeal. These documents contained a considerable amount of identifying material and the other documents stand alone without them.

## ANNEX 1: REPORT FROM THE SUB-COMMITTEE ON LORDS' CONDUCT

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1. The House of Lords Commissioner for Standards has submitted the attached report on the conduct of Lord Lester of Herne Hill.
2. In November 2017, the Commissioner received a complaint alleging that Lord Lester of Herne Hill had sexually harassed the complainant, had offered her a corrupt inducement to become his mistress, and had warned her of unspecified consequences if she did not accept his offer.
3. The Commissioner's assessment of the alleged behaviour, including the alleged element of sexual harassment, was that it engaged the requirement in the House of Lords Code of Conduct that Members should act on their personal honour in the discharge of their parliamentary duties.
4. The Commissioner sought our agreement to investigate the complaint as the allegations that the Code of Conduct was breached were made more than four years after the alleged behaviour complained of. We agreed, at our meeting on 6 February 2018, that the Commissioner should investigate the complaint. We had at the time no idea of the identities of either the complainant or the respondent.
5. After completing her investigation, the Commissioner has concluded that:

“The allegations of sexual harassment, corrupt inducement and threat of retaliation were more likely than not to be true, and I uphold her complaint that Lord Lester breached the Code of Conduct.” (Paragraph 19)
6. In the concluding section of her report at paragraph 242 the Commissioner stated:

“My decision must apply the standard of the balance of probabilities. Where the allegations are particularly serious, it is important that the evidence is suitably strong and cogent. Applying the test of the balance of probabilities I find the complaint upheld, on the basis of the strong and cogent evidence of the complainant and her witnesses. I have carefully considered the challenges to this evidence, but do not find that those challenges undermine the strength of the evidence to any significant degree.”
7. Additionally, during the investigation, Lord Lester admitted to having breached the Code of Conduct by telling another Member of the House that the complainant had been responsible for him being suspended by his political party since February 2018 (paragraph 20 of the Commissioner's report).
8. In accordance with paragraphs 139 and 140 of the Guide to the Code of Conduct, our role has been to decide the appropriate sanction to recommend, not to question the Commissioner's findings and conclusions (any appeal against those, as against our recommended sanction, being to the Privileges and Conduct Committee under paragraphs 141–44 of the Guide to the Code).

9. The Commissioner invited us, when we were considering an appropriate sanction, to take into account that:
  - (i) “Lord Lester persisted in unwanted touching, even when the complainant clearly objected;
  - (ii) He persisted in making sexual comments and offers to her, even after she clearly objected;
  - (iii) He took advantage of her being alone in his house to harass her;
  - (iv) In offering her a corrupt inducement, he undermined the reputation and integrity of the House of Lords;
  - (v) In warning her of unspecified consequences if she did not accept his offer, he abused his power;
  - (vi) In no longer inviting her to relevant meetings; he abused his power;
  - (vii) He breached the confidentiality requirement of the Guide to the Code, and has offered no explanation for doing so; and
  - (viii) He carried out this breach in a way that made it highly likely that others would hear of it, but denied any responsibility for the foreseeable consequences of his breach.” (paragraph 22 of the Commissioner’s report)
10. The sub-committee add the following paragraphs by way of comment under paragraph 139 of the Guide to the Code on the Commissioner’s report and on the case, and in detailed explanation of our recommended sanction.
11. The tragic irony of this case is that for decades past the respondent has been one of the most widely known, effective and admired of those campaigning for racial and sexual equality in this country, a renowned supporter of human rights and freedoms across the board. The Commissioner’s findings suggest that, for a comparatively short period of time some [REDACTED—over a decade] ago, seemingly quite out of character, he became obsessively attracted to the complainant (whose particular rights campaign he was championing by [REDACTED—parliamentary business]) to the extent that he completely lost all sense of judgment and propriety, and now by these findings must forfeit his reputation.
12. In replying on 23 March 2018 to a letter (Appendix K) [reference is to a document that has not been published] from the respondent to the Chairman of the sub-committee (copied to each other Member), contending that none of the Code’s rules of conduct “relates to the allegations in the complaint, which are of sexual harassment,” the Chairman, with the agreement of the other four Members, responded that:

“in granting leave under para 119 of the Guide, we did not regard this as, simply, “a sexual harassment complaint.” A fair reading of the complainant’s statement - not least paras 12 and 13 [reference is to a document that has not been published] - surely makes it plain that the allegation (whether true or false is yet to be determined) is of still more serious misconduct. It alleges what can only be regarded as a grave abuse of power in the performance of a member’s parliamentary duties.”

Paragraphs 12 and 13 there referred to (see Appendix A [reference is to a document that has not been published], quoted verbatim save for anonymisation in the Commissioner’s report), recount, with surrounding detail, the complainant’s allegation that the respondent said to her: “if you sleep with me I will make you a Baroness within a year” and later, “if I did not [sleep with him] he would see to it I never had a seat in the House of Lords and warned me there would be other repercussions for me.” These essentially are the allegations (now found established) of “corrupt inducement” and “threat of retaliation” and “warning” referred to in the Commissioner’s report, as summarised at paragraphs 2, 5 and 9 (iv) and (v) above.

13. Those two particular allegations, and additionally the allegation that the respondent then ceased to invite the complainant to attend relevant meetings, all now found established, constitute the gravamen of this complaint and have driven the sub-committee to conclude that the respondent’s misconduct does indeed amount to a grave abuse of power in the performance of his parliamentary duties. The other findings, whilst breaches respectively of the respondent’s confidentiality obligation and of his duty to act on his personal honour, some serious, none trivial (whatever allowance may be made for the differing standards [REDACTED—over a decade] ago), would not of themselves have led the sub-committee to the sanction it recommends in this case.
14. Section 1 of the House of Lords (Expulsion and Suspension) Act 2015 provides that the House may by resolution expel a Member (or, clearly a lesser penalty, suspend a Member for a specified period) notwithstanding that (as in the present case) the misconduct in question occurred before the Act came into force (26 June 2015), provided that “in the opinion of the House of Lords” it “was not public knowledge before that time.” The sub-committee, whilst fully alive to the misconduct here in question having occurred [REDACTED—some years before] the Act, is of the opinion that, whilst obviously known to the complainant and a small number of her friends and advisers, it is not properly to be regarded as having been public knowledge within the meaning and for the purposes of this legislation. These sanctions are thus available to the House, notwithstanding that one effect of the complainant having for so long delayed making a complaint will have been to expose the respondent to a greater sanction than had the complaint been brought earlier (the House’s power prior to the 2015 Act extended no further than to suspend the Member for the duration of the existing Parliament). Clearly, however, there could be no suggestion here that such was the complainant’s intention; rather the reasons for her long delay in making her complaint are explored and explained in the Commissioner’s report (see particularly paragraphs 41, 70, 88 and 105).
15. Having regard to the arguably mitigating circumstances summarised in paragraph 11 above and to the long delay in bringing this case, had we felt any uncertainty as to the appropriate sanction to impose we would have recommended suspension for a specified period. As it is, however, the sub-committee is of the clear and unanimous view that, given that the House has the requisite power and the very serious nature of the respondent’s abuse of power, the only proper outcome of this most unfortunate case is that the respondent be expelled from the House.
16. Several members of the sub-committee who have known the respondent for very many years would have wished to recuse themselves from this case had

such a course been justifiable. We have all concluded, however, that it has instead been our regretful duty to deal with this case as with any other.

## ANNEX 2: REPORT FROM THE COMMISSIONER FOR STANDARDS

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### Introduction

1. This is the first investigation by me, or my predecessor, as House of Lords Commissioner for Standards into a complaint of sexual harassment. As such, I have had to adapt the normal investigation process to ensure fairness.
2. One adaptation is that the complainant is not named in my report, and, as far as is consistent with justice, I have removed information from the report that could identify her by triangulation. She and I both know that her identity may nonetheless be revealed when this report is published. I hope that those who understand the value of offering anonymity in these circumstances will not seek to identify her.
3. The second adaptation is that, unlike the usual practice, the published report does not have attached to it all the documents referred to within it, and has been written in such a way that it can be understood without these documents. This is partly an attempt to protect the identity of the complainant and witnesses, and also to deal with the sensitivity of some of the information provided, about which there is no public interest requirement to disclose. The sub-committee on Lords' Conduct, however, has seen all the unredacted statements, transcripts and documents referred to in the report.
4. The third adaptation relates to the process of investigation. Generally speaking, a complainant has to provide my office with all the information upon which they rely in support of their complaint, and I subsequently investigate the complaint without further reference to the complainant. In this case, the complainant did provide me with the evidence in support of her complaint, in a detailed statement, and she also gave me the names of four people to contact who could corroborate aspects of her statement. However, as the investigation continued, detailed below in section e, it became apparent that, in the interests of justice, I would need to go back to the complainant to get responses to some of the challenges made by Lord Lester of Herne Hill. I did so, and also gave Lord Lester the opportunity to comment on the complainant's and witnesses' responses, where the interests of justice required this.
5. In my report, direct quotes from written or oral evidence are in italics and findings are in bold.
6. This report consists of nine sections:
  - (a) Executive summary;
  - (b) The complaint;
  - (c) An outline of the relevant parts of the House of Lords Code of Conduct and the Guide to the Code of Conduct;
  - (d) Events prior to obtaining the consent of the sub-committee to carry out the investigation;
  - (e) The investigation;
  - (f) Lord Lester's challenges to the complainant's evidence and her responses to his challenges;

- (g) Other matters requiring explanation;
- (h) Analysis of the evidence;
- (i) Representations by Lord Lester, with my responses; and
- (j) Conclusion.

**a) Executive summary**

7. In November 2017 I received a complaint alleging that Lord Lester of Herne Hill had sexually harassed the complainant, had offered her a corrupt inducement to become his mistress, and had warned her of unspecified consequences if she did not accept his offer.
8. I considered that, if the allegations were true, Lord Lester would have breached the requirement in the House of Lords Code of Conduct that he should act on his personal honour in the discharge of his parliamentary duties.
9. If complaints of breaches of the Code of Conduct are made more than four years after the alleged behaviour complained of, the permission of the sub-committee on Lords' Conduct has to be given before I can investigate the complaint. Permission was given in February 2018, and Lord Lester was then informed of the complaint.
10. He denied all the allegations, and also said that he had not behaved in a way that could have given rise to a misunderstanding about his conduct.
11. I interviewed 10 witnesses, six suggested by the complainant and four by Lord Lester.
12. The complainant told me that she had spoken to her witnesses at the time of the alleged behaviour, and all of them confirmed this, and provided different levels of detail.
13. The evidence of the complainant's witnesses was extremely important, as, although it could not directly confirm the complainant's allegations, it did confirm that she had told them about Lord Lester's alleged behaviour at the time. Her witnesses included a judge, a senior lawyer and a senior civil servant, as well as other colleagues.
14. Lord Lester's witnesses were all people who had met the complainant at the relevant time. They included Lady Lester, a judge, a barrister, and a member of a campaigning organisation. They all confirmed that they had never seen, heard of, or experienced any sexually inappropriate behaviour from Lord Lester; or noticed anything unusual between him and the complainant.
15. Lord Lester also challenged a variety of matters raised by the complainant and her witnesses, in addition to denying the specific allegations. These challenges, perfectly appropriately, were intended to show that the complainant had not been telling the truth in her allegations.
16. Some of these challenges were accepted by the complainant; with others she provided explanations that I accepted, and in a few cases I decided that, as the truth was impossible to establish, I would, as justice requires, not include them in deciding if a breach of the Code had occurred.
17. I found that all the witnesses had been honest in their accounts to me.

18. As I could not think of any plausible reason why the complainant would make detailed but untrue allegations about Lord Lester, and take no further action for many years, I considered that she was more likely than not to have been telling the truth when she spoke to her witnesses and complained to me.
19. This preliminary finding was not altered by the various challenges put forward by Lord Lester, and I therefore concluded that the allegations of sexual harassment, corrupt inducement and threat of retaliation were more likely than not to be true, and I uphold her complaint that Lord Lester breached the Code of Conduct.
20. During the investigation Lord Lester admitted to having breached the Code of Conduct by telling another Member of the House that the complainant had been responsible for him being suspended by his political party since February 2018.
21. Sanctions for breaches of the Code, other than in minor cases where rectification is possible, are not within my remit, but are recommended by the sub-committee on Lords' Conduct.
22. In considering the appropriate sanction, I invite the sub-committee to take into account that:
  - Lord Lester persisted in unwanted touching, even when the complainant clearly objected;
  - He persisted in making sexual comments and offers to her, even after she clearly objected;
  - He took advantage of her being alone in his house to harass her;
  - In offering her a corrupt inducement, he undermined the reputation and integrity of the House of Lords;
  - In warning her of unspecified consequences if she did not accept his offer, he abused his power;
  - In no longer inviting her to relevant meetings; he abused his power;
  - He breached the confidentiality requirement of the Guide to the Code, and has offered no explanation for doing so; and
  - He carried out this breach in a way that made it highly likely that others would hear of it, but denied any responsibility for the foreseeable consequences of his breach.

#### **b) The Complaint**

23. The context for the complaint was set out in the complainant's redacted statement as follows:

*“The complainant was born in the 1960s and has a partner and adult children. She is well-known to government as an expert in her field, and is an international speaker. She met the member of the House of Lords complained of in the context of work that was being done on [REDACTED—parliamentary business] that was within her area of expertise. The first time that she met him was at a meeting on the [REDACTED—parliamentary business], at*

*which she spoke about her expertise, following which Lord Lester invited her to join other meetings concerned with the [REDACTED—parliamentary business]. She attended several meetings and debates in the House of Lords and surrounding buildings.*

*The nature of her relationship with Lord Lester was purely professional. She communicated with him by email and occasionally by telephone; only saw him at meetings and other events related to the [REDACTED—parliamentary business]; and always in the presence of other people.”*

24. The following details of the complaint are taken from the complainant’s statement, edited and paraphrased where necessary to remove identifying information:

*“I attended a meeting followed by a meal in the House of Lords with a number of others including NGOs and Lord Lester. I was living out of London at the time and by the end of the meeting I had missed my intended train. I could have caught a later train but this would have meant arriving home sometime in the early hours of the following morning. Lord Lester suggested that I stay at his home in London. I initially said no as I did not wish to impose on his hospitality, but he insisted and said he would call his wife. Shortly after this he said he had telephoned his wife who is looking forward to meeting me, that his wife was at home and that she worked in an area that related to my work, and would love to meet me. I had no reason to be concerned about staying overnight, especially with his wife present and had by that time been working with him for a few months, and so I accepted his invitation.*

*Lord Lester’s car was parked in the House of Lords car park, so he drove me back to his house. In the car on the way to his house, he kept repeatedly missing the gearstick with his hand and instead very firmly placed his hand on my right thigh. The first time it happened I thought it must’ve been an accident, but when it continued I realised it was not. I removed his hand and asked him to stop. He just smiled. I felt incredibly uncomfortable knowing that I was on the way to staying at his house. He continued to grope my thigh for the length of the journey, despite my protests.*

*When we arrived at his house, we were greeted by his wife who had made tea for us. We chatted, and his wife told me she would bring me a cup of tea to my room in the morning. Lord Lester then said he would show me to my bedroom for the night. Once we had reached where I would be sleeping, he said it was not far from his bedroom, which he insisted on pointing out to me, saying he would not be far from me. This made me feel very uncomfortable, as his remarks and his earlier behaviour made me feel that he had other intentions notwithstanding my unequivocal rejection of his advances.*

*I went into my bedroom and immediately placed the chair under the door; I felt afraid, recalling what had happened in the car. I immediately called T, who had been a friend for many years. I was in the bedroom at this time and I told her what had happened and I felt trapped in his house. She advised me that I put the chair under the handle of the door, which I had placed as I feared Lord Lester might come into my room in the night and she suggested I leave first thing in the morning. I scarcely slept all night, sleeping fully clothed. I removed the chair in the early hours of the morning as I knew his wife will be coming to bring me a cup of tea. This she did, and I then got ready and came down to leave for home.*

*By this time, his wife had left, it was only Lord Lester in the house and I went into the kitchen. At some point, I went over to place the crockery in the sink. It was then that he came up behind me and put his arms around my waist. I pushed him away. Again, he placed his arms around me and further up my body. I had to force myself away. He pursued me around the kitchen and I pleaded with him to stop. Once he stopped, I told him that I wished to leave. I wanted to call a cab, but he insisted that he went with me. I allowed him to, as I just wanted to get out of the house. Before leaving, he insisted on showing me his shed in the garden containing items of interest to him so I followed, after he agreed not to touch me again.*

*Once we got to the train station, he told me that he had strong feelings for me. I responded by saying I did not feel the same way. I said that he should know better as he had a wife. He told me personal matters about his life which I would not have expected to have been told in the circumstances of a professional relationship. I made it very clear that I did not feel the same way and did not want to be involved with him in any way other than professionally. He persisted and told me that he loved me and said he could not help himself. I was relieved to get my train home, feeling uncomfortable and violated by this behaviour. I called T shortly afterwards and told her the whole story of what happened.*

*After the incident at Lord Lester's home, I avoided being in his company alone. I did have professional contact with him as I continue to have a role in contributing to the draft legislation.*

*Not long after the event set out above, I attended a meeting in the House of Lords. I went out for some fresh air whilst on a break from the meeting and Lord Lester suggested he joined me. I did not wish to comment in front of others, so I accepted. We walked outside the House of Lords until we came to a bench (as you leave the House of Lords we turned left), where we sat down. He then proceeded to tell me that he had strong feelings for me. He questioned whether I was concerned that he would not be able to have sex and told me that there were "things" he could buy for this. I was shocked and did not respond. He went on to make other inappropriate sexual comments. I stood up and went to walk back inside.*

*As we were approaching the House of Lords building, he pointed to it and said "do you see that building", to which I replied "yes", he told me that it was the most powerful of decision-making. He said, "if you sleep with me I will make you a Baroness within a year". He even spelt it out putting my surname in, and asked me how that sounded. I responded immediately without hesitation by saying that if I were ever to become a member of the House of Lords, it had to be purely on merit. We then enter the building where he proceeded to start pointing out individuals in the House of Lords and commenting on the reasons they have reached the positions they were in – including that one individual had slept with someone, another had relatives and good connections, and so on. I did not know who these people were. He made reference to the colour of the carpet and said that only members of the House of Lords are allowed to walk on the red carpet and the "commoners" were to walk on the blue carpet. The impression he conveyed was that he was a man of power who could make things happen and that I was powerless in comparison. I felt angry of the impression he gave of the House of Lords having a culture where this type of behaviour was acceptable and not unusual.*

*Once we had reached a private space and were not in full view of anyone he asked me again if I would sleep with him and suggested that I took some time to think about it. Again, I said no. He said that if I did not, he would see to it that I never had a seat in the House of Lords and warned me that there would be other repercussions for me, which he did not specify. He said that if I was a “good girl” and did what he was asking, I would be in the House of Lords and could visit his house abroad with him. He made a number of further inappropriate sexual comments to me such as that he could see me becoming a demanding mistress. I was distressed and shocked by his behaviour.*

*When I left the House of Lords I rang T and told her what had happened. The following morning I rang M, who is a district judge, and N who is a crown prosecutor. I told them what had happened.*

*Shortly after this, I received a text message from Lord Lester saying, “you want to think about my proposal”. It was very unusual for him to text me. As indicated above we normally communicated by email and phone communication. I understood this comment to refer to my sleeping with him. I could not think of anything else that could refer to. Given my unequivocal response to him I found his behaviour and persistence most disturbing. I have not kept that text in the intervening years.*

*Lord Lester had said there would be “further repercussions”. He had not explained what he meant by that threat. What in fact happened was that I was no longer invited to take part in any meetings relating to the [REDACTED—parliamentary business] despite the fact that my expertise in supporting the people who are intended to be the beneficiaries of that [REDACTED—parliamentary business] meant that I had much to contribute to this work. Whereas I had been attending meetings consistently, I was no longer engaged with the work over a number of weeks, until it became apparent that I was completely out of the loop. At first I thought it might just have gone quiet but I concluded I have been excluded. I went from attending regular meetings to none.*

*After a few weeks of non-involvement, A, a civil servant involved in the [REDACTED—parliamentary business] who now works at an embassy abroad, rang me and asked why I was no longer attending meetings given I was a significant contributor. At this point I felt as if my commitment to these issues have been questioned so I told him exactly what it happened and how I felt Lord Lester was now excluding me because I rejected his advances. He appeared shocked and thereafter ensured that I was kept involved which included inviting me to attend meetings.*

*Early the following year I was at an event when I was due to be interviewed by the media, as was Lord Lester. I was apprehensive to see Lord Lester and had no wish to be alone with him due to past events and fear of more unwanted sexual advances. However I considered that raising awareness of the issue I was to be interviewed on was of great importance. I asked T to join me. Lord Lester was in the reception area and walked over to us both and acknowledged T’s presence by saying, “oh, I see you’ve brought a chaperone with you”. T immediately responded by saying, “why? Does she need a chaperone?” And at that he walked away.*

*Before the events complained of, I had invited Lord Lester to attend an event that I was hosting, as the key guest speaker. The event had been well publicised,*

*as had his presence. In the week of the event he rang me to say he needed to talk to me urgently about the event. He said that because of my poor behaviour, and being a bad girl, he would not be attending the event. I was shocked and very dismayed at this last minute change of plan which I believed was as a result of my rejection of his advances. I rang his secretary to check if anything had changed with his attendance and she reassured me that he was still attending and it was clearly in the diary. I felt that this was another instance of Lord Lester's harassing behaviour and exercise of power and it left me feeling worried as people were expecting him. In the event he did attend the event. I have not had any meetings with him since then.*

*Several years later Lord Lester emailed me out of the blue to my work email address criticising me for campaigning for something that he did not agree with. The email stated how I should not be wasting my time doing this and should instead be supporting the proposal that he agreed with. The tone of the email made me feel as if I was being reprimanded and again he had the power to send me such an email. It felt worse because of how he had treated me in the past which was harassment tantamount to bullying."*

### **c) An outline of the relevant parts of the House of Lords Code of Conduct and the Guide to the Code of Conduct**

25. Paragraph 3 of the Code of Conduct explains the purpose of the Code.

"The purpose of this Code of Conduct is:

- a) to provide guidance for members of the House of Lords on the standards of conduct expected of them in the discharge of their parliamentary duties; save for paragraphs 16 and 17, the Code does not extend to members' performance of duties unrelated to parliamentary proceedings, or to their private lives;
- b) to provide the openness and accountability necessary to reinforce public confidence in the way in which members of the House of Lords perform their parliamentary duties."

### ***Personal Honour***

26. Under paragraph 8(b) of the Code of Conduct, members of the House "should act always on their personal honour". Personal honour is not defined in detail per se, but is elaborated upon in paragraph 7 of the Guide to the Code of Conduct, which quotes from a report of the Committee for Privileges:

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

27. Paragraph 9 of the Guide to the Code continues:

“... a written Code can never cover every eventuality. Paragraphs 8(a) [which requires members to comply with the Code] and 8(b) of the Code, taken together, mean that members are required not only to obey the letter of the rules, but to act in accordance with the spirit of those rules and the sense of the House.”

*Exceptionality and the public interest*

28. The Guide to the Code states in paragraphs 119-20:

“The complaint must usually be made within four years of the conduct complained of. In exceptional circumstances the Commissioner may investigate conduct which occurred more than four years before a complaint is made, provided that the Sub-Committee on Lords’ Conduct agrees and that it is satisfied that there is a strong public interest in the matter being investigated.

The complaint must also be supported by evidence sufficient to establish a prima facie case that the Code has been breached.”

*Notification of an investigation*

29. The Guide to the Code states at paragraph 122:

“Following her preliminary assessment, the Commissioner informs both the complainant and the member concerned whether or not she will investigate the complaint. If she has decided that the complaint does not merit investigation, she provides the complainant with a brief explanation of her reasons for dismissing the complaint. The Commissioner publishes a webpage setting out basic information about a case when she has decided to investigate a complaint.”

*Confidentiality*

30. Paragraph 130 of the Guide to the Code states:

“From the point that the Commissioner decides to undertake an investigation all evidence and correspondence relating directly to the inquiry is covered by parliamentary privilege. It must remain confidential unless and until it is published. If such evidence or correspondence were to be published or disclosed to anyone else without the agreement of the Committee for Privileges and Conduct or the Commissioner, this would be a contempt of the House.”

*The standard of proof*

31. Paragraph 128 of the Guide to the Code states:

“The civil standard of proof is adopted at all stages in the enforcement process, not only by the Commissioner, but by the Sub-Committee on Lords’ Conduct and the Committee for Privileges and Conduct. Thus, in order to find against a member, the Commissioner will require at least that the allegation is proved on the balance of probabilities.”

**d) Events prior to obtaining the consent of the sub-committee to carry out the investigation**

32. In November 2017, in the light of the allegations in the media about inappropriate behaviour and a culture of sexual misconduct at Westminster, and after being advised that no complaint about such conduct had ever been made to my predecessor, I considered whether such conduct was covered by the House of Lords Code of Conduct.
33. I looked at the parts of the Code dealing with personal honour, and considered that the current standards of the House would view some forms of sexual misconduct as a breach of personal honour, concluding that sexual misconduct, if it occurred in the context of the discharge of a member's parliamentary duties, could engage the Code.
34. Also in November 2017, a journalist, whom I later discovered was known to the complainant, wrote to the House of Lords Press Office raising the following queries:
- “If a member of the public wished to complain about the behaviour of a peer, who should they complain to?”
  - If a research assistant employed by a peer wished to complain about the behaviour of the peer they were employed by, who should they go to? What about if this employee wished to complain about the behaviour of a peer they were not employed by?
  - Is there a time limit for complaints?”

The journalist said that he had looked through the Code of Conduct and he could not necessarily see complaints of this nature being covered by it.

35. He received the following reply, which had been agreed by me, the clerk to the sub-committee on Lords' Conduct and the Clerk of the Parliaments.

“If a complaint were raised with the administration of a Member behaving inappropriately to anyone on the House of Lords estate we would advise the complainant on the options available to them given the circumstances of the complaint.

Members of the House of Lords are subject to a Code of Conduct which provides guidance on the standards of conduct expected of members in the discharge of their parliamentary duties. This includes a requirement to act on their personal honour. If a member of the public, or a research assistant, was subject to harassment by a member then they could make a complaint to the Commissioner who would make a preliminary assessment of whether the allegation was linked to the discharge of parliamentary duties and, if so, whether it could constitute a breach of the Code which requires members to act on their personal honour. If the preliminary assessment concluded that these two tests had been met the Commissioner would investigate the allegation and if she became aware that it was likely that a criminal offence had taken place she would alert the police.

The Code of Conduct states that a complaint must usually be made within four years of the conduct complained of. In exceptional circumstances the Commissioner may investigate conduct which occurred more than

four years before a complaint is made, provided that the Sub-Committee on Lords' Conduct agrees and that it is satisfied that there is a strong public interest in the matter being investigated.

It would be open to the House in the future to amend the Code of Conduct to require members to abide by an anti-harassment policy.”

36. As the journalist's enquiry mentioned that he was not sure if the Code covered the behaviour complained of, I put a note on my webpage shortly thereafter, clarifying the position. The note had been drafted with the help of officials, and had been seen by Lord McFall of Alcluith, Chairman of the Committee for Privileges and Conduct. The note said:

“Message from the Commissioner

The House of Lords Code of Conduct provides guidance on the standards of conduct expected of members in the discharge of their parliamentary duties. This includes a requirement to act on their personal honour in the discharge of their parliamentary duties. In relevant circumstances, I take personal honour to include personal conduct towards others.

It has been drawn to my attention that this may not be obvious from the wording of the Code and its guidance. Anyone wishing to establish whether the particular behaviour of an individual could amount to a breach of the Code, may contact me for further information.

Contact should be in the usual way, but may be through an intermediary if the person concerned wishes to remain anonymous during the preliminary discussion. Any preliminary discussion will be strictly confidential.”

37. On 17 November, my office was contacted by a solicitor, acting for a complainant who wished to remain anonymous. The solicitor spoke to an official, and then to me, and explained that his client needed to know whether her identity would be kept confidential if she made a complaint to my office and I investigated it. We discussed the possibilities and problems of preserving her confidentiality, and I had a meeting with her, her partner and the solicitor, at which I set out my assessment of the circumstances in which her identity might be revealed, even if I did all I legitimately could to protect her anonymity. We did not discuss the details of her complaint at the meeting. During this meeting I pointed out the possibility of the complainant contacting Lord Lester without involving my office, but for what seemed to me to be valid reasons she confirmed that she wanted to have the matter dealt with formally.
38. After the meeting, I wrote to the complainant, confirming that I would do my best to keep her name and any identifying details private, except that, of course, the Member complained against would have to see all the evidence. I explained that the investigation process was confidential, but that I could give no guarantee that her name would not leak out in due course. On that basis, she decided to proceed with her complaint.
39. Shortly after this meeting, the solicitor forwarded the complainant's statement to me. I subsequently contacted four people, to whom the complainant told me she had spoken at the time of the allegations. They provided written statements which set out their accounts of what the complainant had told

them at the time of the alleged behaviour complained of (T, A, N, M - see appendices B-E). [References are to documents that have not been published.]

40. After careful consideration, I satisfied myself that the alleged behaviour engaged the Code, as the allegations included physical and verbal sexual harassment on more than one occasion; abuse of power by making threats of retaliation; and a corrupt inducement to accept Lord Lester's invitation to have a sexual relationship with him. Moreover, I was satisfied that the alleged behaviour had clearly taken place in the context of Lord Lester's parliamentary duties, in that the only basis for contact between Lord Lester and the complainant was the [REDACTED—parliamentary business] - thus engaging the Code. The alleged behaviour, however, had occurred over a decade ago.
41. In my view, there were exceptional circumstances that justified an investigation being conducted in accordance with paragraphs 119 and 120 of the Guide to the Code, referred to at paragraph 28 above. These were:
  - the current concern of Parliament to deal with sexual misconduct by its members;
  - the publicity given to endemic sexual misconduct and abuse of power in many fields of work, which encouraged the complainant to come forward now; and
  - the likelihood that Lord Lester would recall some or all of the events, if they had taken place, even though they took place a long time ago, because of the nature of the alleged misconduct.
42. I also considered that there was a strong public interest in investigating this complaint, because:
  - The House needs to make plain to the public, including those working with Members of the House, that complaints of sexual harassment will be taken seriously;
  - The sub-committee needs to make plain to Members that behaviour of the kind alleged will be investigated if a complaint is made, as it is a breach of the Code; and
  - Those who behave in the way alleged sometimes do so repeatedly. If I were to investigate, find there had been a breach of the Code, and the Member was named, others might come forward with further complaints for investigation.
43. Furthermore, the statement of the complainant amounted to a *prima facie* case, and was supported by statements from witnesses who confirmed that the complainant had spoken to them about the allegations at the time. These witnesses include a senior lawyer, a senior civil servant and a district judge.
44. The Code requires that complaints are not accepted if made anonymously. This was not an anonymous complaint as I knew who the complainant was from the time I received the complaint.
45. In the light of the above, I sought the sub-committee's agreement to investigate the complaint as the alleged incidents occurred more than four years ago. At

a meeting held on 6 February 2018, the sub-committee agreed that I should investigate the complaint. They were provided with redacted copies of the complainant's statement and those of her initial witnesses, but they did not know the identity of either the complainant or the member when they took their decision. All information and communications were shared with the sub-committee only after redacting names and identifying information. After the sub-committee had reached their decision, Lord Lester's identity was then revealed to them, though not that of the complainant.

#### e) The investigation

46. On 8 February 2018, I met Lord Lester in order to provide him with details of the complaint, and inform him of the decision of the sub-committee and the complaints investigation process. I also asked him to provide a written response to the complaint. He was supplied with the complainant's statement, unredacted, and those of T, A, N and M.
47. On 9 February, as paragraph 122 of the Guide to the Code dictates, I published a note on my website setting out the most basic information about the case: Lord Lester of Herne Hill – alleged breach of the Code in relation to personal honour.
48. Unfortunately, shortly after the fact of the investigation was posted on my webpage, information about the investigation was leaked to the press, and reports appeared in *The Times* and a little later, *The Sun*. The complainant was not named but Lord Lester was. He was subjected to the most distressing headlines before the investigation had barely begun. This was extremely regrettable. I have no evidence as to the source of the press reports.

#### *Lord Lester's response to the complaint*

49. On 28 February, Lord Lester wrote to me, setting out why he did not consider the process to be fair, and saying:

*“Both parties are entitled to a fair process. [The complainant] wishes to have her concerns addressed and I wish to have a fair opportunity to clear my name. While I reserve the right to enter a detailed formal legal challenge to the process, I am aware that this will do nothing to address [the complainant's] concerns. I would therefore, first, ask for consideration to be given to whether an alternative process can be agreed which might achieve these objectives.*

*I wonder whether you would be willing to consult [the complainant] about her willingness to enter into a dialogue to explore this question? I am flexible as the format of such a dialogue. It could take place through her legal representative or with the assistance of an experienced mediator.*

*To be clear: this is not an attempt to avoid dealing with the allegations. Rather it is a constructive proposal to discuss an alternative process. [The complainant] is, of course, entirely free to decide how she wishes to proceed.*

*I understand that you have to balance carefully the interest of both parties and the House. As such, I would hope that you are open to facilitating such a discussion.”*

50. I replied on 8 March and, in relation to this particular proposal, wrote:

*“A complaint was received and I am bound to investigate it under the system as it stands if the Code is, in my view, engaged. It would be highly inappropriate to seek to alter the current procedure during the investigation. The current procedure has been approved by the sub-committee, the Privileges and Conduct Committee, and the whole House. Any change would require the agreement of these committees and the House.”*

51. On 13 March I received a letter from Lord Lester’s solicitor, asking for details of the complainant’s legal representatives, so that they could make contact. I did not reply to this letter, but on 15 March I wrote to Lord Lester as follows:

*“It is now exactly five weeks since I passed you the complaint that has been made about you, and I am yet to receive a substantive response to the allegations. I would remind you that the House of Lords Code of Conduct states at paragraph 22: “Members shall co-operate, at all stages, with any investigation into their conduct by or under the authority of the House.” At paragraph 126, the Guide to the Code of Conduct states: “Members are expected to co-operate with any investigation into their conduct. They should supply written evidence as requested, and in their own name. Letters sent on their behalf by legal advisers or others will be disregarded.”*

*I expect to receive a substantive written response by close on Friday 23 March. If I have not, consideration will be given to proceeding directly to the interview stage.*

*Incidentally, I have received a letter from your legal representatives. In accordance with paragraph 126, I am not proposing to reply, and in any event I am not at liberty to disclose details of the complainant’s legal representatives, and would stress that I am investigating this complaint on behalf of the House of Lords, not the complainant.”*

52. On the same day, Lord Lester wrote to Lord Brown of Eaton-under-Heywood, the chair of the sub-committee on Lords’ Conduct (copying me in) setting out his concerns about the fairness of the procedure, asserting that complaints of sexual harassment were not covered by the Code, and asking the sub-committee to rule that the complaint of sexual harassment was not covered by the Code.

53. Lord Brown, on behalf of all the members of the sub-committee, wrote to Lord Lester on 21 March to confirm that they all agreed that I was bound to investigate the complaint in accordance with the procedure as laid down in the Code and the Guide to the Code. He wrote: *“there is no reason to doubt that the Commissioner will act fully in accordance with the principles of natural justice and fairness”*, and concluded that:

*“in granting leave under para 119 of the Guide, we did not regard this as, simply, ‘a sexual harassment complaint’. A fair reading of the complainant’s statement [redacted] – not least paras 12 and 13 – surely makes it plain that the allegation (whether true or false is yet to be determined) is of still more serious misconduct. It alleges what can only be regarded as a grave abuse of power in the performance of a member’s parliamentary duties.”*

54. In a written statement dated 26 March (see Appendix M) [reference is to a document that has not been published], Lord Lester provided a response to the complaint in which he strongly denied all the allegations. He questioned some of the dates and the chronology set out in the complaint (dealt with

in section f) and noted that the complainant was important in terms of the promotion of the [REDACTED—parliamentary business], but not in its [REDACTED—activity relating to the parliamentary business] and preparation.

55. Lord Lester recalled the complainant staying overnight with him and his wife after she missed her train. He denied, however, groping her thigh or making any other sexual advances. As far as he and his wife were concerned, her stay was uneventful, and her allegations of sexual harassment were untrue. Lord Lester said that the supposed trauma being endured by the complainant was not at all evident to him or his wife.
56. Lord Lester stated that he had no recollection of the conversation with the complainant in which he allegedly expressed his feelings for her, or any conversation in which he spoke of matters of a sexual nature or made any sexually inappropriate comments. Furthermore, he categorically denied making the complainant an offer of a peerage or threatening the complainant by saying that she would not receive a peerage if she refused to sleep with him, emphasising that:
 

*“I have no power to make such offers or threats in respect of peerages and the allegation that I did so is ridiculous and untrue.”*
57. He provided evidence which he said showed that the complainant was not telling the truth, which is dealt with in section e.
58. Lord Lester stated that, until I passed him the complaint, he had at no time after the complainant stayed overnight at his home, more than a decade ago, received any suggestion, still less any complaint, from the complainant or anyone else, that he had behaved inappropriately, sexually or otherwise.
59. In conclusion, Lord Lester outlined the very considerable work he has undertaken during his career to promote equality for women, stating that while his body of work in this area: *“does not prove my innocence ... it demonstrates the inherent unlikeliness of the complainant’s allegations being true.”*
60. He provided the names of 12 people who could confirm aspects of his statement.
61. I sent a copy of Lord Lester’s statement to the complainant, who sent a further statement in response dated 17 May (see Appendix R) [reference is to a document that has not been published]. In turn, I sent this to Lord Lester, who sent a further statement in response, dated 25 May (see Appendix U) [reference is to a document that has not been published].
62. I interviewed Lord Lester in my office on 10 April (see Appendix O) [reference is to a document that has not been published]. The purpose of the interview was to discuss aspects of his statement and to give him the opportunity to tell me anything else that he thought was relevant. During the interview, we agreed which of his proposed witnesses I would contact for interview.
63. I subsequently interviewed the complainant on 17 May (see Appendix S) [reference is to a document that has not been published] to discuss points made by Lord Lester, and to see if she had any further evidence. She agreed to put me in touch with H (see Appendix X) [reference is to a document that has not been published], who she told me had been the person who

received Lord Lester’s phone call about the event at which he was due to speak. Subsequently, she also suggested I speak to J, a counsellor and friend, to whom she had spoken to over the years about what had allegedly happened and how it had affected her (see Appendix Y) [reference is to a document that has not been published].

### *Witnesses and further evidence*

64. The complainant’s initial four witnesses were those to whom she told me she had spoken during or shortly after the alleged events complained of. I emailed each of them, explained who I was, that I was investigating a complaint by the complainant, and asking that they respond by describing:

*“the circumstances in which you knew the complainant at the time of her disclosure to you, the circumstances by which you have kept in touch and your current circumstances; your recollection of what the complainant told you after the alleged events; your recollection of any discussions with her about reporting the allegations; details of your recent contact with her; and brief details of your work/career.”*

65. T, a friend and colleague, sent me a detailed account (Appendix B) [reference is to a document that has not been published]. She recalls the complainant telephoning her from Lord Lester’s home, to tell her that he had groped her. T’s statement suggests that this happened after the alleged incident at the House of Lords. She also confirmed that she had accompanied the complainant to the media event referred to in the complaint. Some of the details she gives differ from the account given by the complainant. She also said that she remains a close friend and has frequent personal and professional contact with the complainant.
66. A, in a senior position in a British Embassy when I contacted him, had at the time of the alleged incidents been involved with the [REDACTED—parliamentary business] (Appendix C) [reference is to a document that has not been published]. He recalled the complainant telling him about the alleged events but could not remember the specifics of those conversations. I subsequently spoke to A on the phone, but he was unable to provide any more information. Apart from a brief contact on an unrelated matter in 2009 he had not had any contact with the complainant until 2017, when they spoke on the phone and she told him that she was planning to make a formal complaint.
67. N, a senior lawyer, was a director in the Crown Prosecution Service at the time the complainant spoke to him about her allegations (Appendix D) [reference is to a document that has not been published]. He already knew her through their shared professional interests. He recalled her telling him that Lord Lester had been ‘coming onto her’ including at his home with his wife present. He recalled advising her to consider reporting him, but she could not be persuaded to do so because it would put everything at risk, by which he understood the [REDACTED—parliamentary business], and also it would be her word against his.
68. He also explained that he had contacted her in late 2017, when allegations of harassment on the Parliamentary estate were being made, and had asked her if she was considering reporting her concerns. When she said that she was, he recommended speaking to the journalist referred to at paragraph 34 above, whom she said she also had in mind.

69. M, a District Judge, said that she had met Lord Lester once during the relevant period, and he had behaved appropriately towards her (Appendix E) [reference is to a document that has not been published]. She has known the complainant for 16 years, as they have shared professional interests. She recalled that the complainant rang her “*totally distraught*” in a way M had never known her, and described the alleged events at Lord Lester’s house, giving more details, which vary from the details given by the complainant in her statement, as discussed in section f. M advised the complainant to contact the then Home Secretary, Theresa May MP, who M knew was very committed to issues affecting the abuse of women, and also advised her to contact N, whom they both knew.
70. M did not discuss the matter again with the complainant until “*recently*”, when the complainant told her that she felt compelled to report it to the appropriate authorities. This was triggered by her conversations with an intern in the House of Lords who had reported a similar experience (against a different Member), which made the complainant feel that she must act.
71. Lord Lester’s witnesses were: Lady Lester; B, now a barrister; S, a judge, and HS and P, members of a campaigning organisation, all of whom knew the complainant at the relevant time, and the last four of whom had worked with Lord Lester on the [REDACTED—parliamentary business].
72. HS was unavailable. I interviewed Lady Lester, B, S, and P in my office or by phone.
73. Lady Lester (Appendix P) [reference is to a document that has not been published] confirmed that she recalled the complainant’s stay at her house, and her recollection of what took place in her presence accords, in all important respects, with the accounts of the complainant and Lord Lester. She did not recall the complainant being distressed in any way: “I remember her being friendly and that is about the size of it”. She was quite sure that her husband had not behaved in the way alleged; had no idea what was motivating the complainant to make these allegations; and wondered if she could have misinterpreted his friendliness.
74. B, who had worked with Lord Lester for a considerable period, and was a young woman when she had started doing so, confirmed that his behaviour towards her and other women had always been respectful and appropriate (Appendix Q) [reference is to a document that has not been published]. She had known the complainant at the time of the alleged behaviour, as she had been working on the [REDACTED—parliamentary business] with Lord Lester, but had noticed nothing unusual about the interaction between Lord Lester and the complainant, nor had any comment been made to her by others to suggest anything unusual between them.
75. S (Appendix AA) [reference is to a document that has not been published] told me that she had attended the event and dinner after which Lord Lester had offered to put the complainant up for the night “*because the complainant had missed the last train home*”. She was able to identify the date of this event, which was several weeks after the complainant had thought it had taken place. I asked the complainant if she accepted this date, and she said that she did.

76. S's records show that she attended a meeting near London 6 weeks later at which Lord Lester and the complainant were also present. She clearly remembers that Lord Lester and the complainant were speakers and were on the main table and she was at a different table. She recalls the complainant appearing to be warm towards Lord Lester, smiling, and comfortable in his company, but a bit frosty towards her, which she put down to professional differences between their approaches to the [REDACTED—parliamentary business] and the complainant perhaps feeling edged out in the creation of the [REDACTED—parliamentary business] after the meeting 6 weeks before.
77. She also recalled, although she did not have the records to identify the date, that two or three months after the event outside London she and the complainant spoke at another event where the senior judge who introduced them commented that Lord Lester had been asked to speak but that he had suggested the complainant and S speak instead.
78. She forwarded to me an email exchange from the relevant time which included an email that the complainant had sent to Lord Lester, signed off with affectionate words (Appendix V) [reference is to a document that has not been published].
79. She ended by telling me that she has been in Lord Lester's presence on many occasions on her own and is aware that other women have been too. She has never seen or heard anything that would suggest he has behaved inappropriately, at all, with anyone.
80. After I received the email sent by S referred to in para 78 above, I asked the complainant to provide evidence of her usual way of signing emails to people with whom she only had a professional relationship, and she sent me some examples, in which she provided affectionate and informal sign offs to professional contacts (see Appendix AL) [reference is to a document that has not been published].
81. The complainant had also asked the university where she had been working at the time to look for any relevant emails, and it discovered emails from Lord Lester to the complainant, from some years after the alleged events, one of which also had an affectionate and informal sign off (see Appendix AF) [reference is to a document that has not been published].
82. I asked Lord Lester to comment on the significance of his sign off, and he replied:

*“The emails to which you refer are further examples of a normal and friendly course of dealing between me and the complainant that is incompatible with her allegations of abuse of power and sexual harassment.”*
83. P (Appendix T) [reference is to a document that has not been published] worked for a campaigning organisation which had been involved in the work on the [REDACTED—parliamentary business], and had been aware of the complainant for a number of years before that time, as they had shared professional interests. She met the complainant during their work on the [REDACTED—parliamentary business], and recalls that the complainant was not at any of the meetings that their organisation had with Lord Lester but was at a larger meeting at the House of Lords that was organised for a number of women's organisations. She said that Lord Lester had first

contacted her organisation after one of their members published a piece in *The Guardian* about the [REDACTED—parliamentary business] and at that time the complainant was not in the picture.

84. Her organisation had a number of meetings with Lord Lester: “*and were not aware for some time that Lord Lester had contacted the complainant and was working with her closely*”. She also recalled a meeting in her borough which Lord Lester had organised and at which the complainant spoke, but to which her organization was not invited, despite their highly relevant expertise. Her perception was that Lord Lester saw the complainant as having the more significant voice, because of her personal experience. This event is discussed in a later section.
85. I spoke to the complainant’s two further witnesses on the phone. H, who had been the complainant’s personal assistant at the relevant time, recalled very clearly receiving a call from Lord Lester, saying that he might not be able to attend the event at which he was an advertised speaker, and asking that the complainant ring him (Appendix X) [reference is to a document that has not been published]. She recalled getting into a panic about this, and discussing it with someone else in the office, as all the leaflets for the event had been printed and she did not know what they would do if he did not attend. H passed on the message to the complainant, and recalls being told that the complainant contacted Lord Lester’s secretary, who said that he was still due to attend.
86. She also told me that the complainant called her on the night she was at Lord Lester’s home, and said that she was feeling very awkward because of what had happened on the way there and was unable to sleep.
87. J, who is a friend of the complainant, and also a counsellor, told me that she has had conversations with the complainant about the alleged events, but that these were not professional conversations and she has not kept notes (Appendix Y) [reference is to a document that has not been published].
88. She recalls the complainant speaking to her after the incident and telling her she could not believe what had happened: “*what does he think I am?*” The complainant mentioned Lord Lester’s name at the time, which she remembered as her sister lives in Leicester. The complainant was upset at what had happened, but also annoyed with herself, because she had not stuck up for herself. She said that she thought she would not be believed as she was just a small woman and Lord Lester was a powerful and important person, and that any kind of publicity would be damaging to her and her cause, because her reputation would suffer in the context of not being believed. As time has gone by she has felt like a failure for not speaking up, and this has been eating away at her. She is also aware that there may be other victims who might come forward if she speaks up.
89. As a result of my conversations with S, T and the complainant, I was able to establish with some certainty that the individual incidents referred to in the complaint had taken place over about 9 days, in the following order:
  - (1) overnight stay
  - (2) conversation at the House of Lords
  - (3) [REDACTED—media event]

(4) event at which Lord Lester was an advertised speaker.

90. I am accustomed to working with experienced colleagues when conducting investigations, but did not have the option of doing so in this case. Therefore, to ensure that I had left no stone unturned in seeking evidence to assist me in making a decision, I sent all the evidence to Camilla Parker QC (Hon), one of the directors of YESS<sup>2</sup>, and a solicitor and judge with great experience in dealing with allegations of sexual harassment and discrimination in the workplace, with a request that she should advise me whether there were any further steps that I should take. I made it very clear that I was not seeking her opinion on the complaint. She found no major unmissed steps, and made some minor suggestions, which were taken into account by me in finalizing the investigation

### *Further alleged breach*

91. At a late stage in the investigation I was informed that Lord Lester had told another Member of the House, who knows the complainant, that it was she who had made the complaint against him. The Member confirmed that this had happened (Appendix AB) [reference is to a document that has not been published].
92. This was a breach of the confidentiality requirement in the Guide to the Code (paragraph 130), and I therefore asked Lord Lester to respond to the evidence of a breach of confidentiality. He replied:

*“As regards the allegation that I named the complainant to [another Member] this is correct. I spoke briefly and privately to [the Member] I apologise. I am not responsible for what occurred thereafter.”*

### **f) Lord Lester’s challenges to the complainant’s evidence and her responses to his challenges**

#### *i. Evidence*

93. The complainant alleges that Lord Lester sexually harassed her, offered her a corrupt inducement to accept his sexual approaches, and threatened her with unspecified consequences if she did not.

#### *Challenge*

94. Lord Lester denies all these allegations, and says that his contacts with the complainant were purely professional and appropriate. At interview (Appendix O) [reference is to a document that has not been published], I asked him if he could think of any reason why the complainant should have made false allegations against him. He replied: *“I wish I could. I speculate and I speculate. It is mere speculation. I wish I could.”*

#### *Response*

95. The complainant confirms her account of events.

#### *ii. Evidence*

96. Six people provided statements or spoke to me on the telephone to confirm that the complainant had spoken to them about her allegations at the time.

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<sup>2</sup> Your Employment Settlement Service: <http://www.yesslaw.org.uk/>

*Challenge*

97. Lord Lester has seen the statements of these witnesses. In his statement, he pointed out inconsistencies and contradictions in the first 4 statements, which were the only ones he had seen at that time.
98. At interview, I asked him whether he accepted that T, M, N and A had truthfully recalled that the complainant had made allegations against him at the time of the alleged behaviour. Lord Lester gave a long reply, which identified differences between the recollections of some of those to whom the complainant said she had spoken at the time of the alleged behaviour and her own statement.
99. I asked him the same question in a slightly different way: *“Do you think this is a conspiracy by the complainant and those who say that she spoke to them about these matters at the time, or do you accept that, whether she was speaking the truth or not, she did speak to them at the time?”*
100. Lord Lester said that he found it extremely hard to give a fair answer to the question, and then spoke about another remark made by one of the witnesses which he said was completely untrue, and concluded by saying, *“so, of course it is horrible for me to have to say to you that I feel this is a pack of lies told by her and her supporters, but I’m afraid that is what I now believe.”*

*Response*

101. I did not ask the complainant or the witnesses to respond to the allegation, as they had already asserted the truthfulness of their evidence and Lord Lester’s response did not contain any factual material to which a response should be sought.

*iii. Evidence*

102. In her initial statement, the complainant said that she felt *“uncomfortable and violated”* by Lord Lester’s alleged behaviour when he was driving her to his house, at his house that evening and the following morning, and after leaving his house.
103. In the same statement, she states that after the alleged incident outside the House of Lords, she was shocked by his comments at the beginning of the interaction; angry about the impression he gave of the House of Lords having a culture where corruption in appointment was acceptable and not unusual; and distressed and shocked when he allegedly suggested that there would be repercussions if she would not sleep with him, and made further inappropriate sexual comments.
104. After he allegedly texted the complainant, making a further approach, she said that she found his behaviour and persistence *“most disturbing”*.
105. She explained that as a survivor it has taken her many years to empower herself and she continues to experience turmoil because she did not have the courage to speak out, when she has spent many years breaking the silences of many women silenced by different forms of gender-based violence. She has increasingly felt that she has not been true to herself by not speaking out about the allegations.

*Challenge*

106. Lord Lester gave examples of the complainant's behaviour in the days, weeks, months and years after the alleged behaviour which contradict her claims of the alleged effect of his alleged behaviour on her.
107. In relation to the night she spent at his house, he said, in his first statement: *"the alleged trauma being suffered by the complainant at my hands was not evident to me or indeed my wife in any of her words or actions; then or ever."*
108. Lady Lester's evidence to me when we met confirmed that she did not recall the complainant being distressed in any way: *"I remember her being friendly and that is about the size of it"*.

*Response*

109. In her second statement (Appendix R) [reference is to a document that has not been published], the complainant said:

*"So far as my interaction with her [Lady Lester] was concerned, it was a perfectly normal incident with social conversation late at night and a cup of tea. The conduct of which I complained in paragraph 23 of my statement [in the morning] took place after she had left. I did not feel that it was appropriate to complain to her about the matters to which I refer in paragraph 20 [hand on thigh]".* [References are documents that have not been published]

110. Lord Lester's response to this response, in his second statement (Appendix U), was:

*"The complainant does not dispute paragraph 10 of my statement where I explained that the alleged trauma being suffered by her was not evident to me or my wife in any of her words or actions on the morning after she stayed overnight. She does not explain how her apparently normal appearance and behaviour were compatible with her allegations of seriously distressing sexual misconduct the night before."* [reference is to a document that has not been published]

*iv. Challenge*

111. Lord Lester recalls that he went to the event hosted by the complainant, at which the complainant gave him a copy of her book with a handwritten inscription:

*[date]*

*"Antony [sic]*

*Thank you so much for your love and support. It has been my pleasure to meet you.*

*Love and admiration."*

112. This dedication, Lord Lester contends, is "impossible to reconcile with the allegation that I had been guilty of harassing behaviour and an abuse of power."

*Response*

113. I put this contention to the complainant, who responded:

*“As regards the dedication, LL came to the front of the queue and asked me to sign a book for him. As was my practice, I asked him what message he would like me to put in. I was by this time disconcerted and intimidated by his behaviour. His attendance at the launch event organised by the University had been long advertised and I did not know whether he would in fact turn up. He told me to spell his name correctly (which it seems that I failed to do) and to sign it With Love and any other message. It was a difficult moment and I wrote it under this pressure and did what seemed best at the time. I went along with his request. I was surprised by the fact that LL had made such a request. It is the case that I did admire the work that he had done.*

*I am asked to sign books for a number of reasons and I am usually happy to accommodate those reasons. I tend to write such dedications in quite flowery language. LL was at the front of the queue of around 100 people and [an important milestone in the [REDACTED—parliamentary business]] was due to take place a few days later. I thought it was better to do what he requested.”*

114. Lord Lester was shown this explanation, describing it as “untrue and graceless.” He subsequently commented:

*“The reason I described her explanation as “graceless” is because I had taken the trouble to take time off from work to go [out of London] to support her... and would have expected her to have thanked me as she did.”*

*v. Challenge*

115. Lord Lester states that he subsequently received a complimentary pre-publication copy of the complainant’s second book with a note from the publisher’s press office explaining that the complainant: “greatly appreciates your support and it’s particularly important to her that you have an opportunity to read it now.” The book contained a handwritten note:

*“Anthony*

*I share this book with you & hope it continues to inspire you. I thank you for all your support with our cause and send you love and respect.*

*Best*

*[Signature]”*

116. Lord Lester suggested that this dedication is “impossible to reconcile with what the complainant alleges against me.”

*Response*

117. In response, the complainant stated:

*“I believe that the publishers sent books to a number of people on their list from the time of the publication of [my first book] and that they would, as LL says, have sent a copy of the book to him without any request from him. I would have worked with the publishers in the circulation of pre-publication copies. I did and continue to respect the work that he had done [REDACTED—relating to the parliamentary business]. For the reasons I state elsewhere in*

*my statement, I had decided at that stage not to make any formal complaint about his behaviour and to get on with my life. I tend to make fairly expansive dedications so I will write things like ‘Deep appreciation and admiration’ or ‘Big love and respect’, sometimes on the basis of what strangers have told me when they ask for the book to be signed.”*

118. I asked the complainant to provide evidence of her usual way of signing emails to people with whom she only had a professional relationship, and she sent me some examples, in which she provided affectionate and informal sign-offs to professional contacts (see Appendix AL) [reference is to a document that has not been published]. She had also asked the university where she had been working at the time to look for any relevant emails, and it produced emails from Lord Lester to the complainant some years after the events, one of which also had an affectionate and informal sign-off (see Appendix AF) [reference is to a document that has not been published].

119. I asked Lord Lester to comment on the significance of his sign-off, and he replied:

*“The emails to which you refer are further examples of a normal and friendly course of dealing between me and the complainant that is incompatible with her allegations of abuse of power and sexual harassment.”*

#### *vi. Evidence*

120. The complainant provides a number of reasons for why she did not make her complaint sooner:

- She did not wish for anything to distract from the [REDACTED—parliamentary business];
- She did not think that she would be believed. Her word against that of Lord Lester’s was not an equal contest, and if her complaint was rejected it could damage her work and discourage others from coming forward; and
- She was unsure as to whether the House of Lords Code of Conduct covered the alleged conduct, and, moreover, there did not appear to be procedures in place, or a willingness, to deal with allegations of harassment.

#### *Challenge*

121. In his statement, Lord Lester said that he regards the complainant’s reasons for not making a complaint sooner as unconvincing, stating that she is a confident and determined campaigner with the benefit of friendship with, and advice from, a senior prosecutor and circuit judge - yet no complaint was made. Furthermore, he pointed out that while the complainant could have pursued her case in a number of ways - civil or criminal proceedings, for instance - she *“has had recourse to a Parliamentary procedure that was not designed to deal with allegations of sexual harassment or abuse of power of this kind.”*

#### *Response*

122. In her second statement the complainant commented: *“As regards the criticisms of my behaviour on this point, these comments do appear to be surprisingly self-*

*...serving given his area of expertise and to fail to understand the thought processes of victims.”*

*vii. Evidence*

123. The complainant says that Lord Lester stopped informing her of, or inviting her to, meetings regarding the [REDACTED—parliamentary business] after she rebuffed him.

*Challenge*

124. Lord Lester claimed that he did not exclude the complainant from meetings; rather, she continued to attend meetings to rally support for the [REDACTED—parliamentary business], highlighting, by way of example, a meeting mentioned by a member who referred to the complainant’s presence, reference to which was recorded in *Hansard*.

*Response*

125. In her second statement, the complainant said that this meeting took place after A had intervened to ensure she was invited to meetings again. Subsequent clarification of dates makes it clear that this event preceded the events complained of, and the complainant accepts this. The complainant accepts that her recollection of what happened when is unclear, as she did not keep notes or a diary at the time, and has had to rely on her memory of events over a decade ago.

*viii. Evidence*

126. The complainant says she first met Lord Lester in March of the relevant year.

*Challenge*

127. Lord Lester points out that the decision to work on the [REDACTED—parliamentary business] was not made until after he returned from a summer holiday that year, and he dates his first meeting with the complainant to October or September of the year.

*Response*

128. In her interview with me, the complainant accepted that she must have got her dates wrong, and explained that she had written her statement from memory, and did not have any appointments diary or other record of events for the period in question.

*ix. Evidence*

129. The complainant says that Lord Lester told her he would not be attending the event where he was an advertised speaker.

*Challenge*

130. Lord Lester said, in his first statement, ‘*I did not threaten to cancel my participation.*’

*Response*

131. H recalls taking this call from Lord Lester.

132. Lord Lester was provided with H's statement, and responded:

*"I have read the recent statement by H and accept that it is possible that I may have attempted to cancel my visit. I cannot now recall doing so but accept that it may have happened. A visit [out of London] away from work was burdensome. Although I cannot recall my attempt to cancel the visit I can say with complete confidence that this was not because the complainant had refused to have sex with me, nor is there any evidence to support any such suggestion. I am hindered in trying to answer the claim on this and other issues because it relates to events [REDACTED—over a decade] ago."*

*x. Evidence*

133. In his statement, N said that he became aware that Lord Lester had asked the complainant to help him [REDACTED—activity relating to the parliamentary business]. The complainant asked for N's assistance *"but didn't really need it"*.

*Challenge*

134. In his interview with me, Lord Lester said:

*"The whole of that is untrue. Either he is making it up or she is making it up, but of course I didn't ask her to help me [REDACTED—activity relating to the parliamentary business]. I had a very good team doing that and she wasn't a lawyer and she didn't even agree with the idea of [REDACTED—activity relating to parliamentary business]. The idea that she asked him for his assistance also cannot be true"*.

*Comment*

135. I have not asked the complainant to respond to this, as I would not expect her to have a precise recollection of what had been said during what must have been an uncontroversial conversation between herself and N over 10 years ago.

*xi. Evidence*

136. The complainant and T both say that at the [REDACTED—media event] referred to in the complainant's original statement, Lord Lester approached the complainant, who was accompanied by T, and said: *"Oh, I see you have brought a chaperone with you"*.

*Challenge*

137. Lord Lester said he did not remember appearing with the complainant at this event, or of making the remarks attributed to him.

*Response*

138. In her second statement the complainant wrote: *"We both appeared [REDACTED—at the media event] and I attach a link which shows details of the [REDACTED—information about the media event] and its date"*.

*Comment*

139. I have followed the link and confirmed that the complainant and Lord Lester were both on the [REDACTED—media event].

*xii. Evidence*

140. The complainant said in her second statement that Lord Lester ceased to involve her in the work on the [REDACTED—parliamentary business] and told her that her role would now be filled by S.

*Challenge*

141. In his second statement, Lord Lester said:

*“The complainant’s role in relation to [REDACTED—parliamentary business] was promotional and not that of a legal expert on family law, unlike the role of S who did not replace her (contrary to her second statement) and who was an experienced legal expert”.*

*Response*

142. I did not seek a response from the complainant, as Lord Lester’s reply did not relate to what he may or may not have said to her. Also, see the comments below.

**g) Other matters requiring explanation**

143. As referred to in paragraph 78 above, S sent an email exchange which included an email from the complainant to Lord Lester, at the relevant time, [REDACTED—about someone she was supporting through her work, and asked for his support, signing off ‘Lots of lovexx’].

144. I asked the complainant to comment on this email, and in particular its friendly sign-off. She responded:

*“I believed that it was appropriate and the right thing to do in bringing it to the attention of LL and seeking his assistance as he was advocating protection for such victims and survivors. I was not going to allow my experience at that time to deter me from advocating for this cause and he responded to this appeal. It is also the case that I had made up my mind that I was not going to complain at that time for all the reasons I have shared with you. Therefore, with this in mind, getting on with things as an advocate was my way of coping. The signing of this email is consistent with how I would sign and I was trying to keep things as normal as possible. I did not want to put the advocacy of victims at risk.”*

145. P told me that Lord Lester had organised a public meeting in the borough, at which the complainant was invited to speak, but her organisation was not told of the meeting, were not invited to it, and did not find out about it from Lord Lester.

146. S commented that she attended the meeting, at which Lord Lester and the complainant were seated together at a table separate from where she was seated. She recalls the complainant appearing to be warm towards Lord Lester, smiling, and comfortable in his company, but a bit frosty towards her, which she put down to professional differences between their approaches to the [REDACTED—parliamentary business] and the complainant perhaps feeling edged out in [REDACTED—activity relating to the parliamentary business] after the meeting of [REDACTED] at which she first saw the complainant. She said that Lord Lester had told her in a telephone call that the complainant had told him that S had arrived on the scene at a later stage and “*had muscled my way in*” (she could not remember the exact words but it was to that effect) and that Lord Lester had said that the complainant

had been rather “*rude*” about her and that this had surprised him. She had also been told by others involved in the work that the complainant had felt “displaced” but she had not taken much notice of any of this, as she put it down to the inevitable tensions between people working on a joint project.

147. I asked the complainant about this meeting, and she told me that she remembered the event, which was one of many that she attended, and still attend, and which was not organised by Lord Lester. It was attended by over 100 people, which made her feel safe, and she also attended with a work colleague. Her recollection is that Lord Lester attended with S and they jointly presented. Her presentation would have been on the agenda alongside them both, but she presented it alone.
148. She accepts that she may have been at the same table as Lord Lester, but this was because she was placed there by the organisers and she accepted the seat because she did not want to draw anyone’s attention to the situation between her and Lord Lester. She knows that she did not arrive with Lord Lester and recalls that she left before him.
149. She commented that she was not prepared not to attend events just because Lord Lester might be in attendance, as she was not going to allow her experience to impact on her advocating these issues and supporting those who she felt she could help. She was not going to let what happened deter her and it was a source of strength for her to carry on.
150. She said that she had felt a little awkward when she spoke to S, but this was because Lord Lester had previously said, when she did not accept his advances, that she would be “replaced” by S - “*if I appeared frosty it was nothing to do with anything other than what Lord Lester had told me...*”
151. By this time, she had noticed that S appeared to become a spokesperson with Lord Lester, and her recollection is that they gave a presentation together at this event, which reinforced her opinion that she had been “replaced” to teach her a lesson. She did not believe that S had any knowledge of what had gone on between her and Lord Lester.
152. She also said that although she had a different view on aspects of the [REDACTED—parliamentary business] to that of Lord Lester and S, she had accepted the majority opinion on how [REDACTED—activity relating to the parliamentary business], and had worked wholeheartedly for it, and that this difference did not affect her opinion of, or attitude to, S - “*I am thankful for S’s work to date*”.

#### **h) Analysis**

153. The standard of proof that I have to apply is the civil standard of balance of probability; that is to say, unless I am satisfied that it was more likely than not that Lord Lester behaved in the way alleged by the complainant, the complaint must be rejected.
154. There is a good deal of case law on how the balance of probabilities should be applied when, for instance, the allegations are particularly serious or implausible, or where the consequences of a finding against the alleged perpetrator would be particularly serious, even if the alleged behaviour is not so serious. The current law in these cases was set out in the House of Lords case of *In re D* (HL(NI) 2008) in which Lord Carswell, who gave

the leading judgement, approvingly quoted Richards LJ in *R (N) v Mental Health Review Tribunal (Northern Region)* [2006] QB 468, para 62:

*“Although there is a single civil standard of proof on the balance of probabilities, it is flexible in its application. In particular, the more serious the allegation or the more serious the consequences if the allegation is proved, the stronger must be the evidence before a court will find the allegation proved on the balance of probabilities. Thus the flexibility of the standard lies not in any adjustment to the degree of probability required for an allegation to be proved (such that a more serious allegation has to be proved to a higher degree of probability), but in the strength or quality of the evidence that will in practice be required for an allegation to be proved on the balance of probabilities.”*

155. In my view, this case is one which requires strong evidence to support a finding that the allegations against Lord Lester are more likely than not to be true. I consider that the allegations relating to Lord Lester’s alleged sexual remarks and persistent unwanted touching to be at the less serious end of the scale, while still amounting to a breach of personal honour, if true. However, the allegation that he offered a corrupt inducement to the complainant to become his mistress is a very serious matter, as is the allegation that he blocked her from attending meetings and threatened her with unspecified consequences if she did not accede to his demands, as, in each case, the alleged behaviour attacks the integrity of the House of Lords.
156. Therefore, in carrying out the investigation, I have followed up all challenges and disputed points, except those that are immaterial or impossible to verify, in order to test the strength of the evidence as hard as I could.
157. The complainant’s initial statement provided *prima facie* evidence that Lord Lester had breached the Code of Conduct. Lord Lester’s response to the complainant statement was to deny, in every particular, that he had behaved inappropriately in relation to the complainant. This then, is not a case of possible misunderstanding, misinterpretation or an inadvertent clash of expectations of what constitutes proper behaviour. Either the complainant or Lord Lester is not telling the truth.
158. It was therefore necessary for me to consider the credibility of the complainant and Lord Lester, to see if there was anything known about either of them that would tend to suggest that one of them was more likely to be telling the truth than the other.
159. Lord Lester and the complainant are both people with impeccable reputations, celebrated nationally and internationally for their work on behalf of vulnerable people, and each with a history of valuable public service, and, in consequence, they both have multiple entries on search engines. My online research found nothing to suggest evidence of dishonesty or any accusations of misconduct or misbehaviour against either of them.
160. **I can find nothing in publicly available information that would allow me to say that one is more likely to be telling the truth than the other.**
161. I therefore turned to the other evidence provided to me by the complainant and Lord Lester.
162. When she made her original complaint, the complainant said that she had spoken to other people about the alleged misconduct, and gave the names of

four people who she said would be able to confirm to me that she had spoken to them at the time. She later gave me two further names.

163. The first four provided me with statements before I made the application to the sub-committee to be able to carry out the investigation. Paraphrases of their statements are set out at paragraphs 64-70 above and my exchange with Lord Lester on this point is at paragraphs 97-100. It is Lord Lester's contention that the authors of these four statements are lying about having been told at the time about the allegations. Lord Lester gives no reason for this, and he does not need to do so, save to say that they are her "*supporters*".
164. The witness statements vary in content and detail. One of them, T, was made by a friend of the complainant, who has spoken to the complainant frequently about the behaviour complained of, and has said that she was present at the [REDACTED—media event] incident referred to by the complainant in her statement.
165. Another, M, a district judge, said she only had one conversation at the time with the complainant, the day after the overnight stay. As she refers in her statement to matters that the complainant says took place on one occasion at Lord Lester's house, and on a subsequent occasion at the House of Lords, it seems likely either that this one conversation took place later than M recalls, or that there was more than one conversation. The complainant's recollection, set out in her initial statement, is that she contacted M on the day after the House of Lords conversation.
166. N, a director in the Crown Prosecution Service at the time, says that he spoke to the complainant at around the time of the events, and then not again until recently, and his account includes his description of contact between himself and the complainant before the alleged behaviour complained of.
167. Finally, A, a civil servant involved in the [REDACTED—parliamentary business] at the relevant time, briefly confirmed that he recalls the complainant speaking to him about Lord Lester's alleged behaviour, but cannot recall any significant detail.
168. In view of the different levels of contact that the complainant has had with these four people since the alleged events complained of, and in view of the lapse of time, I do not find it surprisingly that their accounts differ. In fact, I would have been much more concerned if they had all been the same as each other.
169. **I do not accept Lord Lester's contention that the differences and discrepancies in these statements show that they cannot be relied upon.**
170. **There is no evidence that these people, who do not all know each other, and who have had different relationships and levels of contact with the complainant over the years, have conspired with each other and the complainant to cause serious harm to Lord Lester, and no reason has been suggested why they might do such a terrible thing.**
171. This is not a case where I have to examine in great detail each of the allegations made by the complainant, as there is no suggestion that the complaint arises from any misunderstanding between the complainant and Lord Lester or any misinterpretation of remarks made by Lord Lester. Lady Lester, when

I interviewed her, suggested that possibly the complainant might have misunderstood Lord Lester's "*friendliness*", but Lord Lester did not make any such suggestion, and neither he nor the complainant suggest that they had anything other than a purely professional relationship, apart from the alleged behaviour.

172. I conclude from this that if I find, on the balance of probabilities, that something of concern took place between Lord Lester and the complainant that led the complainant to share her concerns with others at the relevant time, I am bound to accept her account of events, as no alternative is given, other than that the events did not happen.
173. I therefore do not have to reach a view on what exactly the complainant said to A, T, N and M, or exactly why their recollections do not always accord with the complainant's account.
174. **In my view, the evidence strongly suggests that the complainant did speak to T, N, M and A shortly after the alleged incidents in her complaint. The details given in the four statements are similar enough to the detail given in the complainant's statement to be credible recollections of conversations over 10 years ago, and I consider that these statements show that the complainant spoke of the four incidents to her witnesses at, or shortly after, the alleged incidents**
175. Of course, the fact that the complainant spoke to these four people about the alleged behaviour of Lord Lester does not, in itself, prove that Lord Lester behaved in this way.
176. For instance, the complainant could have contacted T, N, M and A because she believed, mistakenly, that Lord Lester had sexually harassed her, offered her a corrupt inducement and threatened her with consequences if she did not accede to his demands. However, for the reasons given above, this seems highly unlikely, as Lord Lester has said that he never behaved in any way that could have led to such a misunderstanding.
177. Another possibility is that the complainant could have been acting with malice in making these allegations against Lord Lester to T, N, M and A. However, if that is the case, some kind of possible explanation has to be given as to why she would wait over 10 years before making a formal complaint. No one has suggested any such explanation, and I cannot think of one that fits with what is known about the complainant.
178. The complainant does explain why she did not make an earlier complaint at paragraph 120, and Lord Lester's criticism of this is at paragraph 121.
179. I consider that the explanation given by the complainant is plausible and rational. I accept Lord Lester's point that there were a number of actions that she could have taken to seek redress, but I also accept the complainant's perception that, in the culture of the time, she would have been unlikely to have been believed, with the result that both she and her cause would be significantly damaged.
180. **I therefore conclude that the most likely explanation for the complainant speaking to T, N, M and A in the way that she did is that she was describing events that she had experienced, and that she subsequently set down in her initial statement to me.**

181. However, this was not the end of the investigation. In his statements to, and interview with, me Lord Lester produced evidence that showed, in his view, that the complainant had behaved towards him, after the alleged events, in a way that was incompatible with her allegations against him. As Lord Lester was clear that he had not behaved as she had claimed, this evidence needed to be looked at carefully, to see if it showed that the complainant was inconsistent in important aspects of her evidence, sufficient to undermine the validity of her complaint.
182. Lord Lester points to Lady Lester's evidence about the complainant's behaviour when she spent the night at Lord and Lady Lester's home. This is set out at paragraphs 106 to 110 above, along with the complainant's response and Lord Lester's comment on this response.
183. Lord Lester says that the complainant asserted that she was traumatised by the events at his house. However, this is not borne out by the complainant's evidence. After she arrived at Lord Lester's house, she says that she had a conversation with Lady Lester before going to bed, but does not suggest that, at this stage, she was traumatised. Rather, she said that after Lord Lester's alleged behaviour in the car she had felt "*incredibly uncomfortable*".
184. She says that Lord Lester made a remark, when showing her to her bedroom, that she found worrying, and which made her feel "*very uncomfortable*", as a result of which she put a chair under her bedroom door handle, did not sleep and had a number of conversations with her friend T. In her statement to me, T said that the conversations were to keep the complainant calm and relaxed. Her personal assistant, H, told me that the complainant also rang her that night, and had said that she felt "*very awkward*" about what had happened in the car, and was unable to sleep.
185. The complainant does not say that she was traumatised while she was in the house with Lady Lester, although she describes herself as "*uncomfortable and violated*" after Lord Lester allegedly sexually assaulted her and propositioned her the following morning, after Lady Lester had left the house.
186. I note that M says that the complainant was "*totally distraught*" when they spoke, which she recalled was the day after the complainant had stayed at Lord Lester's house. However, as explained above, it seems likely that this conversation actually took place after the House of Lords incident, when the complainant herself describes feeling "*distressed and shocked*".
187. **I therefore find nothing inconsistent in the complainant's account of her feelings while in the house with Lady Lester, and Lady Lester's perception that she was friendly, and not distressed, particularly as the complainant said that she had not felt it appropriate to complain to Lady Lester about Lord Lester's behaviour in the car.**
188. As I have found that it is more likely than not that Lord Lester sexually harassed the complainant while driving to his home, and at his home the following morning, I have considered what significance can be given to his offer to put her up for the night. If he did so with a view to harassing her in the way that he did, this would be an aggravating factor in assessing the seriousness of his conduct, as he would have engineered a situation where the complainant would not easily be able to avoid his actions.

189. However, Lord Lester’s explanation for the offer to put her up is that he was simply being helpful and friendly, and it is certainly possible that this was why he made the offer, but that something changed on the way to his home.
190. **It is not possible to establish Lord Lester’s motive in offering to put the complainant up for the night.**
191. At paragraphs 111-19, I set out Lord Lester’s challenges regarding two books in which the complainant had written inscriptions which suggested warm and respectful feelings towards Lord Lester, the complainant’s responses and a further comment by Lord Lester.
192. At paragraph 143 I also asked the complainant to explain why she had signed, at the relevant time, an email to Lord Lester, “*Lots of lovexx*”, and I set out her reply at paragraph 144.
193. Lord Lester has said, in relation to the book inscriptions, that the words the complainant used were impossible to reconcile with what she alleged against him.
194. I do not agree. The complainant’s responses show that she was writing in this way for pragmatic reasons, as she recognised that Lord Lester’s support was important for her cause. I find this believable, particularly as, in the initial statement that was written before Lord Lester produced the inscribed books, she had been clear that at the time of these events she put her cause before her own feelings. The events referred to in this investigation took place over several months with the behaviour complained about taking place over about 9 days within that period, and during those months the complainant was continuing to appear with Lord Lester at relevant events, although, as she said, never alone after the House of Lords incident. Her determination to attend meetings hosted by Lord Lester, and her continued willingness to have him speak at an event she was hosting, show that she was well able to subdue her feelings during this time.
195. At no point does the complainant say that she was traumatised by Lord Lester’s behaviour, and her statement suggests that most of the emotional harm she has experienced over the years has been the result of a sense of helplessness at not being able to find an effective route for redress, and a feeling of failure for not speaking up about his behaviour.
196. I also note that both the complainant, to other professional contacts, and Lord Lester, to the complainant, used informal and affectionate sign offs. Lord Lester commented that his emails simply showed, “*a normal and friendly course of dealing between me and the complainant that is incompatible with her allegations of abuse of power and sexual harassment.*”
197. **The complainant clearly has an informal style of email sign-off, even with professional contacts. Lord Lester, going by this example and his comment on it, does the same. No adverse inference can be drawn about either of them.**

#### *Further matters*

198. Lord Lester said that the complainant was wrong in saying that they had met in March of the year in question, and the complainant accepts that she must have mis-remembered the date.

199. She also now accepts that the date of the first alleged incident, when she stayed at Lord and Lady Lester's home, was some weeks later than her original recollection.
200. **As nothing turns on the dates of the incidents, the complainant's inaccurate recollection of the timing of events is not significant in undermining her account.**
201. Lord Lester says that he did not exclude the complainant from meetings, as alleged by the complainant. A, the official to whom she spoke, who she says made sure that she was invited to the following meetings, cannot remember much about the circumstances, but remembers her telling him about her allegations.
202. **This allegation was communicated to A at the time of the events complained of. Therefore, for the reasons given above, I accept it.**
203. Lord Lester cannot remember attending a [REDACTED—media event] at which he and the complainant were being interviewed, nor can he recall making the remark attributed at paragraph 136. The complainant has provided evidence that the event took place and that she and he were guests on the [REDACTED—media event]. T recalls attending with the complainant and hearing Lord Lester making the remark attributed to him.
204. **I find T to be a credible witness, and as her account tallies with that of the complainant, I therefore accept that Lord Lester made the remark attributed to him on this occasion.**
205. **I also find that the remark strongly suggests that Lord Lester was aware that the complainant felt the need to protect herself from his advances.**
206. Lord Lester also says that the complainant was wrong to say that he had told her that S would be replacing her in the work on [REDACTED—parliamentary business], because S had very different skills and abilities to the complainant. I did not ask the complainant to respond on this, as I would be asking her to comment on a conversation that Lord Lester says did not occur, which seemed unnecessary.
207. **I accept the complainant's recollection of what was said to her, but also accept that what was said to her was inaccurate, as S had a very different role to play to that of the complainant, and could not be seen as a replacement for her.**
208. With regard to the allegation that Lord Lester phoned to inform the complainant that he would not be attending the event where he was the advertised speaker, Lord Lester has now accepted that, although he cannot remember doing so, he may have made this call. The reason he gives is understandable but has to be set against what I assume to be a generally conscientious willingness not to let people down, and by his undoubted presence at the event.
209. **I accept that Lord Lester made this phone call.**
210. In relation to these last two matters, I accept that there is some room for uncertainty about the context in which the events occurred, and so I have

not included them when considering whether the Code of Conduct has been breached.

211. **In my analysis, all the witnesses, both for Lord Lester and for the complainant, are people of integrity who have honestly done their best to tell the truth in their evidence.**

212. Lord Lester acknowledged that he has breached the confidentiality of the investigation by naming the complainant to another Member. When I asked him to comment on this allegation his response, in full, was:

*“As regards the allegation that I named the complainant to [another Member] this is correct. I spoke briefly and privately to [the Member] I apologise. I am not responsible for what occurred thereafter”.*

213. This is an unsatisfactory response:

- He provides no explanation for his breach, so we do not know, for instance, if it was planned or spontaneous, or what his motive was in naming the complainant to the Member. The evidence provided to me, however, makes it clear that Lord Lester knew that the complainant was at the House of Lords on that day, and was in close contact with the Member.
- I do not accept that he is not responsible for the consequences of his breach. The Member to whom he named the complainant knows her as they have worked together, and as the complainant was at the House of Lords when the breach occurred, the Member, unsurprisingly, went to her and told her what Lord Lester had said. The complainant immediately took the Member aside and explained the circumstances and that she had been bound by confidentiality, but before doing this some of the people who she was with had heard the Member inform the complainant of what Lord Lester had said. As a result, the complainant felt bound to provide them with an explanation, and asked them not to speak of the matter to anyone else.
- These consequences seem entirely foreseeable, as Lord Lester knew that the complainant was on the premises and working closely with the Member.
- The Member cannot be blamed for disclosing what Lord Lester had said to the complainant, nor, in the startling immediacy of the situation, for doing so in front of those accompanying the complainant. Equally, the complainant cannot be blamed for her decision to provide explanations to the Member and to those who heard what the member had said.
- His assertion that he is not responsible for what occurred thereafter appears to suggest that the Member to whom he spoke is responsible for any consequences arising from the breach. This, to use Lord Lester’s own language, is ungracious, and, to use my language, unfair.

214. I should add that all those concerned have agreed not to reveal to others what they heard. Nonetheless, they are all now in an invidious position, as, if the complainant’s identity is revealed at some point, she, or others, may feel that the leak could have come from one of them.

215. **Lord Lester deliberately breached confidentiality, for reasons unknown, and is responsible for all the reasonably foreseeable consequences of that breach.**

**i) Representations by Lord Lester, with my responses**

216. As required by the Guide to the Code of Conduct (paragraph 136), I provided Lord Lester with those parts of my draft report that set out factual matters, so that he could comment on them. In his response he made a number of points which are dealt with in the analysis above, but also made representations which he asked me to include in the report. I set these out below, with my responses.

*Representation*

217. Lord Lester asked, in his comments of 11 July (Appendix Z) [reference is to a document that has not been published], that I record in the report his concern at the unfairness of the procedure that I have followed and of the need for a new procedure to deal with allegations of sexual harassment. He wrote:

*“There is a new Code in draft form which is being consulted on. Parliament has recognised that the Code does not cover sexual misconduct and provide fair procedures for dealing with allegations of this nature, which would require cross examination, legal representation, an opportunity to comment on investigations of historic conduct, and many other safeguards of that kind”.*

*Response*

218. I am happy to record his concern, but do not accept the procedure I have followed has been unfair, or that the new procedure would have given him the rights set out in the paragraph above.
219. In July 2018, Parliament published its Independent Complaints and Grievances Scheme Delivery Report. This deals with bullying and harassment generally and has a specific policy and procedure for dealing with allegations of sexual misconduct.
220. The procedure for dealing with formal complaints is set out on pages 85 to 92 of the document. The procedure differs in some respects from that which I have followed in investigating this complaint. However, importantly, there is no provision in the new procedure to allow cross-examination to test credibility or the strength of the evidence, nor is it possible for any of the parties to be legally represented at any meeting. The standard of proof is the balance of probabilities, without any requirement that particularly strong evidence needs to be in place before serious allegations can be upheld.
221. Interestingly, an earlier report by the Cross Party Working Group on an Independent Complaints and Grievance Policy, published on 8 February 2018, set out the early thinking on how complaints of bullying and harassment should be investigated, and its section on sexual harassment contains no suggestion that those complained about would have the opportunity to be legally represented or to have complainants or witnesses cross-examined on their evidence.

*Representation*

222. Lord Lester considered that, under the new scheme, he would “*have had a chance to make observations on the fairness of the [REDACTED] extension of the normal time limit to a [REDACTED]—investigation which is over a decade old*”.

*Response*

223. It seems likely that the complaint against Lord Lester could not have been investigated under the new scheme, as the allegations pre-date the 2017 general election which is the cut off date for complaints under the new process. However, the Delivery Report published in July states that complainants may use alternative ways of complaining, including existing rights to complain to me and my successors, instead of the new process. Therefore, Lord Lester has suffered no disadvantage in being investigated under the existing scheme before the new scheme is implemented.

*Representation*

224. Lord Lester was concerned that, when I interviewed him, I did not challenge key aspects of his evidence. He had expected, for example, to be questioned at least about the central allegation that he offered to get the complainant a peerage if she had sex with him, but the subject was not mentioned.

*Response*

225. Lord Lester had provided me with a full statement, in which he categorically denied all the complainant’s allegations of improper behaviour. The purpose of the interview was to offer him the opportunity to add anything that he wanted to the evidence given in his statement, and for me to seek clarification on certain matters that he had raised. If there had been any lack of clarity in Lord Lester’s denial, I would have sought clarity. However, there was none, so there was no need to seek further clarification.

*Representation*

226. Lord Lester asserted that I had indicated during his interview with me that his reputation was well known to me and so it was not necessary to obtain statements from his list of character witnesses.

*Response*

227. This is not quite correct. Lord Lester put forward 12 character witnesses, and we agreed that I would speak to the ones who had been working with him at the time, and who had met the complainant. If any of them raised concerns about his behaviour, I would then speak to his other character witnesses.

*Representation*

228. Lord Lester asserted that if the allegations of sexual harassment and abuse of power were true, it would mean that he had a propensity to act in this manner, and that I had recognised this. He went on to say that it would be remarkable to conclude that his treatment of the complainant was an aberration, a one-off flaw in his character that had never revealed itself before or since.

*Response*

229. I did not say that, if the allegations were true, it would show that he had a propensity to act in this manner. I did say, speaking generally, that some people found to have behaved in this way do so repeatedly.
230. As for there being a one-off flaw in his character, if he had treated the complainant as alleged, I would express this differently; we are all capable of acting out of character for reasons that may never be clear, even to ourselves, and this does not preclude a history of excellent behaviour.

*Representation*

231. Lord Lester says that as none of the key details of the allegations were put to him or to the other witnesses, and they were simply asked questions of a general nature, this was unfair.

*Response*

232. Lord Lester was provided with the unredacted statements of the complainant and her witnesses, and therefore had every chance, which he took, of dealing with the key allegations. The complainant did not suggest that anyone else would have witnessed his alleged improper behaviour, and therefore there was no reason to ask other than general questions about their observations of Lord Lester generally, about his conduct towards the complainant, and about the complainant. His wife was the only witness put forward by him who could give evidence about specific parts of the allegations, and she gave detailed evidence in interview, but as the allegations did not include any suggestion that she knew about her husband's alleged behaviour, there was no reason to ask her about matters that the complainant had said she did not observe.

*Representation*

233. Lord Lester asks me to state in the report that I declined to investigate the source of the leak to the press at the beginning of the investigation.

*Response*

234. I am happy to confirm this. I did not then, and do not now, see how I could carry out such an investigation, as I have no powers to do so. My role is to investigate complaints made about Members of the House of Lords and their staff. No one made any suggestion to me that a named Member, or member of their staff, had been the source of the leak.

*Representation*

235. Lord Lester suggested to me in interview that the standard of proof should be a high civil standard commensurate with the gravity of the allegation. I disagreed and considered the appropriate standard is on the balance of probabilities.
236. Subsequently, in his comments on the factual parts of the draft report, he wrote:

“The leading case on this issue is re H (Minors) [1966] AC 563 (HL). In that case Lord Nicholls made it clear that where a serious allegation is in issue the standard of proof does not change, but *‘the inherent probability*

*or improbability of an event is itself a matter to be taken into account when weighing the probabilities and deciding whether, on balance, the event occurred. The more improbable the event, the stronger must be the evidence that it did occur before, on the balance of probability, its occurrence will be established.’* He described this as having “*much the same*” result as a higher civil standard.”

He asked that this should be recorded in the report as being the appropriate standard of proof.

*Response*

237. I disagree with Lord Lester’s view on the correct standard of proof, which I have set out at paragraph 235 above.

***Representation***

238. Lord Lester asserts that it is, to put it at its lowest, extremely improbable to claim that he would have acted as alleged – a happily married man aged [REDACTED] – in his home where his wife was, seeking to persuade the complainant to be his mistress, with no evidence at all of any similar behaviour before or since (and plenty of evidence to the contrary).

*Response*

239. In fact, the behaviour complained of was said by the complainant to have taken place in the car on the way to Lord Lester’s house, and in the house the following morning, after Lady Lester had left the house.

***Representation***

240. Lord Lester asserts that the only allegation that brings the complaint anywhere near the scope and jurisdiction of this parliamentary Code is the allegation that he offered the complainant a peerage in return for sex (“*If you sleep with me I will make you a baroness within a year.*”) Even on that point, he says that the draft report does not identify any freestanding rule of conduct in the Code that I am said to have breached but merely the general principle of personal honour used to interpret those rules.

*Response*

241. Personal honour is, deliberately, not defined in the Code. When I sought the consent of the sub-committee to investigate I had to give my reasons for saying that the alleged behaviour, including the alleged sexual harassment, engaged with the personal honour requirement of the Code. This was accepted by the sub-committee.

***j) Conclusion***

242. My decision must apply the standard of the balance of probabilities. Where the allegations are particularly serious, it is important that the evidence is suitably strong and cogent. Applying the test of the balance of probabilities I find the complaint upheld, on the basis of the strong and cogent evidence of the complainant and her witnesses. I have carefully considered the challenges to this evidence, but do not find that those challenges undermine the strength of the evidence to any significant degree.

243. In considering the appropriate sanction I invite the sub-committee to take into account that:

- Lord Lester persisted in unwanted touching, even when the complainant clearly objected;
- He persisted in making sexual comments and offers to her, even after she clearly objected;
- He took advantage of her being alone in his house to harass her;
- In offering her a corrupt inducement, he undermined the reputation and integrity of the House of Lords;
- In warning her of unspecified consequences if she did not accept his offer, he abused his power;
- In no longer inviting her to relevant meetings; he abused his power
- He breached the confidentiality requirement of the Guide to the Code, and has offered no explanation for doing so.
- He carried out this breach in a way that made it highly likely that others would hear of it, but denied any responsibility for the foreseeable consequences of his breach.

## ANNEX 3: PAPERS RELATING TO THE APPEAL

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### Lord Lester's Grounds of Appeal

#### *Introduction*

1. The Parliamentary Commissioner for Standards has upheld a complaint of sexual harassment, corruption and grave abuse of power against Lord Lester, arising out of events said to have occurred [REDACTED—over a decade] ago, allegations that he strongly denies.
2. The complainant's allegations, in summary, were that Lord Lester had "sexually harassed" her in [REDACTED—over a decade ago], offered her a "corrupt inducement to become his mistress" and warned her of "unspecified consequences if she did not accept his offer".<sup>3</sup> As the Commissioner correctly recorded, the complainant informed the press of her allegations long before she complained to the Commissioner.<sup>4</sup>
3. This is the first time the House of Lords' Code of Conduct<sup>5</sup> has been used to investigate a complaint of sexual harassment. The Commissioner decided to proceed with the investigation using a Code that is designed to enforce transparency in Members' financial and personal interests, and which does not contain any Rule of Conduct covering sexual harassment or the other alleged misconduct.<sup>6</sup> It provides a procedure which requires natural justice but has widely been recognised (including by the Senior Deputy Speaker of the House) as being unsuitable and unfair to resolve complaints of this nature and gravity, even in relation to complaints made within its three-year limitation period.<sup>7</sup> For one thing, the Code does not expressly provide for cross-examination and legal representation.<sup>8</sup>
4. The Sub-Committee on Lords' Conduct agreed with the Commissioner that the investigation should proceed, without giving Lord Lester an opportunity

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3 Report from the Commissioner for Standards, para 7. The main body of the Commissioner's Report is in numbered paragraphs 1-243, which are referred to in these Grounds of Appeal by square brackets, [x]. The appendices to the Report do not have numbered paragraphs and, therefore, are referred to by page number. [These appendices are not published]

4 Report p.118. [reference is to a document that has not been published] The Commissioner notes at [34] of the Report that the first contact about this matter also came from a journalist known to the complainant.

5 <https://www.parliament.uk/mps-lords-and-offices/standards-and-financial-interests/house-of-lords-commissioner-for-standards-/code-of-conduct-for-the-house-of-lords/code-of-conduct-for-members-of-the-house-of-lords/>

6 The rules of conduct are in Code [10-17]. There is a general principle that members of the House must act "on their personal honour", but this is not one of the "rules" of the Code. The Commissioner explains at Report [36] that she had to put a note on her website noting that it might not be obvious from the Code and guidance that "personal conduct towards others" is a breach of the Code. This was also unclear to the complainant (Report p.38). [reference is to a document that has not been published]

7 For example, the report of the Working Group on an Independent Complaints and Grievance Policy (February 2018) recognised that sexual harassment complaints were "qualitatively different" and so required separate definition and procedures. The Senior Deputy Speaker, Lord McFall, had further stated (Commissioner's Report p. 93): "The procedures and processes for investigating complaints made under the Code were not designed with complaints of this nature [allegations of sexual assault on the parliamentary estate] in mind and this is something the Commissioner would need to advise any potential complainant about, it is also something the Committee for Privileges and Conduct will need to consider." [reference is to a document that has not been published]

8 Guide to the Code of Conduct [126-127]. The Guide can be found at <https://www.parliament.uk/mps-lords-and-offices/standards-and-financial-interests/house-of-lords-commissioner-for-standards-/code-of-conduct-for-the-house-of-lords/guide-to-the-code-of-conduct/>

to make any observations on the fairness of doing so.<sup>9</sup> The Sub-Committee was informed, incorrectly, that the allegations related to events between [REDACTED] and [REDACTED] years ago (the complaint relates to events said to have occurred in [REDACTED—over a decade ago], [REDACTED] times the normal limitation period).<sup>10</sup>

5. The Commissioner published Lord Lester’s name and the fact that he was being investigated for a breach of “personal honour” on her website without permitting him to comment, with the result that the Press published the fact of the investigation.<sup>11</sup> A subsequent leak (the source of which the Commissioner would not investigate) led to publication of the allegations in the *Sun* and *The Times*, shredding Lord Lester’s reputation while the complainant remained anonymous.<sup>12</sup>
6. As a result of the Commissioner’s findings and the particular factors she asked the Sub-Committee on Lords’ Conduct to take into account in considering penalty, the Sub-Committee decided that Lord Lester should be expelled from the House of Lords forever.<sup>13</sup> The Sub-Committee considered that their role was not to question any of the Commissioner’s findings and conclusions; that is for this Committee.<sup>14</sup>
7. This would be the first and only time any Member has been expelled from the House of Lords. The Sub-Committee applied the most extreme penalty available, and did so retrospectively; the power to expel was not in existence at the time of the alleged events.<sup>15</sup> Parliament intended it to be invoked only for the most egregious conduct.<sup>16</sup>
8. The Sub-Committee permitted the investigation to proceed on the express understanding, as provided in the Code, that the Commissioner would apply the basic principles of natural justice.<sup>17</sup> This was crucially important given the difficulty of fairly resolving complaints brought [REDACTED—over a decade] on. For example, natural justice dictates that the burden of proof should be squarely on the complainant, only to be discharged on the basis of strong and cogent evidence, proving each of the key allegations, and that

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9 Letter from the Chairman of the Sub-Committee on Lords’ Conduct to Lord Lester of Herne Hill, 21 March 2018 (Report p.95) [reference is to a document that has not been published], acting under paragraph 119 of the Guide).

10 Report p. 95. [reference is to a document that has not been published] The difficulties of fairly investigating historic allegations are well known. The need to consider the fairness of proceeding, including the potential prejudice to the respondent, was drawn to the attention of Parliament by Tom Linden QC in his opinion at Annex D to the July 2018 “Independent Complaints and Grievance Scheme Delivery Report” to Parliament.

11 The Guide did not require publication of Lord Lester’s name, but only “basic information” about the case, see paragraph 122 of the Guide.

12 The Commissioner now accepts that publishing the notice on her website naming Lord Lester and the fact of the “personal honour” investigation “did not work very well” as a way of trying not to stir up interest (Report p.118). [reference is to a document that has not been published] The Commissioner declined to investigate who leaked the full allegations to the press when asked to do so (Report p.55) despite the obvious potential relevance to motive and credibility of the person(s) responsible. [reference is to a document that has not been published]

13 Paragraph 19 of the Code.

14 Report [8]

15 They did so on the basis of Standing Order 12 and the House of Lords (Expulsion and Suspension) Act 2015 section 1, which empowers the House to impose this penalty where in its opinion the conduct giving rise to the resolution occurred before the coming into force of the Act and was not public knowledge before that time.

16 See paragraph 63, below

17 Report [53], p.95, [reference is to a document that has not been published] paragraph 21 of the Code.

the evidence relating to each of the key allegations is tested rigorously and thoroughly.<sup>18</sup>

9. As explained below, these basic principles of fairness were not observed. The result was that the Commissioner’s investigation, and the conclusions she drew, were made as a result of a seriously flawed approach.
10. Annexed to these Grounds is a legal opinion prepared by David Perry QC and Rosemary Davidson. Mr Perry advised Parliament in July 2018 on the proposed Independent Complaints and Grievance Policy.<sup>19</sup> Lord Lester asked him to consider the Commissioner’s Report and provide his views as to whether the investigation, analysis of the evidence and conclusions were fair and accorded with principles of natural justice. Mr Perry’s independent opinion is that it did not do so. The Committee is invited to read that opinion in full.

### *Natural Justice and Fairness*

11. The Code of Conduct requires the Commissioner, the Sub-Committee and the Committee to “act in accordance with the principles of natural justice and fairness”.<sup>20</sup>
12. As Mr Perry explains further in his opinion, where a person faces grave allegations of misconduct turning on disputed evidence as to veracity and credibility, with potentially serious adverse consequences for the alleged wrongdoer (in disciplinary or similar proceedings) fairness demands that the person concerned has a right to cross-examine witnesses. In *R (Bonhoeffer) v General Medical Council* [2011] EWHC 1585 (Admin),<sup>21</sup> Stadlen J reviewed the authorities [84] and concluded that “fairness requires that in disciplinary proceedings a person facing serious charges, especially if they amount to criminal offences which if proved are likely to have grave adverse effects on his or her reputation and career, should in principle be entitled by cross-examination to test the evidence of his accuser(s) where that evidence is the sole or decisive evidence relied on against him.” There would have to be “compelling reasons” why cross-examination would not be permitted [108(viii)].<sup>22</sup>
13. The right to cross-examine a witness implies a concomitant right to legal representation, particularly where it would be inappropriate for the alleged wrongdoer himself to question a complainant: *R (SS) v Knowsley NHS Primary Care Trust* [2006] Lloyds Med Rep 123 per Toulson J at [86]; *Kulkarni v Milton Keynes NHS Foundation Trust* [2010] ICR 101, per

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18 All this was made clear to the Commissioner. Lord Lester repeatedly raised concerns about the fairness of the process and made suggestions as to what natural justice might demand in the particular circumstances of this allegation See eg his letters to the Commissioner (Report p. 89), letter to the Chairman of the Sub-Committee (p. 91), response to the complaint (p. 95) and interview with the Commissioner (p. 106). [All references to documents which have not been published.]

19 Independent Complaints and Grievance Scheme Delivery Report: <https://www.parliament.uk/documents/news/2018/1%20ICGP%20Delivery%20Report.pdf>

20 Paragraph 21 of the Code

21 This is so both at common law and under Article 6 of the European Convention on Human Rights.

22 See also *Ogbonna v NMC* [2010] EWHC 272; upheld by the Court of Appeal in [2010] EWCA Civ 1216; *R (SS) v Knowsley NHS Primary Care Trust* [2006] Lloyds Med Rep 123 [82-84]; *White v NMC* [2014] EWHC 520 (Admin) [13]; *Albert & Le Compte v Belgium* (1983) 5 EHRR 533 [28-30].

Smith LJ at [67].<sup>23</sup> It is clear that the requirements of natural justice may apply with equal force in parliamentary disciplinary proceedings: *Demicoli v Malta* (1992) 14 EHRR 47.

14. In this case, natural justice demanded that Lord Lester be given the opportunity to cross-examine the complainant and her supporting witnesses through his legal representative, or at least that the Commissioner should do so in her inquisitorial capacity. The complaint alleged grave allegations of sexual misconduct and abuse of power relating to events occurring almost [REDACTED—over a decade] ago which, if proved, would have the most profound negative consequences for Lord Lester. The complainant’s evidence was critical. Lord Lester raised the necessity for cross-examination with the Commissioner on a number of occasions, but no cross-examination was permitted.<sup>24</sup> He was not aware of how flawed the Commissioner’s approach to the evidence had been until he received a copy of her report.
15. The Guide to the Code of Conduct states at [127]: “Nor do members accused of misconduct have any entitlement to cross-examine complainants ...”. This means that the Code does not give a general right to cross-examine. But it does not mean that cross-examination is precluded even where fairness so requires, still less that there should be no other rigorous testing of the evidence. Any such approach would mean the Guide would conflict with, and frustrate, the Code of Conduct at [21].
16. If members and their representatives are not permitted to cross-examine, it is essential for the Commissioner to do so in her inquisitorial capacity. As further explained below, she did not do so, nor did she conduct any rigorous testing of the evidence.<sup>25</sup>

### *The Commissioner’s approach*

17. The Commissioner’s approach to resolving the complaint was as follows.<sup>26</sup> The Commissioner asked herself whether Lord Lester had given the Commissioner any reason why the complainant would have made these allegations, if they were not true. The Commissioner concluded that he had not given a reason why the complainant would have made these allegations. The Commissioner took the same approach to the complainants’ witnesses; because Lord Lester had not suggested a “conspiracy”, she accepted their evidence and considered that she did not have to analyse the inconsistencies and discrepancies between their accounts.<sup>27</sup>

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23 There is also a right to legal representation in a disciplinary context where the charges are very grave and the case is complex. *R(G) v Governors of X School* [2012] 1 AC 167 per Lord Dyson at [71]; *Kulkarni v Milton Keynes NHS Foundation Trust* [2010] ICR 101, per Smith LJ at [67] (cf. *R v Secretary of State for the Home Department ex p. Tarrant* [1986] 1 QB 251, as approved by the House of Lords in *R v Board of Visitors of HM Prison, The Maze, ex p. Hone* [1988] 1 AC 379, per Lord Goff p. 392C-E).

24 As Lord Lester said (p.119): “there is a breach of natural justice ... [the complainant] is able to make whatever allegations she likes without being cross-examined. I, on the other hand, am publicly named and presumed to be guilty by a procedure where I cannot clear my name because I cannot cross examine her... the only safeguard I have is your duty of care towards me”. [reference is to a document that has not been published]

25 The annexed opinion of David Perry QC and Rosemary Davidson reaches the same conclusion as to the need for cross-examination: [17-23], [28], [52-57]

26 Report [18-19] and [171-2]

27 Report [170] and [173]

18. On that basis, the Commissioner concluded that the complainant must be telling the truth:

“As I could not think of any plausible reason why the complainant would make detailed but untrue allegations about Lord Lester, and take no further action for many years, I considered that she was more likely than not to have been telling the truth when she spoke to her witnesses and complained to me.”<sup>28</sup>

19. For the same reason (i.e. because the Commissioner said Lord Lester had not explained why the complainant had made the complaint if it were untrue) the Commissioner considered that it followed that she did not have to consider each of the allegations in detail. Instead, since the Commissioner thought that “something of concern took place” [REDACTED—over a decade] ago, she considered herself “bound to accept” the complainant’s entire version of events on all allegations: She said:<sup>29</sup>

“171. This is **not** a case where I have to examine in great detail each of the allegations made by the complainant, as there is no suggestion that the complaint arises from any misunderstanding between the complainant and Lord Lester or any misinterpretation of remarks made by Lord Lester...

“172. I conclude from this that if I find, on the balance of probabilities, that something of concern took place between Lord Lester and the complainant that led the complainant to share her concerns with others at the relevant time, I am bound to accept her account of events, as no alternative is given, other than that the events did not happen.”

*Serious flaws in the Commissioner’s approach*

20. The Commissioner’s approach is seriously flawed and will result in grave injustice unless it is overturned by this Committee. This appeal to the Committee for Privileges and Conduct is Lord Lester’s last domestic remedy, and the only remedy that might preserve what remains of his reputation.<sup>30</sup>
21. **First**, finding against Lord Lester on the basis that neither he nor the Commissioner could prove the complainant’s motive in making the complaint reverses the correct burden of proof and violates the presumption of innocence. It starts from the position that the complainant is telling the truth, which has been repeatedly recognised to be an unlawful approach.<sup>31</sup> It results in the same finding of guilt whether the respondent is guilty or not guilty, if he cannot prove a motive that by definition is not his to know. This is particularly unfair in the context of a procedure that does not involve cross-examination and where it is therefore impossible for the respondent or his representative to probe possible motives.
22. As Mr Perry’s opinion notes, the Commissioner’s approach is analogous to the heavily criticised and now discredited policy of the Police to “believe” victims who report allegations of sexual abuse unless there is contrary

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28 Report [18].

29 Report [171-172] (emphasis added)

30 Paragraph 19 of the Code

31 See the opinion of David Perry QC and Rosemary Davidson, [40-45]

evidence. Sir Richard Henriques, in his review of the Metropolitan Police's investigation known as Operation Midland<sup>32</sup> concluded that:

“In cases of sexual allegations, and in particular non-recent cases, there are mostly only two versions of the facts; the complainant's and the suspect's. When a complainant gives a straightforward account of sexual misconduct, with no variation or inconsistency, the present policy requires an officer to believe it unless there is ‘credible evidence to the contrary’. That is a simple reversal of the burden of proof.”

23. **Second**, the Commissioner's approach ignores the obligation on the complainant not only to discharge the burden of proof, but to discharge it on each of the key allegations on the balance of probabilities, with strong and cogent evidence.<sup>33</sup>
24. The question should have been whether, considering all the evidence in detail, the burden of proof was discharged in relation to each allegation to the requisite standard. By considering that if the Commissioner accepted that “something of concern took place” (whatever that means) she was *bound* to accept the totality of the complainant's allegations, the Commissioner short-circuited the need to consider whether the complainant had proved each of the key allegations to the required standard of proof.<sup>34</sup> Indeed the Commissioner's view was that “this is not a case where I have to examine in great detail each of the allegations made by the complainant”.<sup>35</sup>
25. **Third**, in any event, the Commissioner's approach was premised on the mistaken view that Lord Lester's position was that the complainant and her witnesses were lying about everything<sup>36</sup>. In fact, Lord Lester expressly disavowed this position:
  - (a) He said “I am not saying it is all untrue”, but it was “extremely hard” for him to give a “fair answer” to the question of whether the complainant and her witnesses were dishonest.<sup>37</sup>
  - (b) He could not say that the complainant was making everything up. He expressly recognised that something must have happened that caused the complainant great distress and had caused her to speak to the associates at the time.<sup>38</sup>
  - (c) He explained that “I do not know why the complainant acted as she did in making her complaint against me and going to the press. It is inappropriate to speculate”.<sup>39</sup>

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32 “An Independent Review of the Metropolitan Police Service's handling of non-recent sexual offence investigations alleged against persons of public prominence”, 31 October 2016

33 Cf. Report [155]; R(N) v Mental Health Review Tribunal (Northern Region) [2006] QB 468, [62]; Re H (Minors) [1996] AC 563

34 See the opinion of David Perry QC and Rosemary Davidson [64-70], which identifies the same flaw.

35 Report [171]

36 Report [10], [57], [163]

37 Report p. 113-114 [reference is to a document that has not been published]

38 Report p. 113. [reference is to a document that has not been published] The Commissioner does not even mention Lord Lester's position on all of these points, stating instead at [45] that Lord Lester's view is that the authors of four statements were “lying about having been told at the time about the allegations”.

39 Report p. 142 [reference is to a document that has not been published]

- (d) It was only when pressed by the Commissioner that he expressed the view that the complainant and her witnesses might be lying.<sup>40</sup> However, for the reasons explained above, he had previously made it clear that that was not his position, or that it was a conclusion that he could not properly reach, since he could not remember with any accuracy what had occurred.
26. **Fourth**, the Commissioner’s view that she was bound to accept all of the allegations, even the most serious, if she considered that “something of concern” had happened, meant that she did not test the evidence rigorously relating to each allegation before deciding whether or not to accept it.
27. Witness evidence was a key part of the case; it had to be vigorously tested if there were any question of a finding that one or other person was lying. Since the procedure the Commissioner adopted did not include an opportunity for Lord Lester and the complainant to test the evidence themselves, it was incumbent on the Commissioner to perform this role herself. She did not do so, whether in relation to the complainant, her supporting witnesses, or Lord Lester.
28. The Commissioner did not regard the interviews she conducted with witnesses as an opportunity to test their evidence or put to the witnesses the inconsistencies and weaknesses in their evidence, or the evidence that was obviously inconsistent with their accounts. She said the purpose of her interview with Lord Lester was rather “to discuss aspects of his statement to give him the opportunity to tell me anything else that he thought was relevant”.<sup>41</sup> Her interview with the complainant was “to discuss points made by Lord Lester”.<sup>42</sup> The Commissioner did not interview the complainant’s four witnesses at all (she spoke to T on the telephone).
29. The Commissioner tested credibility by searching for publicly available information as to the witnesses’ truthfulness rather than by cross-examination.<sup>43</sup> She did not challenge or probe their version of events. Lord Lester expressed surprise that key events of the complaints were not even put to him: “I was interviewed by her for an hour without challenge to the key aspects of my evidence. I had expected, for example, to be questioned at least about the central allegation that I offered to get the complainant a peerage if she had sex with me. But the subject was not mentioned”; “My denial was not challenged or probed or tested”.<sup>44</sup>
30. The Commissioner decided on several occasions that she did not need to put critical allegations or inconsistencies to the witnesses. Even where Lord Lester pointed out discrepancies between the statements from the complainant, and points that could not be true<sup>45</sup> the Commissioner said she did not need to put these issues to the witnesses because “they had already asserted the truthfulness of their evidence and Lord Lester’s response did not contain any factual material to which a response should be sought”.<sup>46</sup>

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40 Report p. 114 [reference is to a document that has not been published]

41 Report [62]

42 Report [63]; see the opinion of David Perry QC and Rosemary Davidson, [58-59]

43 Report [158-159]; the opinion of David Perry QC and Rosemary Davidson explains that this was an irrelevant consideration: [75].

44 Report [231] pp. 151, 157 [reference is to a document that has not been published]

45 See for example the accounts of M and the complainant as to the events of [REDACTED], explained further below at paragraphs 46 to 49.

46 Report [101]

31. As Lord Lester stated, “if I were to be disbelieved, it could only be fairly on the basis of my evidence and credibility having been tested by cross examination. The same is true as regards the claimant”.<sup>47</sup> Yet the Commissioner’s Report, based on this fundamentally flawed approach, found Lord Lester to have been dishonest in his account without ever putting this to him. The Commissioner noted that had he acted in the manner alleged, he would have remembered doing so; she said it was likely that he would remember these events if they had taken place “because of the nature of the alleged misconduct”.<sup>48</sup> Lord Lester was clear that he did not remember acting in this manner, yet, despite his denial, the Commissioner found that he was guilty without putting to him her conclusion that that he must therefore be lying about his recollection.
32. **Fifth**, the Commissioner’s approach meant that even though she noted that other explanations were possible for the complaint and the witness evidence (other than their accuracy), she declined to investigate the many possible reasons why the complainant’s account could have been inaccurate.<sup>49</sup> For example:
- (a) the complainant could have contacted the witnesses because she had misunderstood Lord Lester’s behaviour;
  - (b) the complainant might have been mistaken in what she believed had happened;
  - (c) some (even if not all) of the allegations might have been exaggerated or imperfectly remembered [REDACTED—over a decade] on;
  - (d) the complainant might have been influenced by her distress and suffering as [REDACTED], and/or by resentment that she felt herself supplanted by S.
  - (e) the complainant’s recollection may have been coloured by political differences with Lord Lester, such as their disagreement over whether the [REDACTED—parliamentary business] should [REDACTED], and the lack of credit her organisation received [REDACTED] when compared to similar groups such as [REDACTED] (see the comments of [REDACTED]).<sup>50</sup>
33. **Sixth**, the Commissioner’s approach, summarised above, led her to place no or plainly insufficient weight on evidence that was obviously inconsistent with the complainant’s allegations. The following are several examples among many more.
- a) Emails and book dedications*
34. The complainant’s personal handwritten inscriptions in the books she gave to Lord Lester at the time of the alleged events, and the contemporaneous emails she sent him, are strikingly inconsistent with her allegations and consistent with Lord Lester’s account (see the copies annexed). This is strong

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47 Report p.153 [reference is to a document that has not been published]

48 Report pp.24 and 120 [reference is to a document that has not been published]

49 Report [176-177]

50 Report [176], [179]

and compelling evidence because it is contemporaneous and objective, and does not rely on recollections [REDACTED—over a decade] on:

- (a) The first inscription was written by her on [REDACTED] at a book signing, a week after the alleged sexual assault at Lord Lester’s house. It states: “Antony [sic] Thank you so much for your love and support. It has been my pleasure to meet you. Love and admiration.”<sup>51</sup>
- (b) The second inscription was in a copy of the complainant’s second book sent to Lord Lester as an unprompted gift around the time of its publication in [REDACTED—around 30 months after the Herne Hill events]. It says: “Anthony I share this book with you & hope it continues to inspire you. I thank you for all your support with our cause and send you love and respect. Best [signature]”.<sup>52</sup>
- (c) On [REDACTED—around seven weeks after the Herne Hill events], the complainant forwarded to Lord Lester an email from a victim of [REDACTED] and wrote to him the following message:<sup>53</sup>

“How sad are the lives of [REDACTED]? Please read this, I have offered her my hand of friendship and will meet her one day soon. We need to develop a ‘Friendship Network’ for [REDACTED]!

Will you help me achieve this goal for [REDACTED]?

Lots of lovexx”

35. The complainant brought none of these to the Commissioner’s attention. The books were produced by Lord Lester and the email by S.<sup>54</sup>
36. Lord Lester pointed out that these messages are impossible to reconcile with the complainant believing she had been harassed, assaulted, threatened and demeaned by him so recently before.<sup>55</sup> The Committee is invited to read them.
37. The complainant provided the following explanations, none of which was tested by cross-examination or otherwise, though plainly they should have been:
  - (a) The complainant stated that Lord Lester had requested that she sign the first book with love and she did so “under... pressure” when she was “disconcerted and intimidated by his behaviour”.<sup>56</sup> She also offered the differing explanations that she “did what seemed best at the time”, “tend[s] to write such dedications in flowery language” and that “[i]t is the case that I did admire the work that he had done”. These different and apparently inconsistent claims obviously required cross-examination if there was any question of believing them; the far more likely explanation was that the complainant had not been sexually harassed and threatened a week before signing the book in these terms and was grateful to Lord Lester for his support at her book launch in [REDACTED].

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51 Report [111]

52 Report [115]

53 Report [143]

54 Report pp. 108, 111 [reference is to a document that has not been published]

55 Report, p.97-98, 156. [reference is to a document that has not been published]

56 Report, [113]

- (b) The complainant’s explanation for the second book inscription was that her publishers had a list of recipients for complimentary copies and that, despite Lord Lester’s previous conduct towards her, she still respected his work on the [REDACTED—parliamentary business] and, in any event, had a habit of writing affectionate dedications.<sup>57</sup> She further states that she “would have worked with the publishers in the circulation of pre-publication copies” and that at that stage she had decided to “get on with her life”. Again, this explanation demanded cross-examination given the nature of the allegations; the second inscription is extremely difficult to reconcile with the complainant’s account of harassment and threats and, even on the complainant’s account, was not written under any alleged “pressure”.
- (c) The email was written only a few weeks after the alleged harassment and threats and the complainant explained it as being consistent with her usual style of sign-off.<sup>58</sup> She also stated that at that time “I had made up my mind that I was not going to complain” and that “getting on with things as an advocate was my way of coping”. Again, this explanation should have been properly tested given that the affectionate tone and sign-off are not consistent with the allegations. The fact that the sign off was similar to her “usual” sign off is precisely the point; Lord Lester was not, on the complainant’s account, a person to whom she would have been likely to have adopted her usual friendly sign off given what she says had happened so recently before.
38. S’s evidence as to the complainant’s manner towards Lord Lester is similarly inconsistent with the complainant’s allegations. S said that at a meeting in [REDACTED—around two months after the Herne Hill events] the complainant appeared “to be warm towards Lord Lester, smiling, and comfortable in his company, but a bit frosty towards her”.<sup>59</sup> The complainant’s explanation of this meeting was that “I did not wish to draw attention to anyone (this situation)” and that “my behaviour was my way of dealing with this situation and I was not going to turn down an event with an opportunity to advocate on these issues because of [Lord Lester]”.<sup>60</sup> However, while this might explain why the complainant attended the relevant event or did not refuse to speak to him, it does not explain why she appeared warm, smiling and comfortable in his company. Again, this was an explanation which should have been tested but was not.
39. The Commissioner did not conduct any critical analysis of these matters. In addition to the points set out above:
- (a) She did not consider the significance of the chronology (see paragraphs 41 to 50 below) and how to reconcile the first inscription with the complainant’s allegation of sexual assault and abuse of power in the preceding week. The chronology reveals that the alleged harassment and threats occurred on [REDACTED—date of the Herne Hill events] and in the subsequent days; and that the book launch was on [REDACTED—eight days after the Herne Hill events]. The proximity in time between the events makes it even more implausible that the

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57 Report [117]

58 Report [144]

59 Report [146]

60 Report, p.161 [reference is to a document that has not been published]

complainant would have written an affectionate inscription had the complaint been true.

- (b) She did not consider the contradiction between the complainant's account of being pressurised to sign the first book "with love" and the expansive message she in fact wrote; and the very similar inscription that appeared unprompted in the second book. Indeed, the Commissioner took the view that the complainant wrote the second inscription because she was keen to keep Lord Lester's favour to advance her project: Report [194]. However, the second inscription (in the complainant's second book published in [REDACTED]) was written long after work on the [REDACTED—parliamentary business] had ceased. The Commissioner did not appreciate this point or put it to the complainant.
  - (c) The Commissioner noted that the complainant frequently and generally used affectionate sign-offs with professional contacts and therefore "no adverse inference can be drawn": Report [80], [118], [196-7]. But the complainant does not allege they made inappropriate advances, inducements and threats prior to her sending emails to those people. It is highly unlikely that the complainant would have used such affectionate language towards someone that had harassed, assaulted, threatened and demeaned her just days beforehand.<sup>61</sup> There plainly should have been an adverse inference.
  - (d) The Commissioner did not test the complainant's account of the [REDACTED—around two months after the Herne Hill events] meeting nor why she appeared to a neutral observer to be warm, smiling and comfortable in Lord Lester's company.
40. There are additional emails (copies of which are annexed) concerning Lord Lester's relationship with the complainant which are inconsistent with the complainant's version of events and which cast serious doubt on the accuracy of her allegations:<sup>62</sup>
- (a) On [REDACTED—seven or eight days after the Herne Hill events], at Lord Lester's request his PA (Evie Jamieson) arranged for the complainant to be able to sit "below-the-bar" at the [REDACTED—parliamentary business] on [REDACTED—11 days after the Herne Hill events] (as a guest of Lord [REDACTED] as Lord Lester already had two guests attending). She had previously been on his list of invitees for the South West Gallery. This contradicts the complainant's allegation that Lord Lester excluded her from meetings.
  - (b) On [REDACTED—17 days after the Herne Hill events], Kate Beattie, a legal researcher at the Odysseus Trust, wrote to the complainant passing on help and advice from Lord Lester. The email suggests that Lord Lester continued to be supportive of the complainant on this date. Again, this is at odds with the allegation that she was excluded.
  - (c) In [REDACTED—around four months after the Herne Hill events], Lord Lester wrote to the complainant to let her know that he would write a letter in support of her application for a grant. This (and the fact

61 As explained in the opinion of David Perry QC and Rosemary Davidson [72-74] the Commissioner had regard to an irrelevant consideration in this respect.

62 These emails were not before the Commissioner but found by Lord Lester in response to the Commissioner's Report.

that Lord Lester subsequently did so) indicate an ongoing friendly and supportive relationship inconsistent with the threats the complainant alleges Lord Lester made, and the other allegations.

*b) Chronology*

41. The correct chronology is inconsistent with the complainant's case but, although the Commissioner was aware that the complainant had been wrong about the dates, she did not appreciate their significance. The correct chronology is annexed.<sup>63</sup> Lord Lester draws the Committee's attention to the following three points.
42. **First**, the complainant alleged that the events in Herne Hill took place at the end of [REDACTED] or [REDACTED—dates around two or three months before the now accepted date of the Herne Hill events] following her first meeting with Lord Lester at the House of Lords on the same date.<sup>64</sup> Further, that following the incident at Lord Lester's home, and the complainant's subsequent conversation with Lord Lester at the House of Lords, but before her appearance on [REDACTED—media event] with Lord Lester, he excluded her from meetings concerning the [REDACTED—parliamentary business] over the course of at least "a few weeks".<sup>65</sup> She claimed that her exclusion was so obvious that A contacted her about it.
43. The Commissioner accepted this allegation (Report [202]). It was of critical importance because it amounted, in the Commissioner's view, to an abuse of power (Report [22]). The Sub-Committee identified it as part of the "gravamen of the complaint" which justified expulsion (see their report [13]).
44. However, the correct of events, taking place over 8 days in [REDACTED], which the Commissioner began to appreciate<sup>66</sup>, showed that this allegation was not true. Lord Lester's first interaction with the complainant was not in [REDACTED] but when she emailed Kate Beattie on [REDACTED—around two months before the book launch] to ask Lord Lester to attend the launch of her book on [REDACTED—around eight days after the Herne Hill events].<sup>67</sup> At this point the complainant was a stranger to Lord Lester and was asking for a favour. The events in Herne Hill took place on [REDACTED].<sup>68</sup> The [REDACTED—media event] took place on [REDACTED—six days after the Herne Hill events].<sup>69</sup> There were no meetings between [REDACTED—date of the Herne Hill events] and [REDACTED—date of the media event] from which the complainant could have been excluded, still less a period of at least "a few weeks";<sup>70</sup> indeed on [REDACTED—two days after the Herne Hill events], Lord Lester was in Strasbourg for a hearing before the European Court of Human Rights (see

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63 Lord Lester has prepared this chronology for the purposes of this appeal but much of the information it contains was before the Commissioner. Where Lord Lester relies on information which was not before the Commissioner, it is identified below.

64 Report, p. 62 [reference is to a document that has not been published]

65 Report p. 18 [reference is to a document that has not been published]

66 Report p. 168 [reference is to a document that has not been published]

67 This email was not before the Commissioner.

68 As the Commissioner and complainant accepted: Report p. 167. [reference is to a document that has not been published]

69 Again, the Commissioner accepted this: Report p. 161. [reference is to a document that has not been published]

70 David Perry QC and Rosemary Davidson identify as a matter which should have been put to the complainant properly: [62].

further below).<sup>71</sup> Lord Lester pointed out repeatedly to the Commissioner that the allegation that he excluded the complainant from meetings was untrue. He was correct, as the evidence shows. No witness to whom the Commissioner spoke recalled any such conduct by Lord Lester or provided any evidential support for this allegation. Importantly, the witness A, whom the complainant says contacted her about her absence from meetings, does not corroborate her account.

45. The Commissioner noticed the date inconsistency and accepted that the proper chronology was that the events at Herne Hill occurred on [REDACTED] and [REDACTED—media event] was on [REDACTED—six days after the Herne Hill events]. The Commissioner raised the issue with the complainant but did not receive a full or proper explanation: Report p. 168. Accordingly, shortly before finalising her report, the Commissioner was in possession of information which showed that:
- (a) the complainant’s claim to have been excluded from meetings over several weeks was incorrect;
  - (b) the correct chronology and sequence were inconsistent with the complainant’s allegation;
  - (c) the complainant had no satisfactory explanation for the inconsistencies;
  - (d) there was no supporting evidence for the allegation of deliberate exclusion.
46. **Second**, the proximity in time between Lord Lester’s first meeting with the complainant and the events at Herne Hill also casts doubt on the veracity of the complainant’s allegations. Lord Lester’s recollection as described to the Commissioner was inaccurate but, as a result of searching old diaries and emails after receiving the Commissioner’s report, the true position has been established: Lord Lester first met the complainant on [REDACTED—four days before the Herne Hill events] when she came to his chambers and told him of her experience.<sup>72</sup> The complainant’s stay at Herne Hill was on [REDACTED]. The notion that Lord Lester – within 4 days of meeting the complainant for the very first time – made serious sexual advances towards her and told her that he loved her is even more unlikely. It is also inconsistent with complainant’s account that they first met in [REDACTED—around 10 months before the Herne Hill events] and that there were subsequently a series of meeting at which both were present.<sup>73</sup>
47. **Third**, the complainant’s account of what occurred the morning after her stay in Herne Hill is also inconsistent with the chronology. According to the complainant, she and Lord Lester left in a taxi for the train station so that she could catch her train to [REDACTED] and Lord Lester continued his advances at the station.<sup>74</sup> The evidence of M – whom the complainant states that she spoke to on that very day – was that Lord Lester drove the complainant to the station, “grabbed at her sexually” and “repeated his threats”.<sup>75</sup> Lord Lester said this was not correct, he did not do so, and that he

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71 The information regarding the hearing in Strasbourg was not before the Commissioner.

72 Lord Lester referred to this meeting in his evidence before the Commissioner but did not give a date or the correct date: Report pp. 96 and 108. [reference is to a document that has not been published]

73 Report p. 60 [reference is to a document that has not been published]

74 Report p. 63 [reference is to a document that has not been published]

75 Report p. 75 [reference is to a document that has not been published]

would not have driven or taken a taxi to either Herne Hill or Kings Cross but rather taken a train to Blackfriars from where he could walk to his chambers.<sup>76</sup>

48. Lord Lester's subsequent research has revealed that he did not travel to Blackfriars but went to Gatwick via Victoria to fly to Strasbourg. He was in Strasbourg on [REDACTED—two days after the Herne Hill events] for a hearing before the European Court of Human Rights, as the judgment in that case records.<sup>77</sup> He travelled there on [REDACTED—the day after the Herne Hill events] on an Air France flight departing from Gatwick at 11:00am (booking reservation annexed).<sup>78</sup> In order to arrive at Gatwick in time for the flight, he would have had to leave Herne Hill soon after 8am (allowing time to travel to Victoria and take a train from Victoria to Gatwick).
49. He could not have travelled to Kings Cross with the complainant or accompanied her to the station. It is also very unlikely that Lord Lester "pursued [the complainant] around the kitchen" when he was likely to be getting ready for a flight, packing or preparing for the hearing.
50. The Commissioner concluded that "nothing turns on the dates of the incidents" and that "(i)n no longer inviting her to relevant meetings; he abused his power." (Report [200 & 243]. This is incorrect; the credibility of the central allegations turned in part on the dates. The Commissioner's conclusions again followed from her flawed approach summarised above.

*c) Character evidence*

51. The Commissioner correctly recognised that if someone were indeed guilty of the matters alleged, they would often have a propensity to act in this manner on other occasions.<sup>79</sup>
52. It was therefore essential for the Commissioner to have investigated the evidence as to Lord Lester's propensity to act in this manner, in order to form a view on the evidence as to the likelihood of the allegations being true. The Commissioner noted that by naming Lord Lester on her website, others might come forward with further complaints for investigation<sup>80</sup>. They did not do so. Lord Lester offered a number of witnesses who could give evidence on this point; women with whom he had worked closely over the years and with whom he would have had every opportunity to behave inappropriately, or harass, or behave in a corrupt manner. He said to the Commissioner (p.101):

"It is crucial that each of these witnesses is interviewed. Given that an important reason for rejecting the allegations is that it is inherently implausible that I would do such a thing, and given my track record of commitment to diversity and of working with women, these witnesses are all women with whom I have worked closely. I would ask that you ask them directly about their experiences of working with me and whether they have had any concerns about the appropriateness of my behaviour towards them. They can give evidence of their knowledge and experience working with me and other female colleagues, and of the likelihood, in their view, given that knowledge and experience, of [REDACTED]'s allegations being true."

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76 Report p. 113 [reference is to a document that has not been published]

77 [REDACTED]

78 The information regarding the hearing in Strasbourg was not before the Commissioner.

79 Report [42]

80 Report [42]

And at p. 152:

“if the allegations of sexual harassment and abuse of power were true, it would mean that I have propensity to act in this manner, as the Commissioner rightly recognises.... Were there any question of a finding against me in the report, the Commissioner would at least have to have interviewed my character witnesses because their evidence would be highly material as to the propensity to act in this manner”.

53. Despite its obvious relevance, the Commissioner:
- (a) declined to speak to these witnesses, on the basis that Lord Lester’s reputation was well-known both to the Commissioner (Report [159]) and the Sub-Committee (see their report [11]) and therefore she did not have to seek further evidence of his good character;
  - (b) considered that she should only speak to any witnesses that had raised concerns about his behaviour as opposed to those who spoke positively of him. (Report [227] and p115). There were none; and
  - (c) did not take into account the absence of propensity in deciding whether the allegations were likely to be true or whether Lord Lester should be believed. Had the Commissioner investigated this point, she would have noted the total absence of any suggestion at all that Lord Lester had any propensity to behave in the way alleged. This would and should have been another factor strongly suggesting that the allegations were not made out.
54. It was not open to the Commissioner in these circumstances to find that this was a bizarre isolated example of grave misjudgement and serious misconduct amounting to public corruption and sexual harassment. The Sub-Committee noted that the Commissioner’s findings that Lord Lester had “completely lost all sense of judgment and propriety” were “seemingly quite out of character” and that<sup>81</sup>:
- “for decades past the respondent has been one of the most widely known, effective and admired of those campaigning for racial and sexual equality in this country, a renowned supporter of human rights and freedoms across the board.”
55. As a jury in a criminal trial is directed, the defendant’s good character goes to both propensity and credibility. A failure to give such a direction where the defendant’s credibility is in issue would likely render any conviction unsafe.<sup>82</sup>
56. In order that the Committee should have before it proper evidence regarding Lord Lester’s character and propensity (which the Commissioner declined to consider), for the purposes of this appeal Lord Lester has obtained further statements from: Natalia Schiffrin (a former lawyer at Interights, who worked closely with Lord Lester); Monica Carss-Frisk QC (a colleague of over 30 years and joint head of Blackstone Chambers); Lord Anderson of Ipswich KBE QC (a barrister and peer who has known Lord Lester for over 20 years); Baroness Kennedy of the Shaws; Baroness Prashar of Runnymede; Baroness Neuberger; Claire Weir (a former Parliamentary Researcher and colleague of over 20 years); Caroline Baker (a former research and administrator); Zoe

81 Report [11]

82 See the opinion of David Perry QC and Rosemary Davidson, [79-82]

McCallum (a barrister who worked with Lord Lester for three years) and Evie Jamieson (a former PA, for 13 years). The Committee is invited to read them in full. They all give evidence of Lord Lester as a man of integrity and principle whom they have never seen behave inappropriately towards women or abuse his position. Some (e.g. Natalia Schiffrin, Monica Carss-Frisk, Zoe McCallum and Claire Weir) refer to instances of working alone with Lord Lester or taking business trips with him as young women. They never experienced or witnessed any inappropriate behaviour at all. This evidence strongly indicates that Lord Lester is not someone who has a propensity to act in the manner alleged by the complainant. Indeed, the evidence is that such behaviour would be abhorrent to him. There is no evidence that suggests otherwise.

*d) The role of KS*

57. The complainant alleges that Lord Lester threatened that because of her “poor behaviour” she would be “replaced” on the [REDACTED—parliamentary business] by S, who would be invited to join him at his house in West Cork.<sup>83</sup> Lord Lester explained to the Commissioner that S and the complainant played wholly different roles and at different times and there was no question of the complainant being replaced. S was a highly qualified family lawyer recommended to him by the President of the Family Division to assist with [REDACTED] in co-operation with government officials, whereas the complainant was involved in promoting her book and the [REDACTED].<sup>84</sup> He would never have said such a thing and did not do so. That S was not and could not be, in fact, a replacement for the complainant is evidence that Lord Lester was unlikely to have said it, still less used it as a threat. S was never invited to visit Lord Lester in West Cork.
58. The Commissioner nevertheless found that Lord Lester had made the threat of replacement by S, even though “what was said to [the complainant] was inaccurate”.<sup>85</sup> This is presumably because (as explained above) the Commissioner considered herself bound to believe the complainant’s account in full, and therefore to disbelieve Lord Lester’s account without properly considering or testing the evidence. In this instance, the inherent implausibility of the threat (which the Commissioner accepted), and that it would have been entirely contrary to Lord Lester’s character, should have been very strong evidence that it was not made.<sup>86</sup>
59. Lord Lester also strongly disputed the evidence of N, who stated that Lord Lester had asked the complainant to help him “[REDACTED—parliamentary business]”. Lord Lester would not have asked the complainant, who was not a lawyer, to help [REDACTED—activity in support of parliamentary business], and did not do so.<sup>87</sup> Moreover, N’s statement is entirely inconsistent with the chronology, which demonstrates that by the time of the complainant’s first contact with Lord Lester (on [REDACTED—around six weeks before the Herne Hill events]) the [REDACTED—parliamentary business] had already [REDACTED—parliamentary business] in the House of Lords (on [REDACTED—around two months before the Herne Hill events]) and so was fully [REDACTED—parliamentary activity]. The evidence of N, and/

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83 Report p. 162 [reference is to a document that has not been published]

84 Report p. 109 [reference is to a document that has not been published]

85 Report [207]

86 Report [210]

87 Report [133-134]

or the accuracy of what the complainant had told him, should have been tested.

60. The Commissioner did not put this key point to the complainant or to N on the basis that “I would not expect her to have a precise recollection of what had been said during what must have been an uncontroversial conversation between herself and N over [REDACTED—over a decade] ago.”<sup>88</sup> Indeed, the Commissioner did not seem to think any discrepancies between the statements mattered given that there was no evidence of a conspiracy between the witnesses.<sup>89</sup> That was the wrong approach. The inconsistencies cast into doubt the reliability of the witnesses and called for a thorough testing of the evidence.<sup>90</sup>

*e) The evidence of Lady Lester*

61. Lady Lester’s evidence with respect to the complainant’s stay at Herne Hill on [REDACTED] was: “I do not remember her being distressed in any way at all. I remember her being friendly and that was about the size of it.” That evidence was again inconsistent with the complainant’s allegation that Lord Lester had harassed her that night, starting in the car on the way to his house from the House of Lords, as a result of which she felt “incredibly uncomfortable”. The Commissioner’s conclusion that there was no inconsistency is incorrect.<sup>91</sup> Lady Lester was an experienced immigration and asylum judge and the only other person who was present on the night in question. She remembers nothing about the complainant’s behaviour that would indicate she had been harassed. Her recollection is inconsistent with what the complainant said had occurred. The Commissioner should have attached greater weight to this evidence and tested the complainant’s account on the basis of it.

*Penalty*

62. The above serious flaws suggest that the Report as a whole should be withdrawn and there be no penalty. If the Committee does not accept the Commissioner’s findings as to abuse of power, it follows that Lord Lester should not be expelled. But even if the Committee were to accept the Report and reject all of the points made above, expulsion from the House is not the appropriate penalty for the following reasons.
63. **First**, the sanction of expulsion should only be imposed in the most extreme circumstances. On its introduction in the House, Baroness Hayman, who moved her Private Member’s Bill, said this:<sup>92</sup>

“Expulsion is obviously a hugely weighty and serious step. I profoundly hope that with this Bill on the statute book and the Standing Orders in place this provision would simply lie unused and there would never be conduct that would provoke the possibility of the House being asked to agree to expel a Member. However, it would be irresponsible not to have such a provision in place when all of us can envisage circumstances—it might be repeat offences against the Code of Conduct or sentences for criminal offences that were less than nine months or were suspended—

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88 Report [135]

89 Report [169-170]

90 See the opinion of David Perry QC and Rosemary Davidson, [62].

91 Report [187]

92 Hansard HL debates 24 October 2014 col. 926

where the House would wish at least to have the opportunity to consider expulsion and to decide whether it would be the right course of action.”

64. Baroness Hayman identified cases of repeat violations of the code, or criminal offences, as those which would justify expulsion. This case falls into neither category and does not justify expulsion.
65. **Second**, the Committee should have regard (as the Sub-Committee did) to the fact that the penalty of expulsion would be applied retrospectively; it did not exist as a sanction at the time of the alleged events. The retrospective application of criminal offences is prohibited by Article 7 ECHR. The allegations are extremely serious and would have a seriously adverse effect on Lord Lester’s career and reputation. Expulsion would be fundamentally unfair in particular in circumstances in which the only reason it can be imposed is that the complainant waited for [REDACTED—over a decade] before making the complaint.
66. **Third**, of the findings made against Lord Lester, only that of abuse of power could justify expulsion as a matter of principle (as the Sub-Committee recognised at [13]). However, the evidence that Lord Lester abused his power was substantially weaker even than the evidence relating to the other alleged misconduct that would not have justified this penalty.
67. In particular, the evidence that Lord Lester had excluded the complainant from meetings because she had refused to accede to his demands (a key part of the abuse of power allegation) was extremely weak for the reasons given above (see paragraphs 41 to 50). Furthermore, as explained above, the Commissioner did not examine the individual allegations of abuse in any detail. This was because she concluded that “something of concern occurred” and that she was therefore bound to accept the complainant’s version of events in full. The investigation on this point was manifestly inadequate.
68. **Fourth**, the Commissioner wished the investigation to go forward because of: a “current concern of Parliament to deal with sexual misconduct by its members”; “the publicity given to endemic sexual misconduct and abuse of power in many fields of work”; and the need for the House of Lords “to make plain to the public, including those working with Members of the House, that complaints of sexual harassment will be taken seriously” and that “behaviour of the kind alleged will be investigated if a complaint is made, as a breach of the Code” (Report [41]).
69. It would be unfair to take those wider factors into account in relation to Lord Lester’s penalty. Any penalty should be determined by reference to the facts of the case and the circumstances of Lord Lester, and not by the need to demonstrate that complaints of sexual harassment will be taken seriously.
70. **Fifth**, the Sub-Committee, in imposing the penalty of expulsion, was directed by the Commissioner only to consider aggravating features of the complaint, framed in language that can only be described as highly prejudicial (Sub-committee Report [9]; cf. “persisted”, “took advantage”, “even after she clearly objected”, “corrupt inducement”). The Sub-Committee should have been directed to other factors in Lord Lester’s case that are relevant to penalty, including:

- (a) The fact that, if proved, the complaint related to isolated misconduct that occurred [REDACTED—over a decade] ago.
- (b) The evidence all being that there was no propensity at all to conduct of this kind.
- (c) The risk of repetition being nil.
- (d) His well-known and impeccable character, in particular as an individual who has promoted equality for women and the rights of the vulnerable over the course of a lengthy and distinguished career.
- (e) The profound adverse effect on Lord Lester’s career and his hard-earned reputation.

### *Conclusion*

71. In summary, the Commissioner’s approach was flawed and unfair and the appeal should be allowed:
- (a) Lord Lester was not permitted to cross-examine the complainant through his legal representative, as the nature and severity of the allegations demanded.
  - (b) In the absence of cross-examination by Lord Lester, the Commissioner should herself have cross-examined the witnesses or otherwise tested the credibility and veracity of allegations with rigour. She did not do so.
  - (c) The Commissioner’s flawed approach was to believe the complainant’s account and those of her witnesses’ wholesale on the basis that Lord Lester did not know why she would make it up and because of her belief that “something” happened. The Commissioner may have been influenced by her misunderstanding that Lord Lester’s position was that the complainant and her witnesses were all lying.
  - (d) This approach reversed the burden of proof as set out above, and came close to the discredited approach of believing the complainant without question as the starting point.
  - (e) It means that the Commissioner did not scrutinise each of the allegations individually, as she should have done.
  - (f) It also led the Commissioner to underestimate, or fail to put to the complaint, aspects of the evidence which were powerfully inconsistent with her account. These included: the book signings and the emails; the correct chronology of events; the overwhelming evidence of lack of propensity and positive good character; and the evidence of S and Lady Lester.
72. As to penalty, if the Committee were to uphold the report, it should have regard to the following:
- (a) Expulsion is the most draconian penalty available;
  - (b) If applied, it would be applied retrospectively;
  - (c) The evidence of abuse of power was particularly weak;

- (d) It would be unfair to take into account in determining sanction in this case any pressure that the House may be under to be seen to deal with such complaints robustly and the wider concerns referred to above;
- (e) There are powerful circumstances which militate in favour of a lesser sanction including Lord Lester's character, the non-existent risk of repetition, and the isolated nature of the alleged events [REDACTED—over a decade] ago.

## Appendix to Lord Lester’s Grounds of Appeal: Opinion of David Perry QC and Rosemary Davidson

### A. Introduction

1. In an undated Report, the House of Lords Commissioner for Standards (‘the Commissioner’) found that Lord Lester of Herne Hill (‘LL’) had breached Article 8(b) of the *Code of Conduct for Members of the House of Lords* (‘the Code of Conduct’). This Opinion considers the Report and, in particular, whether the investigation conducted by the Commissioner, and her analysis of the evidence, was fair and in accordance with the principles of natural justice.<sup>93</sup>

### B. Summary overview

2. In November 2017, the Complainant made an allegation of impropriety against LL in relation to conduct which is alleged to have taken place between [REDACTED] and [REDACTED]. This complaint was submitted to the Commissioner and subsequently investigated. At the end of the investigation, the Commissioner found that the allegations had been substantiated and submitted her report to the Sub-Committee on Lords’ Conduct (‘the Sub-Committee’). Having considered the report, the Sub-Committee imposed the most severe sanction available: expulsion from the House of Lords.<sup>94</sup>
3. LL is appealing to the House of Lords Committee for Privileges and Conduct. The hearing is scheduled to take place on 1 November 2018. One of the issues for consideration by the Committee is the fairness of the investigation process.
4. For the reasons set out in more detail below, this Opinion concludes that the process was unfair for the following reasons:
  - (a) In circumstances where: (i) the allegations were serious, amounting to criminal conduct; and (ii) the passage of time since the events in question placed LL at a disadvantage in meeting the allegations, the requirements of natural justice imposed an obligation on the Commissioner to adopt a fair process which involved testing the evidence against LL with care to provide a properly reasoned basis for concluding that the complaint was substantiated.
  - (b) Given the wide scope of the conduct capable of falling within Article 8(b) of the Code of Conduct, and the number of separate allegations included in the Complainant’s statement, fairness required the Commissioner to identify at the outset what the separate allegations were, and which of them, if proved, amounted to a breach of the Code. The absence of such a ‘charge sheet’<sup>95</sup> led the Commissioner to treat the allegations as an indivisible whole; to take into account irrelevant considerations; and not to take into account relevant considerations, which was unfair.

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93 For the purpose of this Opinion, Messers Peters & Peters, solicitors acting on behalf of Lord Lester QC, provided the following documents: (a) the Sub-Committee on Lords’ Conduct, Report and evidence; (b) Lord Lester’s Draft Appeal Notice; (c) The Code of Conduct for Members of the House of Lords; (d) the Guide to the Code of Conduct.

94 Pursuant to section 1 of the House of Lords (Expulsion and Suspension) Act 2015.

95 The expression ‘charge sheet’ is not intended to convey the need for a formal pleading of the Complainant’s case. It would ordinarily be sufficient to provide a description of the relevant conduct, not in legal language, particularising the essential parts of the complaint capable of giving rise to a sanction, whether singly or cumulatively.

- (c) The Commissioner proceeded on the basis that: (a) absent a plausible reason why the Complainant would lie she ought to be believed; and (b) that the Complainant's written statement alone comprised *prima facie* evidence of an offence. This approach is analogous to the policy of 'belief' that both the criminal courts, and Sir Richard Henriques in his recent review of an investigation into historic offences (Operation Midland)<sup>96</sup>, have rejected as unfair, on the basis that it amounts to a reversal of the burden of proof.
  - (d) In determining whether the balance of probabilities test was met, the Commissioner did not take LL's good character and lack of propensity into account when determining the likelihood that he had engaged in the conduct alleged in the complaint. Nor did she give reasons why she did not consider this to be a relevant consideration. This was unfair in circumstances where LL had specifically made representations that this was a material factor that should be taken into account in his favour.
  - (e) The Commissioner's evaluation of the evidence fell short of the rigorous testing that was required given the serious nature of the allegations made against LL. In particular, the Commissioner interviewed LL before she interviewed the Complainant; she did not interview the majority of the Complainant's witnesses in person; she did not put the detail of the allegations to any of the witnesses, including the Complainant or LL; she accepted statements from the Complainant's witnesses that addressed the allegations against LL at a level of generality, without asking detailed questions about what precisely they had been told by the Complainant; and she did not put key points of LL's case to the Complainant or her witnesses for their comments.
  - (f) The Commissioner proceeded on the basis that, if she found on the balance of probabilities that "*something of concern*" happened between LL on the Complainant, then she was obliged to accept the whole of the Complainant's account as truthful. This was contrary to the long-accepted approach, adopted by the courts, that a witness's credibility is not indivisible. This approach to the credibility of the Complainant was particularly unfair in circumstances where: (i) the allegations were perceived by the Sub-Committee to give rise to different levels of culpability; and (ii) the extent to which there was supporting or contradicting evidence varied as between the allegations.
  - (g) In reaching her determination of the issues, the Commissioner took into consideration a number of irrelevant considerations, and failed to take into account, or afford sufficient weight, to a number of relevant considerations.
5. When considering standards of fairness, it is of course right to acknowledge that proceedings before the Commissioner are Parliamentary disciplinary proceedings in respect of which the full formalities and protections which characterise legal proceedings are inappropriate. Despite this flexibility, there are cases where the gravity of the allegations requires that the evidence be subject to a more intensive degree of scrutiny than may otherwise be appropriate. This is one such case. The serious and criminal nature of the

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<sup>96</sup> An Independent Review of the Metropolitan Police Service's handling of non-recent sexual offence investigations alleged against persons of public prominence, Sir Richard Henriques, 31 October 2016 ('Henriques Report').

allegations, coupled with the potential prejudice to LL inherent in the fact that the allegations arose from events which took place [REDACTED—over a decade] ago, required a procedure equal to their gravity. In the result, it cannot be said that the procedure adopted by the Commissioner conformed to what the ordinary principles of natural justice demanded, and thus the process when viewed as a whole was unfair.

### *C. Relevant factual background*

#### *The Commissioner's investigation*

6. On 17 November 2017, the Commissioner received a complaint alleging the following behaviour in [REDACTED—over a decade] ago: (a) LL had sexually harassed the complainant; (b) LL had offered the complainant a corrupt inducement to become his mistress; and (c) LL had threatened the complainant with negative consequences if she did not accept his offer.<sup>97</sup>
7. As the conduct was alleged to have taken place more than four ago, it was necessary for the Commissioner to seek the agreement of the Sub-Committee to proceed with the investigation.<sup>98</sup> The Sub-Committee gave its consent on 6 February 2018.<sup>99</sup>
8. On 13 March 2018, LL wrote to the Sub-Committee raising, among other matters, concerns in relation to the fairness of the procedure that the Commissioner proposed to adopt.<sup>100</sup>
9. The Chairman of the Sub-Committee replied on 21 March 2018 and stated:
 

*“We agree with the Commissioner that, we having agreed... to her investigating this complaint despite the conduct complained of having occurred [REDACTED—over a decade] ago..., we have no role in her investigation until its completion. This position is unaffected by paragraph 21 of the Code and in any event there is no reason to doubt that the Commissioner will act fully in accordance with the principles of natural justice and fairness.”*<sup>101</sup>

#### *The evidence before the Commissioner*

10. In support of her allegation, the Complainant submitted a statement<sup>102</sup> that contained the following account:
  - (a) On [REDACTED], LL introduced [REDACTED—parliamentary business] to the House of Lords. The Complainant had first met LL some six months earlier, [REDACTED], at a meeting at the House of Lords. At a subsequent meeting LL invited the Complainant to participate in the preparation [REDACTED—parliamentary business]. The Complainant subsequently attended several meetings

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<sup>97</sup> Report from the Commissioner for Standards, paragraph 7.

<sup>98</sup> Paragraph 119 of the Guide to the Code of Conduct provides that *“In exceptional circumstances the Commissioner may investigate conduct which occurred more than four years before a complaint is made, provided that the Sub-Committee on Lords’ Conduct agrees that it is satisfied that there is a strong public interest in the matter being investigated.”*

<sup>99</sup> Report from the Commissioner for Standards, paragraph 45.

<sup>100</sup> Report from the Commissioner for Standards, paragraph 52.

<sup>101</sup> Report from the Commissioner for Standards, Appendix L, p.95. [reference is to a document that has not been published]

<sup>102</sup> Report from the Commissioner for Standards, Appendix 1, pp.58-70. [reference is to a document that has not been published]

in the House of Lords and surrounding buildings; she also attended a number of Parliamentary debates.

- (b) In late October or early November [REDACTED—over a decade ago],<sup>103</sup> the Complainant attended a meeting followed by an evening meal at the House of Lords. A number of people were present at this event, including the Complainant and LL. By the end of the meal, the Complainant had missed her train home and she accepted LL's offer to stay overnight at his home.
- (c) LL drove the Complainant back to his home and during the journey touched her leg on a number of occasions. The Complainant asked him to desist but he continued to touch her leg.
- (d) At LL's home, his wife made tea for the Complainant and offered to bring her a cup of tea in the morning. LL showed the Complainant to her room, and told her that he would be sleeping nearby which made the Complainant uncomfortable. She placed a chair underneath the door handle of the bedroom and called a friend (T) and told her what had happened.
- (e) The following morning, LL's wife brought the Complainant a cup of tea in her room. By the time that the Complainant came downstairs, LL's wife had left. LL placed his arms around the Complainant's waist. He followed her around the kitchen while she asked him to stop. After LL stopped, the Complainant told him that she wanted to leave, and he said he would take her to the railway station. Prior to leaving, he showed her a garden shed where he kept his paintings and drawings.
- (f) At the railway station, LL told the Complainant that he had strong feelings for her, and she told him that she was only interested in a professional relationship. When the Complainant returned home, she called T again and told her what had happened.
- (g) Shortly afterwards, the Complainant attended a meeting at the House of Lords and, in the course of a conversation with LL, he asked her to become his mistress. He told her that, if she agreed, he would make her a Baroness, but if she refused he would ensure that she never got a seat in the House of Lords and that there would be other "*repercussions*". The Complainant later reported the conversation to T, and to two other persons: N (a Senior Crown Prosecutor) and M (a District Judge).
- (h) Following this conversation, the Complainant was no longer invited to take part in meetings to do with [REDACTED—parliamentary business]. Prior to this she had "*been attending meetings consistently and sharing interviews with the media and presenting events often with [LL]*". A civil servant (A) later rang the Complainant to ask why she was no longer attending meetings, and she told him what had happened.
- (i) On [REDACTED—over a decade ago], the Complainant and LL appeared together [REDACTED—a media event]. The Complainant was accompanied by T. When LL saw them, he said "*I see you have*

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103 It now appears to be the case that events occurred in [REDACTED—around two or three months later than the dates in 10(b) above]: see below at paragraph 12.

*brought a chaperone with you*". To which T replied "*why? Does she need a chaperone?*"

- (j) Prior to the above incidents, the Complainant had invited LL to the launch of her recently published book. He told her that he would not now attend because she had been "*a bad girl*", although he did in fact attend the event.
  - (k) In [REDACTED], LL emailed the Complainant criticising her for campaigning to criminalise [REDACTED]. As a result of this, she felt LL was bullying her.
  - (l) The Complainant provided an explanation as to why she did not report the allegation sooner than 2017.<sup>104</sup>
11. LL responded in a written statement dated 26 March 2018.<sup>105</sup> He denied the allegations in the following terms:
- (a) He first met the Complainant in September or October [REDACTED—over a decade ago] at a meeting in his Chambers. The Complainant was not involved in the drafting and preparation of the [REDACTED—parliamentary business], but was involved in its promotion.
  - (b) In late Autumn [REDACTED—over a decade ago], the Complainant attended an event and missed her train home. LL and his wife agreed that the Complainant could stay with them for the night. By this time, LL and the Complainant had been working together for a few weeks, not a few months as claimed by the Complainant.
  - (c) LL did not touch the Complainant inappropriately during the journey to his home or make any other sexual advance. LL vaguely remembered the Complainant's stay and cannot think of anything he said or did that could cause her to be upset. The allegations with respect to abuse of power are untrue. Neither LL or his wife saw any signs that the Complainant was traumatised by her visit to their house.
  - (d) LL had no conversation of the type that the Complainant alleges occurred at the House of Lords, and he denied discussing matters of a sexual nature, or making sexually inappropriate comments. He denied offering the Complainant a peerage, or threatening her if she did not enter into sexual relations with him. He had no power to make offers or threats with respect to peerages and "*the allegation that [he] did so is ridiculous and untrue*".
  - (e) LL did not exclude the Complainant from subsequent meetings relating to [REDACTED—the parliamentary business], and did not threaten not to attend her book launch. In fact, during the occasion of the book launch, the Complainant presented him with a copy of the book with an affectionate inscription that was "*impossible to reconcile with the allegation that I had been guilty of harassing behaviour or an abuse of power*".

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104 The Complainant stated that she did not complain at the time as she feared it might prejudice [REDACTED—parliamentary business], and she feared that if she was disbelieved it could damage her work with [REDACTED]. She was given the confidence to come forward as a result of the House of Commons' response to the recent publicity surrounding allegations of misconduct against a number of high profile individuals.

105 Report from the Commissioner for Standards, Appendix M, pp.95-102. [reference is to a document that has not been published]

- (f) Three days later, the Complainant attended the [REDACTED—parliamentary business] at LL’s invitation, and in the course of [REDACTED—parliamentary business] he referred to [REDACTED] and the Complainant’s “[REDACTED - quote]”.
  - (g) LL had no recollection of appearing on [REDACTED—the media event], or making the comments attributed to him.
  - (h) In December [REDACTED], LL received a copy of the Complainant’s second book with an affectionate inscription and a handwritten note in similarly affectionate terms.
12. The Commissioner conducted interviews with both the Complainant and LL. She received statements and/or interviewed or spoke to a number of other witnesses, including: T, A, N and M (the Complainant’s witnesses) and Lady Lester; B (a barrister); S (a judge) and P (a member of a campaigning organisation) (LL’s witnesses). S confirmed that the date of the dinner attended by the Complainant and LL, and after which the Complainant had missed her train, was [REDACTED—over a decade ago but around two or three months later than originally thought].<sup>106</sup> The Complainant accepted that this date was “*more likely to be accurate*”.<sup>107</sup>

*The Commissioner’s conclusions*

13. The essential reasoning of the Commissioner, together with her conclusions, are set out in her Report. The key aspects of the Commissioner’s observations and findings were as follows:
- (a) The civil standard of proof was applicable and, the more serious the allegation, the stronger the evidence must be. The allegations in the case were such that they required strong evidence to support a finding adverse to LL.<sup>108</sup>
  - (b) The Complainant’s statement provided *prima facie* evidence that LL had breached the Code of Conduct. In circumstances where LL denied the allegations, “*this then, is not a case of possible misunderstanding, misinterpretation or an inadvertent clash of expectations of what constitutes proper behaviour. Either the complainant or [LL] is not telling the truth*”.<sup>109</sup>
  - (c) As the Commissioner could not think of any plausible reason why the Complainant would make detailed but untrue allegations about LL, and then take no further action for many years, she was more likely than not to have been telling the truth when she spoke to her witnesses and made her complaint.<sup>110</sup>
  - (d) This was not a case where it was necessary “*to examine in great detail*” the allegations made by the Complainant, as there was no suggestion that the Complaint arose from a misunderstanding. The Commissioner concluded that “*if I find, on the balance of probabilities, that something of concern took place between Lord Lester and the complainant that led the*

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106 Report from the Commissioner for Standards, Appendix AA, p.pp.157-158. [reference is to a document that has not been published]

107 Report from the Commissioner for Standards, Appendix AJ, pp.168. [reference is to a document that has not been published]

108 Report from the Commissioner for Standards, paragraphs 153-155.

109 Report from the Commissioner for Standards, paragraph 157.

110 Report from the Commissioner for Standards, paragraph 18.

*complainant to share her concerns with others at the relevant time, I am bound to accept her version of events, as no alternative is given other than that the events did not happen*".<sup>111</sup>

- (e) The Complainant did speak to the witnesses T, N, M and A shortly after the incidents alleged in her complaint, and that the most likely explanation for what she said to them was that she was describing events that she had experienced.<sup>112</sup>
- (f) The differences and discrepancies between the statements of the Complainant's witnesses did not show that they could not be relied upon; there was no evidence that these individuals had conspired with one another and the Complainant to cause harm to LL "*and no reason has been suggested why they might do such a terrible thing*".<sup>113</sup>
- (g) There was nothing inconsistent in LL's wife having perceived the Complainant to be friendly and not distressed while in the house given the Complainant's account that she had not found it appropriate to complain about LL's earlier behaviour.<sup>114</sup>
- (h) The fact that the Complainant had later written in affectionate terms to LL did not undermine her account as she "*clearly has an informal style of email sign off, even with professional contacts*".<sup>115</sup>
- (i) Nothing turned on the dates of the incidents in question, and the Complainant's inaccurate recollection as to the timing of events was "*not significant in undermining her account*".<sup>116</sup>

#### *D. The rules of natural justice in proceedings before the Commissioner*

14. Paragraph 21 of the Code of Conduct provides:

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

15. The Code of Conduct is accompanied by the *Guide to the Code of Conduct* ('the Guide') which includes provisions governing the Commissioner's investigation process.<sup>117</sup>
16. In order to understand the requirements of the Code of Conduct, it is first necessary to identify the ordinary requirements of natural justice and fairness, and then to consider their application to the proceedings in LL's case.

#### *The common law*

17. It is well established that the requirements of natural justice are given substance by their context (*R v Home Secretary ex parte Doody* [1994] 1 AC

111 Report from the Commissioner for Standards, paragraphs 171-172.

112 Report from the Commissioner for Standards, paragraphs 174 and 180.

113 Report from the Commissioner for Standards, paragraphs 170-171.

114 Report from the Commissioner for Standards, paragraph 187.

115 Report from the Commissioner for Standards, paragraph 197.

116 Report from the Commissioner for Standards, paragraph 200.

117 Paragraphs 131-138.

531<sup>118</sup>). Thus, where proceedings concern a serious allegation of wrongdoing, the requirements of fairness are stricter than in other contexts. In *International Transport Roth GmbH v Home Secretary* [2003] QC 728, Jonathan Parker LJ stated:<sup>119</sup>

*“there must be something in the nature of a sliding scale, at the bottom of which are civil wrongs of a relatively trivial nature, and at the top of which are serious crimes meriting substantial punishment. Broadly speaking, the more serious the allegation or charge, the more astute should the courts be to ensure that the trial process is a fair one.”*

18. The essential requirements of natural justice in criminal and civil procedures were described in the following terms by Lord Dyson in *Al Rawi and Ors v Security Service and Ors* [2012] 1 AC 531:<sup>120</sup>

*“There are certain features of a common law trial which are fundamental to our system of justice (both criminal and civil)...*

*... trials are conducted on the basis of the principle of natural justice. There are a number of strands to this. A party has a right to know the case against him and the evidence on which it is based. He is entitled to have the opportunity to respond to any such evidence and to any submissions made by the other side. The other side may not advance contentions or adduce evidence of which he is kept in ignorance...*

*Another aspect of the principle of natural justice is that the parties should be given an opportunity to call their own witnesses and to cross-examine the opposing witnesses. As was said by the High Court of Australia in *Lee v The Queen* (1998) 195 CLR 594, at para 32: “Confrontation and the opportunity for cross-examination is of central significance to the common law adversarial system of trial.”*

19. An additional requirement of fairness is that the decision-maker must acquaint herself with all relevant facts, and include in her consideration all relevant matters, while excluding irrelevant matters. In *Secretary of State for Education and Science Appellant v Tameside Metropolitan Borough Council Respondents* [1977] AC 1014, Lord Denning stated<sup>121</sup> that:

*“To my mind, if a statute gives a minister power to take drastic action if he is ‘satisfied’ that a local authority has acted or is proposing to act improperly or unreasonably, then the minister should obey all the elementary rules of fairness before he finds that the local authority is guilty or before he takes drastic action overruling them. He should give the party affected notice of the charge of impropriety or unreasonableness and a fair opportunity of dealing with it... In addition... the minister must direct himself properly in law. He must call his own attention to the matters he is bound to consider. He must exclude from his consideration matters which are irrelevant to that which he has to consider and the decision to which he comes must be one which is reasonable in this sense: that it is, or can be, supported with good reasons or at any rate is a decision which a reasonable person might reasonably reach.”*

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118 Per Lord Mustill, at p.560.

119 At paragraph 148.

120 At paragraphs 10 and 12-13.

121 At p.1025.

*Article 6 of the European Convention on Human Rights*

20. Article 6(1) of the European Convention on Human Rights provides:
- “In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.”*
21. In disciplinary proceedings, where an individual’s right to practise their profession is at stake, Article 6(1) is engaged, and so too are some of the procedural protections guaranteed in criminal cases under Article 6(3) (*Albert and Le Compte v Belgium* (1983) 5 EHRR 533<sup>122</sup>). In *Albert*, the Strasbourg Court found<sup>123</sup> that the Article 6(3) procedural protections applicable to disciplinary proceedings were:
- (a) the right of the subject of the proceedings to notice of the allegation against him;
  - (b) the right to adequate time for the preparation of his defence; and
  - (c) the right to examine, or have examined, witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him.
22. *Albert* has been applied in English domestic law. For example, in *R (G) v Governors of School X* [2012] 1 AC 167, the House of Lords upheld the approach of the Court of Appeal to the effect that an individual may enjoy article 6 procedural rights if a decision in disciplinary proceedings will have a substantial influence or effect on his civil right to practice his profession.<sup>124</sup>
23. The European Court of Human Rights has also held that Article 6(1) applies in the context of Parliamentary disciplinary procedures: *Demicoli v Malta* (1992) 14 EHRR 47. As early as 2000, the Committee for Standards in Public Life made reference to *Demicoli* and observed that a previous Committee had rightly proceeded on the basis that, notwithstanding the exception for proceedings in Parliament in section 6(3)(b) of the Human Rights Act 1998, the minimum standards of fairness in Article 6 should apply to a charge of serious misconduct against a Member of the Commons.<sup>125</sup>

*Application of the principles of fairness to LL’s case*

24. There were two significant features of LL’s case that inform the content of the requirements of natural justice.

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122 Paragraphs 28-30.

123 At paragraph 38.

124 Per Lord Dyson at paragraph 69, and per Lord Hope at paragraph 90.

125 Sixth Report of the Committee for Standards in Public Life, *Reinforcing Standards*, Appendix III, paragraph 2 (January 2000).

25. **First**, the complaint against LL included serious allegations of a criminal nature.<sup>126</sup> While it could not sensibly be suggested that the full formality of a criminal trial was required for their determination, the gravity of the allegations inevitably provides the context for the necessary standards of fairness. This is particularly so, where the consequences for LL of upholding the complaint include the revocation of his right to practice; exclusion from the House of Lords; and irreparable damage to his reputation.
26. **Second**, the allegations are historical, dating back [REDACTED—over a decade ago]. It is widely recognised that the investigation of historical sexual complaints requires particular attention to the issues of due process and fairness. As Mr. Tom Linden QC noted in his advice to the House of Commons Independence Complaints and Grievance Policy Programme Team:<sup>127</sup>
- “the key issue in relation to the so called historic cases is the fairness, in terms of the ability [of the] responder to respond effectively, of any investigation where the allegation relates to events which took place a long time ago.”*
27. The difficulties of ensuring a fair process have been recognised in the context of criminal prosecutions. In *R v PS* [2013] EWCA Crim 992 Fulford LJ identified<sup>128</sup> the problems that may arise in cases where a complaint is made in respect of non-recent sexual misconduct:
- (a) Delay in making an allegation can place a defendant at a material disadvantage in challenging allegations arising out of events that occurred many years ago, and this is particularly so in cases where the defence amounts to a simple denial.
  - (b) The longer the delay, the more difficult meeting the allegation often becomes because of fading memories and the unavailability of evidence. A difficulty compounded by the fact that it may be unclear what evidence has been lost.
  - (c) When considering the central question of whether a case is proved, it is necessary to bear in mind, in particular, the prejudice that may be occasioned by delay.
  - (d) In appropriate cases, a jury should be directed to have regard to these above considerations and provided with a summary of the main elements of identifiable prejudice.
28. Given the serious nature of the allegations in LL’s case, and the fact that the allegations are historical in nature, it appears that, as a starting point, the following basic elements of natural justice should have applied to the proceedings before the Commissioner:
- (a) LL had a right to notice of the case against him;
  - (b) He had a right to adduce his own evidence, and effectively to challenge the evidence adverse to him, or to have it tested on his behalf by the Commissioner;

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126 Including: (a) sexual assault contrary to section 3(1) of the Sexual Offences Act 2003; (b) harassment contrary to section 1 of the Protection from Harassment Act 1997; (c) misconduct in public office contrary to common law.

127 At paragraph 15.

128 At paragraph 35.

- (c) The Commissioner (in common with other decision-making bodies under the Code of Conduct) was required to focus on the issues; take account of relevant considerations; and disregard irrelevant considerations.
  - (d) The Commissioner was required correctly to apply the relevant legal standards, and in particular the burden and standard of proof.
29. The approach of the Commissioner, and the extent to which she adopted a procedure in conformity with these principles, is addressed in the sections that follow.

*E. Notice of the charges against LL*

30. The Commissioner investigated LL for an alleged breach of paragraph 8(b) of the Code of Conduct.<sup>129</sup> Paragraph 8(b) provides:

*“Members of the House should always act on their personal honour”.*

31. Paragraph 7 of the Guide to the Code of Conduct states that:

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

32. The conduct said to constitute the breach was the conduct described in the Complainant’s statement. This conduct comprised a number of separate allegations falling broadly into two categories: (a) sexual harassment (inappropriate sexual comments; sexual touching in LL’s car; and sexual touching at LL’s home); and (b) abuse of power (threats/inducements in connection a request that the Complainant become LL’s mistress; subsequent exclusion from meetings; and the threats not to attend the book launch and to replace the Complainant in her role in connection with [REDACTED—parliamentary business] with another individual, S).
33. The Commissioner and the Sub-Committee appear to have viewed different aspects of the allegations as particularly serious. In finding that there were exceptional circumstances justifying the investigation, the Commissioner focused on the sexual misconduct allegations and the importance of investigating them in light of the *“publicity given to endemic sexual misconduct*

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<sup>129</sup> Report from the Commissioner for Standards, paragraph 8.

*and abuse of power in many fields of work*".<sup>130</sup> However, in imposing a penalty, the Sub-Committee found that the abuse of power allegations:

*"constitute the gravamen of this complaint and have driven the sub-committee to conclude that the respondent's misconduct does indeed amount to a grave abuse of power in the performance of his Parliamentary duties. The other findings... would not of themselves have led the sub-committee to the sanction it recommends"*.<sup>131</sup>

34. Given the breadth of the conduct capable of falling within Article 8(b) of the Code of Conduct, and the number of separate allegations included in the Complainant's statement, it was incumbent on the Commissioner to identify at the outset of her investigation which of the allegations in the Complainant's statement required to be proved in order to constitute a breach of the Code of Conduct.<sup>132</sup>
35. The absence of a simply formulated 'charge sheet', or other summary of the accusation setting out what the separate allegations were, and which of them required to be proved in order to reach a conclusion that there had been a breach of the Code, led the Commissioner into a number of errors. In particular:
  - (a) She treated the Complainant's evidence as a single indivisible allegation that should be accepted or rejected as a whole, rather than treating each allegation separately;
  - (b) She focussed on irrelevant matters, such as the manner in which the Complainant signed off her emails to others; and whether publicly available material on the internet was adverse either to LL or the Complainant.
  - (c) She failed to take into account, or give sufficient weight to, relevant considerations, such as: (i) the lack of supporting evidence for the exclusion allegation; (ii) LL's good character; and (iii) the prejudicial effects of the Complainant's delay in making the complaint.
36. Each of these matters is considered below.

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130 Report from the Commissioner for Standards, paragraphs 41-42. However, it is to be noted that the Commissioner later stated that she considered the allegations related to LL's sexual remarks and unwanted touching were "*at the less serious end of the scale*", but that the abuse of power allegations "*attack... the very integrity of the House*" (paragraph 155).

131 Report from the Sub-Committee on Lords' Conduct, paragraph 13.

132 It is not clear that some of the allegations taken alone would have constituted a breach of the Code. For example, if the Commissioner was satisfied that LL had touched the Complainant's knee but not of the other allegations, whether or not this amounted to a breach of the Code may have depended on the reasons why she thought the conduct had occurred (for example, whether there was a misunderstanding). Similarly, if the only allegation that was proved was that LL excluded the Complainant from meetings (in other words, the sexual harassment and threats that formed the background to the exclusion allegation were not proved, and the Commissioner found only that, for some reason, LL had excluded the Complainant from meetings) it is arguable that this alone was incapable of resulting in a breach of the Code.

*F. The Commissioner's approach to the burden and standard of proof*

37. The obligation on the Commissioner to direct herself properly as to the law (*Tameside*<sup>133</sup>), included a requirement correctly to apply the burden and standard of proof.

*The burden of proof*

38. So far as the burden of proof is concerned, one factor that led the Commissioner to find that the Complainant was credible was the fact that she could think of no plausible reason why the Complainant would lie,<sup>134</sup> and LL had not put forward any reason why she (or her witnesses) would do so.<sup>135</sup>
39. By proceeding on the basis that the Complainant should be believed, absent a credible reason why she should lie, the Commissioner adopted an approach rejected by Sir Richard Henriques in his Review of Operation Midland<sup>136</sup>:

*“In cases of sexual allegations, and in particular non-recent cases, there are mostly only two versions of the facts; the complainant's and the suspect's. When a complainant gives a straightforward account of sexual misconduct, with no variation or inconsistency, the present policy requires an officer to believe it ‘unless there is credible evidence to the contrary. That is a simple reversal of the burden of proof.’”*<sup>137</sup>

40. A similar observation was made by the Court of Appeal in *R v GJB* [2011] EWCA Crim 867. In that case the trial judge's summing-up had referred to the fact that the Defendant could not explain why the Complainant could remember the appearance of the Defendant's bedroom. Stanley Burnton LJ noted that *“this comment, at a crucial point in the summing up, effectively reversed the onus of proof”*.<sup>138</sup>
41. In the context of criminal allegations, it has long been recognised that there may be many reasons why complainants in sexual offence cases (and other cases) may not be telling the truth, or the whole truth. In *R v Henry* (1969) 53 CrAppR 150, Lord Salmon LJ observed<sup>139</sup>:

*“human experience in the courts has shown that [Complainants], for all sorts of reasons and sometimes for no reason at all, tell a false story which is very easy to fabricate, but extremely difficult to refute.”*

42. More recently, in his Report on Operation Midland, Sir Richard Henriques made the following recommendation:

*“Investigators should be informed that false complaints are made from time to time and should not be regarded as a remote possibility. They may be malicious, mistaken, designed to support others, financially motivated **or inexplicable**”. When considering non-recent allegations against prominent people they should consider all relevant background information.”* (emphasis added)<sup>140</sup>

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133 *Supra*, paragraph 19.

134 Report from the Commissioner for Standards, paragraph 18.

135 Report from the Commissioner for Standards, paragraph 170.

136 Henriques Report, *supra*.

137 Paragraph 1.27.

138 Paragraph 12.

139 At p.153.

140 Henriques Report, Recommendation 4.

43. In making this recommendation, Sir Richard observed that prominent people were “*more vulnerable to false complaints than others*”<sup>141</sup> and referred to the findings of a focus group (organised by a sexual assault referral centre) that complainants were sometimes “*troubled people [who] often have something that happened in life, even if its not what they’ve reported. It could be a flashback or something that happened years ago.*”<sup>142</sup>
44. The danger of using the absence of a known motive to lie as a positive feature of a complainant’s evidence has been recognised in other common law jurisdictions. For example, in the Australian case of *Palmer v The Queen* (1998) 193 CLR a majority of the Australian High Court held<sup>143</sup> that:
- “a complainant’s account gains no legitimate credibility from the absence of evidence of motive. If credibility which the jury would otherwise attribute to the complainant’s account is strengthened by an accused’s inability to furnish evidence of a motive for a complainant to lie, the standard of proof is to that extent diminished ... The correct view is that absence of proof of motive is entirely neutral.”*
45. While the English courts have not gone so far, they have held that questions as to whether a Defendant can explain why a Complainant would lie must be accompanied by a careful direction as to how evidence of this nature should be approached. In *R v B* [2003] 1 WLR 2809 the Court of Appeal held<sup>144</sup> that a summing up which included directions that: (a) such a question did not shift the burden of proof, and (b) there were many reasons why complainants lie,<sup>145</sup> was sufficient to meet the requirements of fairness.
46. On analysis, the difficulty with the Commissioner’s approach is that she placed significant, and arguably determinative, weight on the absence of an explanation as to why the Complainant would lie without directing herself that: (a) this factor alone placed no burden on LL to prove anything, and (b) there may be a number of reasons why even an apparently credible Complainant is not in fact telling the truth. In summary, there is a real risk that the Commissioner reversed the burden of proof and, as a result, failed to subject the complaint to proper scrutiny.

*The standard of proof*

47. The Commissioner rejected LL’s submission (based on *Re H (Minors)* [1996] AC 563) that “*the inherent probability of an event is itself a matter to be taken into account when weighing the probabilities and deciding whether, on balance, an event*

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141 Henriques Report, paragraph 139.

142 Henriques Report, paragraph 138.

143 At paragraph 9.

144 At paragraphs 20 and 44.

145 “*This type of case, that is to say allegations by young women of events they say happened when they were children, is the type of case where juries have to be particularly careful when considering the evidence of a complainant, because instances in other cases have shown that complainants can, of course, make up stories: children, of course, can misinterpret events happening to them and, of course, children can fantasise about what is happening, or has happened, to them. But a real danger in this type of case is this: it is possible—I am not saying it happens every time, or even that it happens frequently, but it is possible, and the possibility has to be something to bear in mind—for people whose lives have become unhappy, for whatever reason, to cast about in their past to look for reasons why their lives have become unhappy and they can then misinterpret to themselves what has happened to them as children, and that risk is something that you have to bear in mind when you are considering the evidence.*”

occurred”. In dealing with this point, the Commissioner’s only response was that “*the appropriate standard is on the balance of probabilities*”.<sup>146</sup>

48. With respect, the Commissioner’s response did not adequately address the point advanced by LL. It is well-established (and obvious) that the inherent improbability of an event can be a relevant factor when applying balance of probabilities test. In *Home Secretary v Rehman* [2003] 1 AC 153, Lord Hoffman referred to *Re H Minors* and made the following observations (at paragraph 55):

*“I turn next to the Commission’s views on the standard of proof. By way of preliminary I feel bound to say that I think that a “high civil balance of probabilities” is an unfortunate mixed metaphor. The civil standard of proof always means more likely than not. The only higher degree of probability required by the law is the criminal standard. But, as Lord Nicholls of Birkenhead explained in Re H (Sexual Abuse: Standard of Proof) (Minor) [1996] AC 563, 586, some things are inherently more likely than others. It would need more cogent evidence to satisfy one that the creature seen walking in Regent’s Park was more likely than not to have been a lioness than to be satisfied to the same standard of probability that it was an Alsatian. In this basis, cogent evidence is generally required to satisfy a civil tribunal that a person has been fraudulent or behaved in some other reprehensible manner. But the question is always whether the tribunal thinks it more probable than not.”*

49. While the Commissioner noted that LL was a person with an impeccable reputation, “*celebrated nationally, and internationally for [his] work on behalf of vulnerable people, and ... with a history of valuable public service*”,<sup>147</sup> she appears not to have taken this into account when applying the balance of probabilities standard. Instead she found that:

*“...we are all capable of acting out of character for reasons that may never be clear, even to ourselves, and this does not preclude a history of excellent behaviour.”*<sup>148</sup>

50. While, in as far as it goes, this observation may be true, it fails to address the essential point: LL was entitled to have the inherent improbability of the allegation taken into consideration when deciding whether or not the standard of proof was met. The Commissioner repeated the same error when dealing with a representation made by LL in the following terms:

*“it is, to put it at its lowest, extremely improbable to claim that he would have acted as alleged – a happily married man aged [REDACTED] – in his home where his wife was, seeking to persuade the Complainant to be his mistress, with no evidence at all of any similar behavior before or since (and plenty of evidence to the contrary)”*<sup>149</sup>

51. The Commissioner’s response<sup>150</sup> (to the effect that the alleged sexual touching was said to have taken place in LL’s car and again after his wife left

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146 Report from the Commissioner for Standards, paragraph 236.

147 Report from the Commissioner for Standards, paragraph 157.

148 Report from the Commissioner for Standards, paragraph 230. The reference to “*a history of excellent behaviour*” suggests that the Commissioner accepted that LL was of impeccable character. If this was not the case, then it was unfair for the Commissioner not to have interviewed all of LL’s character witnesses.

149 Report from the Commissioner for Standards, paragraph 238.

150 Report from the Commissioner for Standards, paragraph 239.

in the morning) addressed only part of the point being made. On analysis, the Commissioner should either have: (a) taken the inherent improbability of the allegation into account in her assessment of whether the standard of proof was met; or (b) given reasons as to why she did not think this was appropriate on the facts of this case. Her failure to do either was unfair.

*G. The Commissioner's approach to the evaluation of the evidence*

52. As noted, the complaint against LL included serious allegations of a criminal nature, and the historical nature of the allegations placed LL at a disadvantage in seeking to refute them. In those circumstances, ordinary notions of fairness required the evidence adverse to LL to be rigorously tested, either: (a) through cross-examination; or (b) if not by way of cross-examination, by careful scrutiny of the evidence capable of providing a commensurate level of procedural protection to LL's interests. While the Guide to the Code of Conduct states that "*nor do members accused of misconduct have any entitlement to cross-examine complainants*",<sup>151</sup> the wording of the Guide does not exclude the possibility that cross-examination may be appropriate in some cases.
53. In this regard, it is to be noted that cross-examination, that is the testing of testimony by questioning (either by an advocate or by an officer performing a judicial function), is considered to be an essential component of the process for establishing where the truth lies in allegations of a criminal nature. It has long been recognised as an essential feature of a criminal trial: *R v Davies* [2008] 1 AC 1128,<sup>152</sup> and there have been numerous cases in the context of disciplinary proceedings where the Courts have held that that cross-examination is necessary to ensure fairness. In *R (Bonhoeffer) v General Medical Council* [2011] EWHC 1585 (Admin), Stadlen J observed:<sup>153</sup>

*"It is axiomatic that the ability to cross-examine in such circumstances is capable of being a very significant advantage. It enables the accuser to be probed on matters going to credit and his motives to be explored. It is no less axiomatic that in resolving direct conflicts of evidence as to whether misconduct occurred the impression made on the tribunal of fact by the protagonists on either side and by their demeanour when giving oral testimony is often capable of assuming great and sometimes critical importance"*.

54. He held<sup>154</sup> that:

*"... in the absence of a problem in the witness giving evidence in person or by video link, or some other exceptional circumstance, fairness requires that in disciplinary proceedings a person facing serious charges, especially if they amount to criminal offences which if proved are likely to have grave adverse effects on his or her reputation and career, should in principle be entitled by cross-examination to test the evidence of his accuser(s) where that evidence is the sole or decisive evidence relied on against him"*.<sup>155</sup>

55. These considerations are all the more acute in a case involving a non-recent allegation of sexual misconduct where (as the Commissioner found<sup>156</sup>) the

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151 Guide to the Code of Conduct, paragraph 127.

152 Paragraph 5.

153 At paragraph 45.

154 At paragraph 85.

155 See also the cases cited by Stadlen J at paragraphs 75-88.

156 Report from the Commissioner for Standards, paragraph 158.

credibility of the Complainant and the Respondent were critical to the determination of the complaint.

56. In this context, it is also to be noted that the Joint Committee on Parliamentary Privileges (1999) (chaired by Lord Nicholls) expressed the view that any unfairness during the Commissioner's investigation could be cured by providing the right to examine witnesses on appeal:

*"... when deciding an appeal on a disputed issue of fact central to a complaint, the tribunal will need to ensure the necessary safeguards are available to the member. The tribunal should afford the member the opportunity to question witnesses and call relevant witnesses of his own, if he did not have this opportunity during the commissioner's investigation. If the tribunal decides to adopt an adversarial type of procedure, with one of the law officers or another lawyer leading the questioning of the member, fairness will normally require that the member also should have the opportunity to be legally represented..."*<sup>157</sup>

57. The giving of oral evidence, and the ability to cross-examine, were considered by Lord Bingham to be *"the main tests needed to determine whether a witness is lying or not"*. Lord Bingham (writing extra-judicially) identified the following tests for determining credibility and reliability, although he noted that their relative importance could vary widely from case to case:<sup>158</sup>

- (a) The consistency of the witness's evidence with what is agreed, or clearly shown by other evidence, to have occurred;
- (b) The internal consistency of the witness's evidence;
- (c) Consistency with what the witness has said or deposed on other occasions;
- (d) The credit of the witness in relation to matters not germane to the litigation;
- (e) The demeanour of the witness.<sup>159</sup>

58. On analysis, the approach adopted by the Commissioner to the evidence fell short of the rigorous testing that was necessary to ensure fairness. The procedure she adopted was as follows:

- (a) The Commissioner was provided with the statement of the Complainant, which had apparently been prepared by the Complainant's solicitor.<sup>160</sup>
- (b) The statement was provided to LL and he was asked to provide a written response.<sup>161</sup>

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157 Joint Committee on Parliamentary Privilege, First Report, *Parliamentary Privilege* (30 March 1999), paragraph 291.

158 Tom Bingham, *The Business of Judging* (OUP, 2011), p.6.

159 It is to be noted that Lord Bingham also observed (at pp.7-10) that *"the current tendency is (I think) on the whole to distrust the demeanour of a witness as a reliable pointer to his honesty..."* although he also notes that *"there are I feel sure, occasions on which a witness leaves a judge with a profound conviction that he is, or is not, telling the truth... a firm judgment of this kind formed by one whose judgment is supposed to be his stock in trade is, I think, not lightly to be overridden..."*

160 Report from the Commissioner for Standards, paragraph 39.

161 Report from the Commissioner for Standards, paragraph 46.

- (c) LL provided a written response,<sup>162</sup> accompanied by evidence<sup>163</sup> and the names of 12 witnesses.<sup>164</sup>
  - (d) LL's statement was sent to the Complainant and she sent a further written response.<sup>165</sup>
  - (e) That response was sent to LL who provided a further statement in response.<sup>166</sup>
  - (f) The Commissioner interviewed LL first. The purpose of this interview was described as being to "*discuss aspects of his statement and to give him the opportunity to tell me anything else that he thought was relevant*".<sup>167</sup>
  - (g) The Commissioner subsequently interviewed the Complainant. The purpose of this interview was described as being "*to discuss points by made [LL], and to see if she had any further evidence*".<sup>168</sup> She later corresponded with the Complainant by email and by telephone.
  - (h) The Commissioner then sent questions to the complainant's witnesses (T, A, N and M) by email and received written responses.<sup>169</sup> She also spoke to T by telephone.<sup>170</sup>
  - (i) She interviewed four (out of 12) of LL's witnesses in person,<sup>171</sup> and two (P and S) by telephone.<sup>172</sup>
  - (j) She interviewed further witnesses for the Complainant (H and J) by telephone.<sup>173</sup>
59. The Guide to the Code of Conduct provides that the Commissioner should initially obtain and disclose written accounts from both the Complainant, and the Member complained against,<sup>174</sup> and that further information from witnesses is "*usually requested in writing in the first instance*".<sup>175</sup> However, the Guide also vests the Commissioner with a discretion to "*interview witnesses, either informally or by means of formal oral evidence*".<sup>176</sup> Given the seriousness of the allegations against LL, and the importance of the witness evidence to the determination of those allegations, this was a case where formal oral evidence would have been appropriate. Such evidence would have enabled the Commissioner to: (a) question each witness as to the detail of their evidence; and (b) carefully assess their reliability and credibility.
60. Further, given the serious nature of the allegations, fairness required that they be carefully and thoroughly tested. The fairest and most effective way to achieve this would have been to permit cross-examination of the witnesses

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162 Report from the Commissioner for Standards, paragraph 54.

163 Report from the Commissioner for Standards, paragraph 57.

164 Report from the Commissioner for Standards, paragraph 60.

165 Report from the Commissioner for Standards, paragraph 61.

166 Report from the Commissioner for Standards, paragraph 61.

167 Report from the Commissioner for Standards, paragraph 62.

168 Report from the Commissioner for Standards, paragraph 63.

169 Report from the Commissioner for Standards, paragraph 64.

170 Report from the Commissioner for Standards, Annex AH.

171 Report from the Commissioner for Standards, paragraph 71.

172 Report from the Commissioner for Standards, Annexes T and AA.

173 Report from the Commissioner for Standards, paragraphs 85-88.

174 Guide to the Code of Conduct, paragraph 131.

175 Guide to the Code of Conduct, paragraph 133.

176 Guide to the Code of Conduct, paragraph 133.

adverse to LL. In the absence of cross-examination, it was incumbent on the Commissioner rigorously to test the evidence before reaching any adverse finding.

61. Even allowing for the fact that the proceedings before the Commissioner do not have the character of a formal legal process, the procedure provided no effective challenge to the evidence. In particular:
- (a) Her starting point was to conclude that the statement of the Complainant provided a *prima facie* case against LL.<sup>177</sup> This was even before she had interviewed the Complainant, or spoken to her witnesses. This starting point was unfair and in conflict with the burden of proof. Further investigation was required to reach a conclusion that the complaint established a case that required an answer.
  - (b) The starting point led the Commissioner to interview LL *before* she interviewed the Complainant, or corresponded with her witnesses. In other words, the Commissioner accepted the evidence in the complaint at face value without taking any investigative steps herself, and required LL to provide an answer to the allegations.
  - (c) The answers that LL gave formed the basis upon which the Commissioner challenged the Complainant and her witnesses. This suggests that the Commissioner was testing LL's response to see whether it would disprove, or was capable of disproving, the written case that she had already concluded made out a *prima facie* case.
  - (d) In her interviews with both LL and the Complainant, the Commissioner did not take steps to test their evidence in any detailed way. She did not, for example, ask questions of either of them about the core allegations of sexual touching or abuse of power. It is now well established that best practice when interviewing complainants in relation to allegations of a sexual nature is: (a) to initiate a free-narrative account; and then (b) to question the complainant on their account which can, in appropriate cases, include questions as to inconsistencies or other matters that might undermine their credibility.<sup>178</sup> Similarly, detailed questioning of the Respondent to a complaint may help the interviewer reach conclusions as to his consistency, demeanor and other matters that may assist in assessing credibility. It is striking that the Commissioner did not question LL at all about the detail of the allegations against him.<sup>179</sup>
  - (e) Further, the Commissioner did not question the Complainant's witnesses about the detail of the complaint made to them. For example: (i) A stated that he "*recall[ed] [the Complainant] telling me about the alleged events*";<sup>180</sup> (ii) N stated that the Complainant told her that LL "*had been*

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177 Report from the Commissioner for Standards, paragraph 45.

178 *Achieving Best Evidence in Criminal Proceedings*, Guidance on interviewing victims and witnesses, and guidance on using special measures, Ministry of Justice (March 2011). As the Henriques Report found (at paragraph 1.28) "*The obligation to believe at the outset can and does obstruct the asking of relevant and probing questions designed to elicit the truth. The asking of such questions can be achieved in a sympathetic, kindly and professional manner*".

179 Report from the Commissioner for Standards, Annex O. [reference is to a document that has not been published]

180 Report from the Commissioner for Standards, Annex C. [reference is to a document that has not been published]

*‘coming on to her’ including at his home with his wife present*’;<sup>181</sup> and (iii) J stated that the Complainant *“spoke to me about the incident”*. There is no further detail as to what ‘the alleged events’, ‘the incident’ or ‘coming on to her’ entailed, other than (by inference) that it related to sexual harassment.<sup>182</sup>

62. On analysis, it seems that there were a number of points that fairness required to be put to the Complainant and/or her witnesses but which were not asked (either in person or in writing). By way of example:
- (a) The Complainant should have been asked about the chronology of events: once the Commissioner found that that (contrary to the initial account given by the Complainant) the events in question took place over nine days,<sup>183</sup> fairness then required that it be put to the Complainant that this left very little time in which she could have been excluded from meetings relating to [REDACTED—parliamentary business] as she claimed. The Commissioner’s initial view (stated in interview of the Complainant) was that there was *“several weeks where you weren’t involved [in the meetings]”* was erroneous,<sup>184</sup> and yet the Complainant was not questioned to establish the impact that this had on her credibility.<sup>185</sup>
  - (b) LL’s case that the Complainant and her witnesses were either mistaken or untruthful in their accounts should have been put to them. The Commissioner did not do this. Instead, she concluded that *“they had already asserted the truthfulness of their evidence and [LL’s] response did not contain any factual material to which a response should be sought”*.<sup>186</sup> This was unfair, particularly in circumstances where the accounts of three of these witnesses had been received in writing and the Commissioner had not sought to question them in person, or to take steps to test their credibility.
  - (c) An important point in relation to the Complainant’s credibility was the delay in [REDACTED—over a decade] years in making her formal complaint. The Commissioner sought an explanation for this in writing, but given the central importance of this issue, it is a point where questioning in person would have enabled the Commissioner to assess the Complainant’s demeanour, a material factor relevant to the issue of her credibility (and reliability).
  - (d) The Claimant’s witness (N) stated that the Complainant told him that LL had invited her to [REDACTED—activity relating to parliamentary business].<sup>187</sup> LL denied this, and gave an explanation as to why that

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181 Report from the Commissioner for Standards, Annex D. [reference is to a document that has not been published]

182 Report from the Commissioner for Standards, Annex Y. [reference is to a document that has not been published]

183 Report from the Commissioner for Standards, paragraph 89.

184 Report from the Commissioner for Standards, Annex S, p.135. [reference is to a document that has not been published]

185 It cannot be said that the Commissioner’s request that the Complainant comment on how long elapsed between the stay at LL’s house and the [REDACTED—media event] and, if it was only a few days, why her initial statement gives a different impression, was sufficient for these purposes (Report from the Commissioner for Standards, Annex AJ, p.168).

186 Report from the Commissioner for Standards, paragraph 101.

187 Report from the Commissioner for Standards, paragraph 133.

claim was implausible.<sup>188</sup> The Commissioner did not return to N to confirm whether he was sure that this is what he had been told by the Complainant; nor did she put this point to the Complainant. Her explanation for this was: “*I would not expect her to have a precise recollection of what was said during what must have been an uncontroversial conversation between herself and N [REDACTED] years ago*”.<sup>189</sup> By assuming what the Complainant would say in answer to the question, the Commissioner deprived herself of the opportunity to test this aspect of the case.

63. The points set out above provide examples of those aspects of the Commissioner’s approach to the evidence which were superficial and fell short of the type of testing required when dealing with allegations of serious misconduct. Overall, the approach taken by the Commissioner to the evidence was insufficiently rigorous and resulted in unfairness to LL.

#### *H. No separate consideration of each allegation*

64. The Commissioner’s approach to the evidence of the Complainant was as follows:

*“This is not a case where I have to examine in great detail each of the allegations made by the Complainant, as there is no suggestion that the complaint arises from any misunderstanding between the complainant and [LL] or any misinterpretation of remarks made by [LL]...*

*I conclude from this that if I find, on the balance of probabilities, that something of concern took place between [LL] and the complainant that led the complainant to share her concerns with others at the relevant time, I am bound to accept her account of events, as no alternative is given, other than that the events did not happen.”<sup>190</sup>*

65. On analysis, it is apparent that this approach was erroneous. The criminal courts have often recognised that a witness’s credibility is not indivisible. In *R v G* [1998] Crim LR 48 Buxton LJ stated:<sup>191</sup>

*“A person’s credibility is not a seamless robe, any more than is their reliability. The jury had to consider (as they were rightly directed) each count separately, and might take a different view of the reliability of the evidence on different counts.”*

66. In *R v Fanning* [2016] 1 WLR 4175, the Court of Appeal held that it was generally permissible for a jury to be sure of the credibility or reliability of a complainant or witness in relation to one count in the indictment, and not to be sure of these matters on another count. In *Hamill’s Application for Judicial Review* [2017] NIQB 118, Stephens LJ summarised the position<sup>192</sup> as follows:

*“In relation to the assessment of a witness’s credibility and reliability there is not an overall globalised approach as those qualities are divisible between different issues. Credibility and reliability is not a “seamless robe” see R v G ... so that a jury might take a different view as to the credibility or the reliability of a witnesses’ evidence in relation to different issues... In R v Cairns and others*

188 Report from the Commissioner for Standards, paragraph 134.

189 Report from the Commissioner for Standards, paragraph 135.

190 Report from the Commissioner for Standards, paragraphs 171-172.

191 At paragraph 13(viii).

192 At paragraph 45.

[2002] EWCA Crim 2838; [2003] 1 W.L.R. 796 *the Court of Appeal held that “it is open to the prosecutor to form the view that part of a witness’s evidence is capable of belief, even though the prosecutor does not rely on another part of his evidence, ...”*

67. As noted above, the Commissioner did not specify which allegations in the Complaint, if proved, were capable of establishing a breach of the Code of Conduct. While she was clearly correct to assess that, if she accepted the Complainant’s evidence in full, a breach would be made out, there was no obligation to accept the Complainant’s evidence in full. As the decided cases above make clear, it is permissible for a tribunal of fact to conclude that a Complainant has been truthful in relation to one issue, and untruthful in relation to others; not least because it is not uncommon for complainants to exaggerate or embellish allegations of impropriety.
68. The approach taken by the Commissioner to the indivisibility of the evidence was particularly unfair in circumstances where:
- (a) The allegations were perceived by the Sub-Committee to give rise to different levels of culpability,<sup>193</sup> and
  - (b) The extent to which there was supporting or contradicting evidence varied as between the allegations.
69. By way of illustration, the Sub-Committee viewed the allegation that the Complainant was excluded from meetings related to [REDACTED—parliamentary business] as being a particularly serious abuse of power.<sup>194</sup> The Complainant’s initial account suggested that the exclusion took place over several weeks.<sup>195</sup> However, by the conclusion of the evidence the Commissioner had determined that the relevant period was nine days,<sup>196</sup> and the Complainant’s position was that *“I have no idea how many meetings took place relating to [REDACTED—parliamentary business], so I will have no idea how many I missed as I was no longer invited to them. It was only after [A] made the point to me that my absence was noted by him that I realised I was not included.”*<sup>197</sup> In those circumstances, A’s evidence was crucial to whether this allegation was proved. However, A’s statement simply records *“I recall [the Complainant] telling me about the alleged events. I do not recall the specifics of those conversations”*. He also states that the Complainant had telephoned him in [REDACTED] 2017 and told him what (she says) had happened in [REDACTED—over a decade ago], and that *“I did remember her informing me at the time”*. It is unclear from this account which parts of the Complainant’s account A remembered prior to the conversation with the Complainant in 2017 and, importantly, whether he recalled her being excluded from meetings. Had the Commissioner treated this issue as a separate allegation that needed to be resolved on the balance of probabilities, she would (or at least should) have questioned A more closely in relation to this issue.
70. Subject to overall considerations of fairness, it was open to the Commissioner rationally to conclude that some parts of the Complainant’s evidence were

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193 Report from the Sub-Committee on Lords’ Conduct, paragraph 13.

194 Report from the Sub-Committee on Lords’ Conduct, paragraph 13.

195 Report from the Commissioner for Standards, Annex A, p.65. [reference is to a document that has not been published]

196 Report from the Commissioner for Standards, paragraph 89.

197 Report from the Commissioner for Standards, Annex AJ. [reference is to a document that has not been published]

proved to the necessary standard, and others were not. In those circumstances, fairness required that each allegation be considered separately and, if the standard of proof was not met in respect of one or more of the allegations in the Complaint, then LL was entitled to the benefit of that finding. Such an approach would have assisted in determining the ultimate outcome of the case as a finding that one aspect of the complaint was unreliable would (or might) have impacted another. Separate consideration of the allegations was particularly important in a case where a partial finding in favour of LL was capable of having a material impact on penalty.

*1. Irrelevant considerations taken into account by the Commissioner*

71. The Commissioner asked herself two irrelevant questions when determining whether the Complaint against LL was well founded which, in the case of one of the questions, caused her to take into consideration irrelevant evidence.

*The complainant's practice in signing off emails*

72. An important aspect of LL's case was that the Complainant's allegations were implausible because, after the events were said to have occurred, she continued to write to him in affectionate terms. LL provided the Commissioner with evidence of an email in which the Complainant had signed off "*lots of love xx*" and two books which she had inscribed with fond messages.<sup>198</sup>
73. As part of her investigation, the Commissioner asked the Complainant to provide her with examples of emails to other individuals to whom she had written in affectionate terms.<sup>199</sup> This was an irrelevant line of inquiry: as a matter of logic, such evidence could only be relevant if the emails in question were written to persons to whom the Complainant had made well-founded allegations of a similar nature to those she had made against LL. Otherwise, the fact that she wrote to other persons in affectionate terms was not an answer to the issue raised by LL: namely that it was not consistent with her allegations of serious sexual harassment and abuse of power that she should have continued to write to him in terms of friendship and affection.
74. While the Commissioner also found that she accepted the Complainant's explanation in relation to this issue,<sup>200</sup> there is a real risk that her conclusion in this regard was coloured by the irrelevant material as to the Complainant's general writing style. This is particularly so given that the conclusion highlighted in bold in the report was that "*the Complainant clearly has an informal style of email sign-off, even with professional contacts*".<sup>201</sup>

*The Internet searches to ascertain credibility*

75. The Commissioner began her investigation into credibility with an internet search "*to see if there was anything known about either [the Complainant or LL] that would tend to suggest that one of them was more likely to be telling the truth*

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198 Report from the Commissioner for Standards, paragraphs 111-116.

199 Report from the Commissioner for Standards, paragraph 118.

200 Report from the Commissioner for Standards, paragraph 194.

201 Report from the Commissioner for Standards, paragraph 197. In the same paragraph, the Commissioner also considered the manner in which LL signed off his emails. Logically, this was of no relevance to whether the manner in which the Complainant wrote to LL was consistent with her having made serious allegations of impropriety against him. While this was not a matter that the Commissioner found to be adverse to LL, the fact it formed part of her consideration at all suggests that her understanding of the relevant issues was flawed.

*than the other*”.<sup>202</sup> In so doing, the Commissioner conducted a self-informing process outside the terms of the complaint or the response and, although the public information that she found was not detrimental to either party, real questions of fairness could have arisen as a result of her search for extraneous information. This serves to emphasise the risks of not clearly identifying the substance of the charges (and the issues) at the outset, and the importance of the need for an intense focus on the relevant materials.

*J. Relevant considerations not taken into account or afforded sufficient weight*

76. In addition to taking into account irrelevant information, there is reason to conclude that the Commissioner also failed to take into account – or afford sufficient weight to – relevant considerations.

*The lack of supporting evidence with respect to the exclusion allegation*

77. The Statements of T, M, N and A varied in their detail, and supported in part only certain aspects of the allegations. Importantly, none of the witnesses expressly confirmed the allegation that the Complainant had been excluded from meetings subsequent to the alleged harassment. The Commissioner did not take this into account at all. In light of this evidence, her conclusion that “*the [exclusion] allegation was communicated to A at the time of the events complained of*”<sup>203</sup> was neither evidence-based nor rational.

78. Further, the Commissioner concluded that (contrary to the Complainant’s initial account) only nine days passed between the evening that the Complainant stayed at LL’s house and the Complainant’s book launch (that is, after the conclusion of the [REDACTED—work relating to the parliamentary business]).<sup>204</sup> If the evidence had been tested rigorously, the Commissioner should have taken this into consideration, along with the Complainant’s revised evidence that she had “*no idea*” how many meetings took place relating to [REDACTED—parliamentary business].<sup>205</sup> Instead, the Commissioner concluded that “*as nothing turns on the dates of the incidents, the complainant’s inaccurate recollection of the timing of the events is not significant in undermining her account*”.<sup>206</sup> This suggests that the Commissioner misunderstood the significance of this issue and failed to consider the possible impact of what was a potentially important point capable of undermining the Complainant’s account.

*Approach to LL’s character*

79. LL made detailed representations to the Commissioner as to his good character.<sup>207</sup> In *R v GJB (supra)*, Stanley Burnton LJ made the following relevant observations:<sup>208</sup>

*“The good character of the defendant is relevant in relation to credibility and to propensity, and he is entitled to the full direction on both. However, in an*

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202 Report from the Commissioner for Standards, paragraph 158.

203 Report from the Commissioner for Standards, paragraph 202.

204 Report from the Commissioner for Standards, paragraph 89.

205 Report from the Commissioner for Standards, Annex AJ. [reference is to a document that has not been published]

206 Report from the Commissioner for Standards, paragraph 200.

207 Report from the Commissioner for Standards, Annex Z, p.152. [reference is to a document that has not been published]

208 At paragraphs 18-19 and 24.

*historic sex abuse case such as the present, there are two aspects of propensity to be considered. The first is that applicable even where the allegation is of a recent offence: a person of good character is less likely to have committed the alleged offence. The second results from the passage of time since the alleged offence: the fact that the defendant has not committed any offence, let alone one involving sexual abuse, since the date of the alleged offence goes to the likelihood or otherwise of his having committed the offence or offences. Such a direction is particularly apt where delay since the date of the alleged offences renders it more difficult for the defendant to defend himself, as is so often the case.*

*Mr Barlow (who did not appear at the trial) submitted that the judge should have given what he referred to as the third limb of the good character direction, to the effect that the jury may think that the fact that so long has passed since these alleged offences (in the present case, some 18 years) without the defendant committing any offence renders it less likely that he did commit the offences of which he was accused. As we have indicated, in reality this third limb is no more than an adaptation of the normal propensity direction, that is to say one that is adapted to the facts of the case. **In historic sexual abuse cases, where the defence is a straightforward denial, the defendant may have little more than his good character to rely on. The prejudice that may be caused by the delay between the alleged offence and the charge or the trial renders the so-called third limb particularly relevant.***

...

*We think that this direction was not sufficiently tailored to the facts of this case, and that the so-called third limb of the direction should clearly have been given". (emphasis added)*

80. This decision is reflected in the specimen direction given to juries in criminal trials:

*"Good character is evidence which counts in the defendant's favour in two ways:*

*(1) his good character supports his credibility and so is something which the jury should take into account when deciding whether they believe his evidence; and*

*(2) it may mean that he is less likely than otherwise might be the case to have committed the offence/s with which he is charged.*

*In cases where allegations are "historic" the jury should also be directed to take account of the fact that the defendant has not committed any offences in the intervening period."*

81. In other disciplinary contexts, it is clear that a failure to take into account character evidence in this way amounts to a "significant legal error": *Donkin v The Law Society* [2007] EWHC 414 (Admin),<sup>209</sup> cf. *Bryant v Law Society* [2007] EWHC 3043 (Admin).<sup>210</sup>

82. Fairness required that LL's good character was a matter to be taken into account in his favour in the following ways: (a) as a factor enhancing his

209 At paragraph 25, per Maurice Kay LJ.

210 Paragraph 162, per Richards LJ.

credibility; (b) as demonstrative of his lack of propensity to commit offences of this nature; and (c) given the historical nature of the allegation, as a factor making it less likely that LL engaged in the conduct alleged. The Commissioner's conclusion that "*we are all capable of acting out of character for reasons that may never be clear, even to ourselves*" did not properly or fairly engage with this issue.<sup>211</sup>

*The prejudicial effect of delay*

83. Finally, the Commissioner should have taken into consideration the prejudicial effect that the delay in the making of the Complaint had had on LL's ability effectively to respond to the allegations (see *R v PS*, cited above). This is particularly so given the emphasis that was placed on LL's lack of an explanation as to why the Complainant would have been untruthful.

***K. Conclusions***

84. For the reasons set out above, the procedure adopted by the Commissioner, and her approach to the evidence and the issues, was unfair in a number of material respects. In particular:
- (a) There was a failure clearly to particularise the conduct which, if proved, would constitute a breach of the Code.
  - (b) The Commissioner adopted a policy of belief that led to a reversal of the burden of proof.
  - (c) The Commissioner took an approach to the evidence in which the Complainant's evidence was treated as indivisible.
  - (d) The Commissioner adopted an insufficiently rigorous approach to each allegation.
  - (e) The evidence of the witnesses was not considered in detail or effectively challenged.
  - (f) Matters favourable to LL (such as his good character, and the inherent improbability of the allegations) were left out of account or given insufficient weight.
  - (g) In reaching her determination of the issues, the Commissioner took into consideration a number of irrelevant considerations, such as the manner in which the Complainant signed off her emails.
85. In summary, it cannot be said that the Commissioner's investigation of the complaint against LL complied with the requirements of natural justice and the errors resulted in a procedure that was insufficiently rigorous and unfair.

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<sup>211</sup> Report from the Commissioner for Standards, paragraph 230.

## Comments from the Commissioner on Lord Lester's Grounds of Appeal

### *Introduction*

1. Lord Lester has appealed against my findings that he breached the requirement in the Code of Conduct that he act on his personal honour. He has also appealed against the recommendation of the Sub-Committee that he be expelled from the House.
2. My comments do not address the recommendation of expulsion by the Sub-Committee, but only Lord Lester's points of appeal against my findings, and his criticisms of aspects of my report that are not contained in his points of appeal, but that I need to address.
3. The Grounds of Appeal run to 30 pages. Helpfully, in the conclusion to the document, Lord Lester sets out 6 overarching grounds on the basis of which he says that his appeal should be allowed.
4. In this document I will deal with those 6 points. In the Appendix to this document I provide comments on each of the criticisms made by Lord Lester, and these are referenced in my comments on his 6 points.
5. However, before dealing with the 6 points, I have a number of overarching points of my own to make, which provide, I hope, a context which will assist the Committee in its deliberations. These deal with Lord Lester's approach to the investigation; the status of the counsels' opinion on which he relies to a significant extent; his attempt to introduce fresh evidence; his responsibility for any inaccurate or unevicenced assertions in the Grounds of Appeal and his unsatisfactory conduct during the investigation.
6. References to the Grounds of Appeal are given as (GA x), to counsels' opinion as (O x) and references to my report are given as (R x).

### *Lord Lester's approach to the investigation*

7. From the outset, Lord Lester has not accepted the legitimacy of my investigation or the procedure laid down by the House for conducting it. In his letter to me of 28 February he complains that: he was not given an opportunity to make representations before his name was published on my website, the investigatory procedure to be followed was unfair; and the fact that he was not given an opportunity to address the Sub-Committee before it considered whether to allow me to investigate was also unfair. He asked me to consider an alternative process (R Appendix H) [reference is to a document that has not been published], which would have involved asking the House to amend the Code after the investigation had begun.
8. I replied to explain that I could not deviate from the procedure laid down by the House in the Guide to the Code (R Appendix I). [reference is to a document that has not been published]
9. Despite this, Lord Lester has continued to assert that the process is unfair. He wrote to the Sub-Committee saying that: the Code did not cover the present case; the 'personal honour' requirement was not free-standing but had to relate to the rules on openness and financial interests set out in the Code; it was unfair that he had no right to cross-examine the complainant; that the standard of proof had to be higher than the balance of probabilities

required by the Code; that the delay since the behaviour complained of made the process inherently unfair; and that I should delay any investigation until the reforms currently under consideration by the Sub-Committee on Lords' Conduct made a more appropriate process available. He wrote to Lord Brown and asked the Sub-Committee to rule that the Code did not cover the complaint (R Appendix K). [reference is to a document that has not been published]

10. The Sub-Committee rejected his request, and confirmed that I had to investigate under the existing Code, and pointed out that the allegations were not simply of sexual harassment but also of grave abuse of power in the exercise of Lord Lester's parliamentary duties (R Appendix L). [reference is to a document that has not been published]
11. As required by the Code, I sent Lord Lester a draft of part of my report, containing factual information, but not my analysis of findings, so that he could comment on it.
12. His response repeated his complaints of procedural unfairness; saying that: Parliament has recognised that the Code does not cover sexual misconduct (this is the case in the House of Commons where there is no equivalent 'personal honour' provision); I had 'declined' to investigate the breach of confidentiality when the press revealed information after the notification on my web site; the correct standard of proof was higher than the civil standard of the balance of probabilities; and the sexual harassment alleged by the complainant was not covered by the Code as it did not relate to his parliamentary duties.
13. Finally, in his Grounds of Appeal, Lord Lester repeats that the process is unfair as: it does not allow for legal representation or cross examination; repeats that I did not allow him to comment before publishing the fact of the investigation on my webpage and that I 'would not' investigate the subsequent leak; that fairness required that he should be entitled to legal representation and cross examination.
14. It is clear, therefore, that Lord Lester has never accepted the legitimacy of the investigation.
15. As he is well aware, there is no other procedure for investigating complaints of misconduct made against Members of the House. The implication appears to be that Lord Lester considers that, whether or not the allegations were true, he should not have been subject to investigation.
16. This is, of course, a point of view, and Lord Lester is entitled to hold it, but it was not one with which the Sub-Committee, two of whose members include very senior retired judges and lawyers, agreed when it authorised me to start this investigation.
17. The House of Lords has not published its procedure for dealing with complaints under the Bullying and Harassment Code, which will be available when it comes into effect but the procedure agreed by the House of Commons makes no provision for legal representation or cross examination, and it seems likely that the same will apply in the House of Lords, as consistency, where possible, is acknowledged to be desirable.

18. I also wish to draw the Committee's attention to the Privileges Committee's Report on the Conduct of Lord Moonie, Lord Snape, Lord Truscott and Lord Taylor of Blackburn, printed on 11 May 2009, and debated on 20 May 2009. The report included the report of the Sub-Committee on Lords' Interests, which had investigated allegations made by the *Sunday Times* that the four Members had been "*prepared to accept fees of up to £120,000 a year to amend legislation in the House of Lords on behalf of business clients*".
19. At that time, the Sub-Committee's role included carrying out the investigations which are now my responsibility. The procedural rules were the same then as they are now, except that in 2009 Members' lawyers could communicate with the Sub-Committee on behalf of their clients, whereas now they cannot, following a revision of the Code recommended by a Leader's Group chaired by Lord Eames.
20. The purpose of the debate in May 2009 was to decide whether the recommendation of another Privileges Committee Report, on sanctions, should be accepted so as to allow for the first time an additional sanction of suspension from the House; to agree the findings of the Committee in relation to the conduct of the four Members; and, if suspension were decided to be a permitted sanction, to agree with the recommendations that Lord Truscott and Lord Taylor of Blackburn should be suspended.
21. This was in the context of no Member of the House having been suspended since the time of Oliver Cromwell, and the historic nature of the decisions under consideration was evident to all those present. The relevance to the current proceedings is obvious.
22. In the evidence attached to the Report is correspondence between the Sub-Committee and the legal representative of one of the Members, which sets out allegations of procedural unfairness, including: a general complaint that the proposed procedure did not comply with the requirements of a fair trial as set out in Article 6 of the ECHR; and, more specifically that the procedure was unfair in that:
- the Member had not been provided with details of the 'charge' that he faced;
  - it was unfair to apply the 'balance of probabilities' standard of proof instead of the standard of 'beyond reasonable doubt';
  - there was no right to legal representation at the hearing;
  - there was no right to cross examine the journalists with whom the Member met, and from whom the recorded evidence of alleged breaches of the Code came; and
  - the Sub-Committee was not looking at the behaviour of the journalists.
23. The Sub-Committee rejected the allegations of unfairness, saying: *'In the Sub-Committee's view, a fair hearing requires that the person whose conduct is being investigated is told the rules under which his conduct is being assessed, is shown all the evidence, and is given a fair opportunity to respond. Fairness also requires that the individual peers are given an opportunity to respond in writing, which allows them to use the services of such lawyers as they wish to instruct.'*

24. In the subsequent debate, Lord Lester was scathing in his rejection of the allegations of procedural unfairness:

*“The Sub-Committee is not a court of law and has not determined any criminal charge. Nor has it determined any civil right. It has performed its role as a disciplinary body acting on behalf of the committee and the House under the House’s extensive and essential powers of self-regulation....Because the committee and the sub-committee have not determined a criminal charge or a civil right of any Member of the House, it is quite clear that there is no question of any breach of the European convention ...*

*The sub-committee and the committee decided, in the light of the seriousness of the allegations, that particularly strong evidence was required before they could be satisfied that the allegations were proved. The four Members were fairly informed of the case against each of them. They each received legal advice. They each had a fair opportunity to answer what had been put to them, both in writing and orally ...*

*As for the noble Lord, Lord Taylor of Blackburn, his lawyers alleged in his appeal that the finding against him could not stand,*

*“because it was reached through an unfair process”,*

*and that he was,*

*“denied basic procedural safeguards guaranteed by domestic and international law, and by the House of Lords own rules. Not least of these is the right to know the charges against you and to test the evidence against you through cross-examination ... and the right to confront your accuser.”*

[..]

*The noble Lord, Lord Taylor, was advised throughout by Finers Stephens Innocent. His lawyers raised procedural and legal objections based on what the sub-committee rightly described as a “fundamental misconception” of its role. In my view, they were also based on a fundamental misconception of both domestic law and international human rights law. In his letter of 17 February, Mr Mark Stephens alleged that the sub-committee,*

*“appear to wish to proceed by flouting both the letter and spirit of the right to a fair trial, guaranteed under Article 6 of the European Convention on Human Rights”.*

*In his letter of 12 March, he referred to what he described as the “pretence in the code” about the fairness of the procedures. These and other criticisms were entirely misguided”<sup>212</sup>*

25. I draw attention to Lord Lester’s May 2009 speech in such detail because it shows that in 2009 he vigorously defended the processes which he now seeks to undermine.

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212 HL Deb 20 May 2009 col 1410-12 <https://publications.parliament.uk/pa/ld200809/ldhansrd/text/90520-0006.htm>

*The Status of Counsels' Opinion*

26. The first document attached to the Grounds of Appeal is an opinion by David Perry QC and Rosemary Davidson. In his grounds (GA 10) Lord Lester describes this as an independent opinion.
27. However, although no doubt Ms Davidson and Mr Perry are people of integrity, and Mr Perry's eminence is well known, it is not correct to say that the opinion is independent, or should be accepted without reservation.
28. Firstly, the opinion was obtained by Lord Lester's solicitors, Messrs Peters and Peters. We do not know what instructions were given by the solicitors, nor do we know what meetings took place, and to what extent all the evidence was properly considered before the opinion was finalised.
29. Lord Lester's (undated) Grounds of Appeal were received by the Committee staff on Monday 15 October, two days after the date of the opinion, Saturday 13 October. In view of the close mirroring of the contents of the opinion in the contents of the Grounds, and in view of the fact that Lord Lester has had my report since 11 September it seems probable that there was considerable contact between the members of Lord Lester's legal team in the weeks available to them for preparation. I do not suggest for a moment that there is anything wrong with this, simply that it cannot be described as an independent document, but must be seen as one designed to advance Lord Lester's cause.
30. Secondly, this is only an opinion, not an accepted decision made in an adversarial court.
31. In a standard appeal the appellant (Lord Lester) and the respondent (me) would both put up legal arguments (opinions) as to why the appeal should, or should not be allowed. I do not have that option, as the processes set out in the Code do not permit this. However, what I can say is that, if I had that opportunity, I have no doubt that I would be able to obtain a reputable, eminent opinion that disagreed in many, if not all, respects from that of Mr Perry and Ms Davidson.
32. Finally, as Lord Lester has raised Mr Perry's involvement in the proposed Independent Complaints and Grievance Policy, I should point out that Mr Perry was asked to advise on 'the functioning of the policy in circumstances where the subject of a complaint made under the policy may also be capable of constituting the subject of a criminal investigation and, potentially, a prosecution'. This did not include any advice on the contents of the scheme.
33. I ask the Committee to bear this in mind.

*Lord Lester's attempt to introduce fresh evidence*

34. The Committee will be aware that it is not its role to reopen the investigation, but simply to '*use their judgment to decide whether, on the balance of probabilities, they endorse the conclusions of the Commissioner*' (para 144, Guide to the Code).
35. Lord Lester, at (GA 40-50), introduces new evidence, in the form of old emails and diary entries, which he says cast even more doubt on the reliability of my findings. In doing so, he seeks to get the Committee to re-open the investigation.

36. The Guide to the Code makes no reference to admitting fresh evidence, which makes sense when the Committee is precluded from reopening the investigation. I readily concede that there may be circumstances where fresh evidence should be admissible, for instance when new information, unavailable at the time of the investigation, shows that findings are no longer safe.
37. However, neither of those criteria apply in this case:
- The evidence sought to be introduced was available while the investigation was live, and is of exactly the sort that I urged Lord Lester to seek out, when I interviewed him on 10 April: (pp 6 and 7 of R Appendix O); [reference is to a document that has not been published]
  - The information does not prove that any of the findings was manifestly incorrect, but simply adds to what Lord Lester claims to be the existing inadequate evidence to support the findings.

Lord Lester does not seek to explain why this evidence should be introduced at this stage, nor why it was not produced earlier.

38. The unfairness of this attempt can be illustrated by his claim (GA 46) that his first meeting with the complainant was [REDACTED—several months after the date he had given in his evidence during the investigation], although she had contacted him via a colleague in [REDACTED—a date about two months previous] to ask him to attend her book launch on [REDACTED].
39. However, in his statement of 26 March [reference is to a document that has not been published] Lord Lester said that he had met the complainant in [REDACTED—a date three to four months before the date asserted above], and in his interview with me on 10 April [reference is to a document that has not been published], he said that he had met her in his chambers, and either then or shortly thereafter he had agreed to go to her book launch, and she had attended at least one, if not more, political meetings with him to garner support *‘before Christmas.’*
40. Clearly, these two accounts are inconsistent. If I had been given the information during the investigation, I could have:
- Pointed out the discrepancy to Lord Lester and asked for an explanation;
  - Sent the ‘new’ emails to the complainant for comment and to give her an opportunity of finding evidence to challenge Lord Lester’s new chronology; and
  - Gone back to one of Lord Lester’s witnesses, P, who said in interview (R Appendix T pp 1 and 2 at 25 -1) [reference is to a document that has not been published] that she was aware that Lord Lester had been working closely with the complainant, to seek further information.
41. As Lord Lester has given no good reason for not providing this information in a timely way, I do not believe the Committee should admit it, or use it to re-open the investigation.

*Lord Lester's responsibility for any inaccurate or unevidenced assertions in the Grounds of Appeal*

42. Lord Lester's Grounds of Appeal rely very heavily on counsels' opinion, which is acceptable and normal. If Lord Lester were not himself an eminent jurist, he could counter any criticism of errors and inaccuracies by saying that he is not an expert, and has simply taken counsels' advice, in its totality, which many lawyers would consider a very sensible and proper attitude in a lay client.
43. However, Lord Lester is not a lay client in the ordinary sense of the phrase, and must have known, or should have known, that counsels' opinion, and his own Grounds of Appeal, contain assertions which are either inaccurate on the face of the papers, or unsubstantiated through lack of evidence.
44. I find it disturbing that, for instance, suggestions about my failure to behave in particular ways have been repeated throughout the investigation, up to and including in the Grounds, with no acknowledgement to the explanations that I have given, and no response to those explanations.
45. Of course he is entitled to disagree with my position, but to ignore inconvenient facts is not satisfactory.
46. Details of these matters are given below and in the Appendix.

*Lord Lester's unsatisfactory conduct during the investigation*

47. Lord Lester seriously breached confidentiality in July, as set out in R paras 212-215. He offered no explanation, and put the Member to whom he spoke, and the complainant and those who were with her, to whom the Member spoke immediately afterwards, in a potentially vulnerable position, as they could have been suspected if details of the breach had emerged. Luckily, and impressively, none of those to whom confidential matters were revealed have breached confidentiality in their turn.
48. At the end of September my office received an email from one of Lord Lester's witnesses, who had been contacted by Lord Lester's solicitors, and who had been told of the outcome of the investigation. This was a breach of confidentiality.
49. During most of the investigation, except when he was out of the country, Lord Lester bombarded my office (sometimes several times a day) with demands that I should complete the investigation quickly and exonerate him.
50. While making all due allowance for his anxiety, this was grossly inappropriate. I did not speak to Lord Lester, and my clerk bore the brunt of the harassment, for which I am, and was, very grateful. I was not influenced by his repeated calls, but he should not have made them.
51. I know that there were concerns about the length of time the investigation took, but Lord Lester has to take responsibility for a good deal of this; he did not respond in substance to the complaint for nearly 7 weeks, and, just as we were hoping to get the report to the sub-committee before the summer recess, he breached confidentiality, as described above. This necessitated a further investigation, which although brief, made it impossible to submit the report before the recess.

52. I am aware that his supporters complained to the Press about the ‘delay’, but of course I do not know if Lord Lester was implicated in this.

*Lord Lester’s 6 overarching grounds of appeal*

*1. Lord Lester was not permitted to cross examine the complainant through his legal representative, as the nature and severity of the allegations demanded.*

53. As set out above when commenting on Lord Lester’s approach to the investigation: the procedural rules agreed by the House are long standing; have been used when very serious allegations against other members have been investigated; are considered by the Sub-Committee to comply with the principles of natural justice; and were strongly endorsed by Lord Lester in his speech of 2009.

*2. In the absence of cross-examination by Lord Lester, I should have cross-examined witnesses or otherwise tested the credibility and veracity of witnesses with rigour, but did not do so.*

54. I am not entirely sure what Lord Lester means by cross-examination in these circumstances, but if he means testing the evidence where there is a challenge or a good reason to do so, then the report shows that I did this, throughout the process, and where I did not, I gave my reasons. (R156). The meticulousness with which I did this is clear from R 93 to 152.

55. For instance, I did not challenge the evidence of the initial four witnesses who confirmed that the complainant had spoken to them at the time, or shortly after, the events complained of. As I explained in my report (R), they were all senior people (a judge, an ex-Chief Crown Prosecutor, a Deputy Head of Mission in our embassy in an EU country, and a friend and colleague), recalling what the complainant had said to them many years ago, and, in my view inevitably, recalling differently. Asking them to explain discrepancies between what they recalled being told and what the complainant recalled saying, seemed to me an exercise in futility. They had done their best in difficult circumstances, and challenging them would not improve their recollection. I did not consider it appropriate to accuse them of lying, just as I did not consider it appropriate to accuse Lord Lester’s witnesses of lying. Lord Lester makes much of his good character, which I fully accept. I also accept the good characters of all the witnesses, which I consider I am entitled to do.

56. I give further details of testing the evidence at 4 below.

*3a. I believed the complainant’s account and those of her witnesses wholesale on the basis that Lord Lester did not know why she would make it up and because she believed that ‘something’ had happened.*

57. This claim is based on a paragraph in my executive summary (R18 and 19) which is necessarily a truncated version of my reasoning, which is set out in detail at 5 below. This assertion is apt to mislead the Committee.

58. The assertion that I believed that ‘something’ had happened is taken out of context. I explain at 5 below how I reached the conclusion that it was more likely than not that something had happened that caused the complainant to speak to her 6 witnesses at the time or shortly thereafter.

*3b. I may have been influenced by my misunderstanding that Lord Lester's position was that the complainant and her witnesses were lying.*

59. This is bizarre.
60. In his statement Lord Lester made much of the discrepancies in the witnesses' statements, which was fair enough, but did not deal with their assertions that the complainant had spoken to them about his behaviour at the time, or shortly after, it occurred.
61. I found this odd, and raised it with him in interview. (pp 9-11 R Appendix O) [reference is to a document that has not been published]
62. I asked him if he accepted that the four witnesses had correctly recalled that the complainant had made allegations against him at the time, or whether he thought they were lying about this. Lord Lester spoke at some length about the discrepancies in the witness statements and the unsatisfactory conduct (as he saw it) of one of the witnesses, but did not answer the question, and after a while I asked again. He said that he found it extremely hard to give a fair answer to my question, to which I replied: '*That is fair enough*', which could not by any stretch of the imagination be seen to be expressing dissatisfaction with his answer, or indicating that more was expected from him; I thought what he said was all the answer I was going to get, and was going to move on. However, Lord Lester then gave another long reply, culminating in him volunteering that he believed that the complainant and her witnesses were telling '*a pack of lies*'.
63. In his Grounds he says that this was an unfair conclusion for me to draw, as he had previously made different comments. However, as I would have thought he would be the first to acknowledge, if direct questioning (so long as it is not bullying or overbearing) elicits something new, it cannot be disavowed simply because the speaker wishes he had not said it. Obtaining such new and illuminating information is the whole purpose of cross-examination.
- 4. This approach reversed the burden of proof and came close to the discredited approach of believing the complainant without question as the starting point.*
64. The basis of this point comes from the assertion in the opinion, (O 38) that I believed the complainant because I could think of no plausible reason why she would lie.
65. At R 169-180 I set out my reasons for accepting, in broad terms, the evidence of the complainant's first four witnesses that the complainant had spoken to them about what she alleged to be Lord Lester's misconduct.
66. I went on to point out that accepting their evidence did not, in any way, mean that I accepted that the complainant was telling the truth, as I explained at R174-180.
67. I was alive to the possibility that the complainant had been mistaken in her perception, or had acted out of malice [REDACTED—over a decade] ago, and, for the reasons given, decided that these possibilities were very unlikely.
68. It is a travesty of the explanation in my report for Lord Lester to assert that I found that the complainant was credible because I could think of no plausible reason why she would lie. In fact, as I set out at R174 -180, I found the complainant credible because I could think of no rational reason

why a woman of the complainant's apparent sanity and probity would make detailed and specific false allegations against Lord Lester, do nothing for many years, and then make a complaint.

69. When I wrote the report, it occurred to me that perhaps I should explain what I would have done if the evidence had been different, but I decided that discussing hypothetical scenarios would be neither useful nor necessary. However, as the reasons I have given have been misinterpreted, I will now try to explain by reference to what I would have done if the evidence had been different.
70. If there had been no corroborative evidence from the initial witnesses, and no other corroborative or supporting evidence, and I had been asked to decide if the complainant's unsupported allegations made it more likely than not that Lord Lester had behaved as alleged, despite his denial, I suspect that I would have found that the burden of proof had not been met, as the evidence would have been 50/50.
71. However, there was cogent corroborative evidence, despite all the attempts by Lord Lester to airbrush it away, which tipped the balance of probability in favour of the complainant.
72. It is interesting that Lord Lester seeks to undermine my reasoning in the way he does, because this carefully skates over the fact of the statements of her witnesses, and suggests that, in considering Lord Lester's word against that of the complainant, I acted irrationally and incorrectly in accepting her account.
73. It is also interesting that Lord Lester makes no reference to the two later witnesses who also confirmed that the complainant had spoken to them at the time. One of these, H, recalls being phoned by the complainant during the night she stayed at Lord Lester's house and I refer to her evidence again below. She has the distinction of being the only witness evidence Lord Lester accepts in part, (R Appendix X and R Appendix Z page 6 at para 31). [reference is to a document that has not been published]
74. If Lord Lester had said that there might have been a conversation with the complainant about how to be elevated to the House of Lords, this would immediately have raised the possibility that the complainant had misunderstood or misinterpreted an innocent remark, and I would have pressed her on this, just as Lord Lester says I should have done. The same would apply if he had acknowledged that he might have made a flirtatious remark, or commented on her appearance, even though he had forgotten doing so.
75. However, in his statement and his interview with me, he made no suggestion of any possible misunderstanding, or misinterpretation. As his statement was dated 26 March, which was nearly 7 weeks after he had been given full details of the allegations, including the complainant's unredacted statement, I assume that he and his lawyers would have been doing all they could to find an explanation for the allegations. It would have been reasonable for him to have raised any possibility for me to investigate, but he did not, until now.
76. I would have taken the same approach of challenge and probe if one of her witnesses had claimed that the complainant had made other allegations of

misconduct quite different to those made by the complainant to me. However, they did not.

77. My reasoning took full account of the evidence and the burden of proof.

*5. I did not scrutinise each of the allegations individually as I should have done.*

78. In the absence of any evidence to cast doubt on one allegation more than another, and in light of Lord Lester's blanket denial, the issue became one of the complainant's credibility, with the allegations standing or falling together. For the reasons given, I found that, generally, they stood.

79. However, this did not prevent my looking at the strength of the evidence in relation to each of the allegations, and on some minor matters I considered that the evidence did not reach the necessary threshold, and said so (R206-210).

80. I have been a mental health tribunal judge for 10 years, and sit several times a week. Sometimes cases are uncontentious, or the evidence is overwhelming in support of a particular opinion or finding. However, often there are disagreements between professionals; disagreements between the detained person and the professionals, and contradictory reports. These disagreements and contradictions can relate to historical facts, diagnoses, and evidence of past risk and assessments of future risk and how to manage it. Some of the disputed information can relate to events decades ago, but if it is still relevant it has to be assessed. I am completely familiar with teasing out weak and strong evidence, and testing weak evidence. I use my judgement to identify strong evidence, which will often be based on corroboration by a number of people. This is part of my job, I am not only entitled to do it, but have to do it, and I have applied the same judgement of the evidence in this investigation. I have recently been appointed to sit in the Court of Protection, where I will use the same judicial skills to make decisions on deprivation of liberty, health and welfare and property and financial affairs in the cases of adults who lack capacity to make the decisions themselves and where there are disputes.

*6. I underestimated, or failed to put to the complainant, aspects of the evidence which were inconsistent with her account, including:*

*a. the book signings and emails;*

81. This is dealt with at R111-119 and 143-144, and my analysis of these matters at 191-197. This shows that the matters drawn to my attention by Lord Lester and S were put to the complainant. She gave me explanations which I found credible. I am aware of the increasing evidence of the ways in which women who have been sexually harassed respond, including by trying to carry on as if nothing has happened, and I consider that the complainant's response fits well within this range. Dame Laura Cox's report, recently published, refers to this.

*b. the correct chronology of events;*

82. Both the complainant and Lord Lester revised their evidence on the chronology during the investigation. I chased up, and raised with the complainant, these changes, and did not challenge Lord Lester's alterations during the investigation.

83. Lord Lester has introduced new evidence, which he says undermines some of the complainant's claims even more than he considers the previous evidence had done. I have dealt with the general unfairness of this above, and now deal with his assertion, based on new material, that the complainant's claim to have been excluded from meetings '*for several weeks*' cannot have been true.(R Appendix A p8 at para 31, GA 42-44). [reference is to a document that has not been published]
84. His claim entirely relies on the complainant's original belief that she spent the night in his house in [REDACTED—that his first meeting with the complainant was several months later than he had said in his evidence during the investigation] and that the alleged exclusion [REDACTED—therefore cannot have taken place as she claimed.]
85. However, the complainant's statement does not say that the exclusion happened before the [REDACTED—media event], but that it occurred with [REDACTED—parliamentary business] "*fast approaching*". The [REDACTED—parliamentary business] took place on [REDACTED], so there were 12 days between the night at Lord Lester's house and the [REDACTED—parliamentary event] during which I accept the complainant could not have been excluded '*for several weeks*'. However, there were then the further [REDACTED—parliamentary events] until [REDACTED—five to six months after the events in Herne Hill] during which there would have been meetings to which the complainant could have contributed.
86. As Lord Lester did not raise the 'impossibility' point during the investigation, and as there are explanations that could undermine his assertion of impossibility, and as I cannot now ask the complainant to respond to this challenge, it is not open to Lord Lester to seek to raise this new point now, and this ground of appeal should be rejected.
87. This is probably the right point to comment on A's evidence, which Lord Lester says does not corroborate the complainant's claim on the exclusion point.
88. A gave little information in his statement, and when I phoned him during the investigation he told me he could say no more than was in his statement (which is why that phone contact is not mentioned in the report).
89. I accept that when A says that he recalls her telling him about 'the alleged events' he does not say that this was in the context of him contacting her because she was not attending meetings. It would appear from his statement that he cannot remember the context.
90. However, in my view, his evidence that the complainant told him about Lord Lester's behaviour gives a strong indication that her version of her contact with him was correct.
91. A was an outlier of all those to whom the complainant spoke to at the time; not a colleague or friend, (T, M, H and J) and not someone who she was referred to for specialist advice (N). The complainant's evidence is that she was reluctant to make a complaint, or do anything to jeopardise the draft legislation, and it seems implausible that she would have contacted A of her own initiative to inform him of Lord Lester's behaviour. A more plausible explanation is that it happened as the complainant said; he contacted her because she was not at meetings, and, anxious not to give the impression of

lacking keenness for the project, she told him what Lord Lester had said to her.

*c. the overwhelming evidence of lack of propensity and positive good character;*

92. Lord Lester claims that I did not give sufficient weight to his excellent character, and did not deal with whether he had a propensity to act in this way (G53) and that therefore it was not open to me to find that this was a bizarre isolated example of grave misjudgement and serious misconduct amounting to public corruption and sexual harassment. (G54)
93. Having accepted without question that Lord Lester is a man of excellent character, I consider that it follows that I was satisfied that he did not have a propensity to act in this way. I deal with his argument that I should have interviewed more character witnesses to establish his lack of propensity below, together with the suggestion that the lack of propensity meant that the allegations could not be made out.
94. This argument, when accompanied by a number of character references from people well known to the Committee, comes perilously close to saying that good people, with excellent reputations and high status, if they are important enough, should be given credit not available to the many millions of people known only to their friends, family, colleagues and associates, who live good lives, behave impeccably towards women, support the advancement of women and then are claimed to have had have a single lapse.
95. Lord Lester asserts that I found that his behaviour was '*bizarre isolated example of grave misjudgement*' (GA 54) and says it was not open to me to find this. I do not know what motivated Lord Lester, and did not speculate or write this in my report. His actions could have been a bizarre misjudgement, or could have been a deliberate and reckless attempt to use his position in an unsavoury way, in full knowledge that what he was doing was wrong and in the belief that he could not be held to account by Parliament and that the complainant would probably not have been believed if she had gone to the police.
96. Lord Lester's good character was acknowledged by me at the time I interviewed him and subsequently. He put forward several character witnesses and I interviewed a number of these, who might have been able to comment on the interaction between Lord Lester and the complainant. He put forward others, whom I did not interview, as I could see no need, having accepted the evidence of the witnesses that I did interview that his behaviour towards women, including young women working with him in junior positions, was impeccable.
97. However, lack of propensity does not mean that such behaviour cannot occur, as this would mean that after establishing a lack of propensity a person would never behave unacceptably. This is an obvious nonsense.
98. I have read the new character references, and note that some of them refer to Lord Lester's innocently flirtatious manner with women on occasion, and suggest that his behaviour could have been misinterpreted. However, he made no such suggestion, despite having weeks to consider his response with his lawyers in and out of the House before submitting it. These character referees also do not know the identity of the complainant, who, in her own field, is as eminent as Lord Lester and held in high regard in official circles.

99. Many of the concerns expressed in the cases quoted in the Opinion, on the reliability of allegations against well-known people, arise where the complainants are damaged and vulnerable people, with very troubled histories (which they often attribute to the alleged behaviour of the well-known person) and with a considerable discrepancy between their circumstances and those of the alleged abuser. The complainant is not in that position.

*d. The evidence of S and Lady Lester*

100. When Lord Lester talks about the evidence of S, what he means, as shown at (GA 57 and 58) is the claim by the complainant that Lord Lester had told her that she was to be replaced by S.
101. Lord Lester points out that S could not, and did not, replace the complainant, as her skills were very different. However, I was not investigating whether S replaced the complainant, and it is hard to see how I could have done. What I was investigating was whether Lord Lester had told the complainant that she was to be replaced by S.
102. I considered that Lord Lester probably had said something along these lines to the complainant (because I did not think she had made it up), but I also acknowledged that there was an element of uncertainty, and so this complaint would not be relied upon. This is all set out at R206, 207, 210.
103. With regard to Lady Lester's evidence, I accepted it in its entirety. What I did not accept was Lord Lester's contention that because Lady Lester did not observe the complainant to be upset, therefore the alleged groping in the car on the way to the house cannot have happened. This is all set out at R107-110.

*Conclusion*

104. For the reasons set out in this paper and in the appendix to this paper I am confident in my findings and in the processes I applied throughout my investigation. I ask the Committee to dismiss Lord Lester's appeal against my findings.

*Appendix: Response to remaining points in the grounds of appeal and counsels' opinion*

1. **Assertion:** The Sub-Committee was given incorrect information that the events complained of had occurred [REDACTED—in the first 10 years of this century, and well before] the normal limitation period for investigations (G4).
2. **Response:** The Sub-Committee must authorise investigation of complaints that are more than four years old, not three. The period [given in the document before the Sub-Committee] came from the Complainant's original submission, a redacted version of which was sent to the Sub-Committee and also, later, to Lord Lester. In January 2018 I prepared a note for the Sub-Committee seeking permission to investigate the complaint and enclosing the redacted version of the complainant's original submission. My note to the Sub-Committee did not state that the events had occurred [REDACTED—in the period mentioned above]. The Sub-Committee had the redacted statement with the note, and although this deliberately did not have dates, it made plain that several years had passed (R Appendix F para 3) [reference is to a document that has not been published].

3. **Assertion:** I tested the credibility of witnesses by searching for publicly available information as to their truthfulness rather than by cross examination, and did not probe their versions of events (G29);
4. **Response:** There is no evidence that I sought information online to test credibility, rather than relying on cross examination. As I explained at R 159, I made a basic online check, not to confirm credibility, but to look for any evidence to undermine it. For instance, if there were allegations that the complainant had made similar complaints that had not been upheld, this would have been highly relevant in the context of her not having raised this complaint for so many years, and if there were allegations of inappropriate behaviour against Lord Lester, this could also have been significant, depending on the allegations.
5. **Assertion:** I found Lord Lester to have been dishonest in his account, and guilty of lying without putting this to him. (G31);
6. **Response:** I have (re)read my report from cover to cover and can find no reference to Lord Lester being dishonest, or lying. Although I find that the complainant is more likely than not to be telling the truth, this is not to say that Lord Lester is being dishonest in his account.
7. Just as he suggested that the complainant could be mistaken, it is possible that he is mistaken, and has suppressed, or otherwise forgotten, what happened. I do not intend to speculate on why this might be, but it is a real possibility which I do not discount.
8. **Assertion:** I declined to investigate the many possible reasons why the complainant's account could have been inaccurate (G32);
9. **Response:** Lord Lester claims that I should have put various speculative possibilities to the complainant as to why she might be mistaken in her recollection. However, I do not consider that it is my role to make suggestions which are unsupported by any evidence. This applies not only to the complainant but also to Lord Lester.
10. The suggestions as to what I should have put to the complainant include that 'the complainant might have been influenced by her distress and suffering as a [teenager and/or by resentment that she felt herself supplanted by S.' If Lord Lester had wanted to raise this possibility, I certainly would have put it to the complainant, but I do not think I could have been expected to raise such highly speculative suggestion myself.
11. **Assertion:** It is suggested that I considered that I should only speak to any witnesses that had raised concerns about Lord Lester's behaviour as opposed to those who spoke positively of him (G 53b).
12. **Response:** This is a reversal of what I said and did. In fact, as I explained in Lord Lester's interview, I decided to interview the witnesses who might be able to comment on the complainant and any interaction between her and Lord Lester (R appendix O, pg 113 ff.). [reference is to a document that has not been published]
13. **Assertion:** At G54 Lord Lester attributes to me the comments of the Sub-Committee that Lord Lester had 'completely lost all sense of judgement and propriety' and that his actions were 'completely out of character'.

14. **Response** These were not my words, I said nothing about any possible motive.
15. **Assertion:** At G70 Lord Lester claims that I directed the Sub-Committee only to consider the aggravating features of the complaint.
16. **Response:** I would not be so impertinent as to direct the Sub-Committee in any way. My conclusion was intended, and I believe was taken as, a summary of my findings amounting to breaches of the Code. They were not aggravating features, but the elements of breach.
17. **Assertion:** Lord Lester complains that the language I used in my note to the Sub-Committee before they decided on sanction was highly prejudicial: ‘persisted’; ‘took advantage’; even after she clearly objected’; ‘corrupt inducement.’ (G 70)
18. **Response:** In my use of language I was taking great care to use as descriptive and unjudgemental language as possible. So, for instance, I am of the view that unwanted touching is not necessarily unacceptable, as it can arise from a misunderstanding or from clumsy attempts to show interest. However, when it is persistent, even after the recipient has made it plain that it is unwanted, it amounts to sexual harassment.
19. I used the expression ‘corrupt inducement’ because it was the offer to help with a peerage that amounted to corruption and a breach of the Code. Lord Lester could have offered other inducements, such as money, which may not have engaged the Code.
20. I am sorry that Lord Lester considers that this language was prejudicial, and I confirm that I continue to have the highest opinion of his life’s work, having known of it for many years. My own contact with him has only been in the unhappy context of this investigation, but I also fully accept that the warm regard in which he is held, as expressed in his character references, is fully justified.

*Points from Counsel’s opinion not dealt with elsewhere*

21. **Assertion:** Counsels’ opinion is that fairness required me to identify at the outset what the separate allegations were and which of them, if approved, amounted to a breach of the code, and that the absence of such a charge sheet led me to treat the allegations as an indivisible whole (CA 4B).
22. **Response:** In my note to the Sub-Committee dated 23 January, (attached as an appendix), I set out the allegations which, if proved on the balance of probabilities, would amount to a breach of the code, and this shows that I was clear in my own mind, and with the Sub-Committee, about the elements of the complaint that had the potential to breach the Code.
23. The reply from Lord Brown to Lord Lester at (R Appendix L) [reference is to a document that has not been published] shows that Lord Lester was well aware of the elements of breach being alleged, before he put in his statement on 26 March.
24. **Assertion:** Counsel asserts that I proceed ‘on the basis that: (a) absent a plausible reason why the complainant would lie she ought to be believed; and (b) that the complainant’s written statement alone comprised prima facie evidence of an offence. This approach is analogous to the policy of “belief’

that the both the criminal courts and Sir Richard Henriques in his recent review of an investigation into historic offences (Operation Midland) have rejected as unfair, on the basis that it amounts to a reversal of the burden of proof'. (CO para 4c)

25. **Response:** I have dealt with point (a) in the other document.
26. Point (b) is factually and legally incorrect. The Guide to the Code of Conduct at para 120 says: "The complaint must also be supported by evidence sufficient to establish a *prima facie* case that the Code has been breached."
27. Accepting that the complainant's statement provides evidence to establish a *prima facie* case that the Code has been breached does not mean that I thereby believe her statement. A *prima facie* case is simply a case that, if not challenged, provides enough evidence that an infraction has taken place. The fact that the Guide refers to *prima facie* evidence as a starting point for investigation supports my interpretation, as without *prima facie* evidence, there can be no investigation.
28. I am satisfied that a detailed statement can provide the necessary evidence to support a complaint. To say otherwise suggests that an unwitnessed and unreported sexual assault can never be investigated under the Code. For the reasons given in my main document, it may be the case that such a complaint may not meet the necessary standard of proof, but that does not mean that it cannot even be investigated.
29. In any event, I did not accept the complainant's statement alone that a *prima facie* case had been established. As is clear, before applying to the Sub-Committee for permission to investigate the case, I also obtained supporting statements from four witnesses, and it was this totality that satisfied the Sub-Committee that I should be permitted to undertake the investigation. (R43)
30. **Assertion:** At CO10 Counsel sets out that one of the allegations made by the complainant was that Lord Lester '*touched her leg on a number of occasions. The complainant asked him to desist but he continued to touch her leg*'.
31. **Response:** The complainant's allegation was that Lord Lester persistently put his hand on her thigh. (R Appendix A para 20) [reference is to a document that has not been published]. The description in the Opinion minimises the allegation.
32. At 10 (E) the opinion says that after Lord Lester's wife had left Lord Lester placed his arms around the complainant's waist, but does not say, as alleged by the complainant, that he also placed his arms further up her body, such that she had to force herself away (R Appendix A para 22) [reference is to a document that has not been published]. This is a further example of minimisation.
33. **Assertion:** In 13 (g) it is claimed that I consider there was nothing inconsistent in Lord Lester's wife having seen the complainant to be friendly and not distressed while in the house, given the complainant's account that she has not found it appropriate to complain about Lord Lester's earlier behaviour.

34. **Response:** In fact, my findings are based on the fact that the complainant did not allege that she had been traumatised by his behaviour, as Lord Lester alleges.
35. **Assertion:** Paragraph 25 of the opinion claims that the complaints against Lord Lester include serious allegations of criminal nature, including sexual assault, harassment and misconduct in public office. The consequences of upholding the complaint include the revocation of his right to practice.
36. **Response:** In the context of the Code of Conduct, the allegations are serious, as the standard of conduct expected of Members of the House is extremely high. Furthermore, the allegation that Lord Lester offered to help the complainant receive a peerage, if she acceded to his proposition for a sexual relationship, is particularly serious in this context, as it reinforces the view held in some quarters that appointments to the House of Lords are sometimes made for reasons other than merit.
37. However, in the context of the criminal law, these matters do not amount to serious allegations of a criminal nature. The allegations of sexual assault and harassment would be seen by all reasonable people as being at the lower end of the scale of offences.
38. Misfeasance in public office requires acts in bad faith by a public official that result in harm to another, including financial or reputational harm or personal injury.
39. I do not know whether Lord Lester can be considered a public official for this purpose, but it is clear that there is no suggestion that he took any action to assist her in obtaining a peerage, nor does the complainant say that not being invited to meetings caused her to suffer any financial or reputational loss, or any personal injury, so there is nothing to support a claim of misfeasance in public office.
40. It is not correct to say that upholding the complaint would include the revocation of Lord Lester's right to practice. Any revocation of Lord Lester's right to practice as a barrister could only be made following disciplinary proceedings by the Bar Standards Board which would reach its own conclusions, and would not rely upon my findings.

*Appendix: Note to the Sub-Committee on Lords' Conduct by the Commissioner for Standards, 23 January 2018*

*Sexual misconduct and the Code of Conduct*

1. In November 2017, in light of the allegations being made about the sexual misconduct of MPs and their staff, and after being advised that no complaint about such conduct had ever been made to my predecessor, I considered whether such conduct was covered by the Code of Conduct.
2. The purpose of the Code is:
  - (a) to provide guidance for members of the House of Lords on the standards of conduct expected of them in the discharge of their parliamentary duties; save for paragraphs 16 and 17, the Code does not extend to members' performance of duties unrelated to parliamentary proceedings, or to their private lives;

- (b) to provide the openness and accountability necessary to reinforce public confidence in the way in which members of the House of Lords perform their parliamentary duties.
3. The Code contains principles and rules. The rules do not cover sexual misconduct, but I determined that the principles do.
4. The relevant principle is in paragraph 8:
- “Members of the House:
- a) must comply with the Code of Conduct;
- b) **should act always on their personal honour;** (my emphasis)
- c) must never accept or agree to accept any financial inducement as an incentive or reward for exercising parliamentary influence;
- d) must not seek to profit from membership of the House by accepting or agreeing to accept payment or other incentive or reward in return for providing parliamentary advice or services.”
5. Personal honour is not defined in detail, but is referred to in paragraph 6 of the Guide to the Code:

The term “personal honour” has been explained by the Committee for Privileges as follows:

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

6. I considered that the current standards of the House would view some forms of sexual misconduct as a breach of personal honour, and concluded that sexual misconduct, if it occurred in the context of the discharge of a Member’s parliamentary duty, could engage the Code.

*Information on my webpage*

7. In early November 2017 a journalist [REDACTED], wrote to the House of Lords Press Office raising the following queries:
- If a member of the public wished to complain about the behaviour of a peer, who should they complain to?
  - If a research assistant employed by a peer wished to complain about the behaviour of the peer they were employed by, who should they go to?

What about if this employee wished to complain about the behaviour of a peer they were not employed by?

- Is there a time limit for complaints? The context for this is that two individuals have made allegations to him about the bad behaviour of two different peers.
8. He said that he had looked through the Code of Conduct and he could not see complaints of this nature being covered by it.
  9. He received the following reply, which had been agreed by me, the Clerk to the Sub-Committee and the Clerk of the Parliaments.

“If a complaint were raised with the administration of a Member behaving inappropriately to anyone on the House of Lords estate we would advise the complainant on the options available to them given the circumstances of the complaint.

Members of the House of Lords are subject to a Code of Conduct which provides guidance on the standards of conduct expected of members in the discharge of their parliamentary duties. This includes a requirement to act on their personal honour. If a member of the public, or a research assistant, was subject to harassment by a member then they could make a complaint to the Commissioner who would make a preliminary assessment of whether the allegation was linked to the discharge of parliamentary duties and, if so, whether it could constitute a breach of the Code which requires members to act on their personal honour. If the preliminary assessment concluded that these two tests had been met the Commissioner would investigate the allegation and if she became aware that it was likely that a criminal offence had taken place she would alert the police.

The Code of Conduct states that a complaint must usually be made within four years of the conduct complained of. In exceptional circumstances the Commissioner may investigate conduct which occurred more than four years before a complaint is made, provided that the Sub-Committee on Lords’ Conduct agrees and that it is satisfied that there is a strong public interest in the matter being investigated.

It would be open to the House in the future to amend the Code of Conduct to require members to abide by an anti-harassment policy.”

10. As the journalist’s enquiry mentioned that he was not sure if the Code covered the behaviour complained of, I put a note on my webpage, clarifying the position, in mid-November. The note had been drafted with the help of officials, and seen by Lord McFall of Alcluith, Chairman of the Committee for Privileges and Conduct. The note says:

**“Message from the Commissioner**

The House of Lords Code of Conduct provides guidance on the standards of conduct expected of members in the discharge of their parliamentary duties. This includes a requirement to act on their personal honour in the discharge of their parliamentary duties. In relevant circumstances, I take personal honour to include personal conduct towards others.

It has been drawn to my attention that this may not be obvious from the wording of the Code and its guidance. Anyone wishing to establish whether the particular behaviour of an individual could amount to a breach of the Code, may contact me for further information.

Contact should be in the usual way, but may be through an intermediary if the person concerned wishes to remain anonymous during the preliminary discussion. Any preliminary discussion will be strictly confidential.”

*The complaint*

11. A few days later my office was contacted by a solicitor, acting for the complainant. He spoke to an official, and then to me, and then forwarded the complainant’s statement to me. I have subsequently contacted four people to whom the complainant spoke at the time, and their responses are in the papers.
12. I am satisfied that the alleged behaviour engages the Code, as the allegations include physical and verbal sexual harassment on several occasions; abuse of power by making threats of retaliation; and an offer to subvert the process for appointing Members, for personal gain.

*Exceptionality and public interest*

13. The Guide to the Code states:
 

“119. The complaint must usually be made within four years of the conduct complained of. In exceptional circumstances the Commissioner may investigate conduct which occurred more than four years before a complaint is made, provided that the Sub-Committee on Lords’ Conduct agrees and that it is satisfied that there is a strong public interest in the matter being investigated.

120. The complaint must also be supported by evidence sufficient to establish a *prima facie* case that the Code has been breached.”
14. In my view, there are exceptional circumstances that justify an investigation being made. These are:
  - the current concern of Parliament to deal with sexual misconduct by its Members;
  - the publicity given to endemic sexual misconduct and abuse of power in many fields of work, which encouraged the complainant to come forward now; and
  - the strong likelihood that the Member who is subject to the complaint will recall some or all of the events, if they took place, even though they took place a long time ago, because of the nature of the alleged misconduct.
15. I also consider that there is a strong public interest in investigating this complaint, because:
  - The House needs to make plain to the public, including those working with Members of the House, that complaints of sexual misconduct will be taken seriously;

- The Sub-Committee needs to make plain to the Members of the House that behaviour of the kind alleged will be investigated if a complaint is made, as it is a breach of the Code;
  - Those who behave in the way alleged are often repeat offenders. If I investigate, find there has been a breach of the Code, and the Member is named, others may come forward with further complaints for investigation.
16. As for there being a *prima facie* case, I find it hard to think of a stronger set of statements, or a more convincing set of witnesses, including a senior lawyer, a senior civil servant and a district judge.

#### *Confidentiality*

17. The complainant contacted me via a solicitor, who did not initially give me her name. He explained that she needed to know whether her identity would be kept confidential if I decided to investigate the complaint. After a conversation with her solicitor about the possibilities and problems of preserving her confidentiality, I had a meeting with her, her partner and the solicitor.
18. After the meeting, I wrote to her, confirming that I would do my best to keep her name and any identifying details private, except that, of course, the Member complained against would have to see everything.
19. I explained that the investigation process was confidential, but that I could give no guarantee that her name would not leak out in due course.
20. On that basis, she decided to proceed with her complaint.
21. The Code requires that complaints are not accepted if made anonymously. I do not consider that this complaint has been made anonymously, as I know who the complainant is, and, if I investigate the complaint, so will the Clerk to the Sub-Committee and the Member complained of.

#### *Confidentiality process*

22. Currently we are in a pre-investigation stage, and I determined that, at this stage, I should not share the names of the complainant, or the Member complained of, with anyone. My thinking was that if the Sub-Committee decides that I should not investigate, but knows the name of the Member complained of and the allegations against him, the Sub-Committee Members would not be able to forget the information in the statements. This would be unfair on the Member, who would not have a chance to clear his name, or even to know what had been said about him. Therefore, during this stage, I have shared all information and communications with the Clerk only after redacting names and identifying information.
23. If the Sub-Committee gives me permission to investigate, I will provide unredacted statements to the Clerk and to the Member complained of, so that the investigation can proceed in the normal way. The Clerk and I have already discussed how to share the unredacted information in the way least likely to lead to an accidental disclosure of confidential information.
24. The Sub-Committee will become aware of the identity of the Member when a note goes up on my website. This note will be as uninformative as possible,

to minimise the risk of speculation. My preference would be simply to say that Lord X (naming him) is being investigated for a breach of the Code. However, I have been advised that the Code may require a reference to the breach relating to personal honour. I would welcome the Sub-Committee's advice on this point.

25. When I write my report, I will maintain the complainant's privacy, by using redacted information. However, in my view, the decision on whether she is named at this stage will be for the Sub-Committee. One possibility is that it will agree not to name her, without asking to know who she is, or why she wants this protection. The other possibility is that the Sub-Committee will want to know the facts and reasons in detail before deciding on this matter. I do not think that the Sub-Committee needs to decide on this at this stage, but I raise it as a matter for future decision.

**Supplementary submission from Lord Lester in response to comments from the Commissioner: “Fresh Evidence”**

1. The Commissioner states that the Committee should only have regard to evidence that was not before the Commissioner if that evidence was not available at the time of the investigation, and if it shows that the Commissioner’s findings are unsafe.<sup>213</sup> She states that I have not explained why I have referred to new documents in my appeal. I respond in this note, since I do not have time to do so in the half hour allocated to me to make a statement.
2. The Committee will recall that the Commissioner found that I abused my power by excluding the complainant from relevant meetings about the [REDACTED—parliamentary business] between the events in Herne Hill (now agreed to be on [REDACTED—date]) up until the [REDACTED—media event] on [REDACTED—date] (a six-day period). The Commissioner says this was a twelve-day period, taking as the end point the [REDACTED—parliamentary business] on [REDACTED—date]<sup>214</sup>.
3. The complainant’s original allegation was that this period of exclusion from meetings was for a number of weeks, between [REDACTED—two dates around three months apart].<sup>215</sup> When I saw this in the complaint, I asked my part time personal assistant to search the Odysseus Trust archive of documents to see if there was still any relevant material (the office having closed more than two years ago) relating to the complainant or the [REDACTED—parliamentary business]. She found a historic email inbox and searched the archive index and found some briefings about the [REDACTED—parliamentary business] but nothing else relevant.
4. The Commissioner then found, for the first time in the Report, that the correct timeframe for any possible exclusion was in fact only between [REDACTED] (now agreed to be the date on which the complainant stayed in Herne Hill) and the [REDACTED—media event] on [REDACTED—date six days after the Herne Hill events] or in the run up to the [REDACTED—parliamentary business] on [REDACTED—11 days after the Herne Hill events].<sup>216</sup>
5. As David Perry QC explains (and I explained in my Grounds), having found that those were the only relevant days in which there could have been an exclusion, the Commissioner did not investigate whether there was any evidence of meetings from which I had, or could have excluded the complaint during those days, and incorrectly concluded that nothing turned on the revised dates.
6. When I saw the Commissioner’s conclusion that those were in fact the relevant dates but that nothing turned on them, I asked my current personal assistant to search every single email over that time period. The Commissioner never asked me to do so, never asked my whereabouts on those dates, or asked or otherwise investigated whether there were any meetings about the [REDACTED—parliamentary business] on those dates.

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213 Comments on the Appeal, paras 34-41.

214 Comments on the Appeal, paragraph 85

215 Report paragraph 23 (pages 17-18); Appendix A to the Report paragraphs 31 and 33 (pages 62 and 65) [reference is to a document that has not been published]; Appendix S to the Report pages 134-5.

216 Report page 168. [reference is to a document that has not been published]

7. The documents we found are summarised at paragraphs 40-47 and 56 of the Grounds of Appeal. They show the following.
8. **First**, that it is overwhelmingly likely that I met the complainant for the first time four days before she came to stay in Herne Hill when she says I harassed her sexually. The documents show that the complainant's first contact with me was an invitation on [REDACTED—around two months before the book launch] for me to come to her book launch on [REDACTED—8 days after the Herne Hill events] (which I did).<sup>217</sup> My diary confirms that I met her in chambers on [REDACTED—4 days before the Herne Hill events]. There is no suggestion of a meeting before then, indeed I was only in London for a week during that period.<sup>218</sup> The fact that I had almost certainly met her for the first time only four days before makes the complainant's allegations extremely hard to believe.<sup>219</sup>
9. **Second**, there is an electronic ticket showing that I flew from Gatwick Airport to Strasbourg on [REDACTED—the day after the Herne Hill events] and returned the next evening.<sup>220</sup> This makes M's (untested) evidence that I was in a taxi making unwanted sexual advances on [REDACTED - the day after the Herne Hill events] impossible. I was on trains from Herne Hill to Victoria and from Victoria to Gatwick Airport to fly to Strasbourg at 11.00am.<sup>221</sup>
10. It also shows that there were only two possible days on which I could have "excluded" the complainant from [REDACTED—parliamentary business] meetings, and no evidence of there being meetings on either day. There were only six days between the Herne Hill event and the [REDACTED—media event] during which she could have been excluded from meetings.<sup>222</sup> One was a Saturday. As I now know, I was in Strasbourg for two of them.
11. **Third**, there is an email showing that on [REDACTED—7 days after the Herne Hill events], far from my excluding the complainant, my office manager and personal assistant at the time Evie Jamieson arranged, at my instigation, for the complainant to sit below the Bar during the [REDACTED—parliamentary business] on [REDACTED—date], and I [REDACTED—information relating to the parliamentary business].<sup>223</sup>
12. **Fourth**, an email of [REDACTED—date around 3 months after the Herne Hill events] shows that I agreed to write a letter in support of the complainant's application for a grant from the [REDACTED—name of organisation] at that time, illustrating our normal and cordial relationship at that time.<sup>224</sup>

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217 Appeal Bundle tab 5. [reference is to a document that has not been published]

218 As my diary shows, I was in Strasbourg from [REDACTED—dates], Ireland [REDACTED—dates], Paris [REDACTED—dates] and Mexico [REDACTED—dates]

219 Grounds of Appeal paragraph 46.

220 Appeal Bundle tab 6. [reference is to a document that has not been published]

221 Grounds of Appeal, paragraph 47.

222 The complainant's allegation is that the exclusion from meetings ended with the [REDACTED—media event] on [REDACTED—6 days after the Herne Hill events]. See Appendix A to the Report, paragraph 33 (page 65) [reference is to a document that has not been published] and Appendix S to the Report, pages 134-5. [reference is to a document that has not been published]

223 Appeal Bundle tabs 3 and 9. [reference is to a document that has not been published]

224 Appeal Bundle tab 3. [reference is to a document that has not been published]

13. **Finally**, there are eleven statements written about my character by people who have worked with me closely.<sup>225</sup> This evidence was not before the Commissioner because she declined to interview my character witnesses.<sup>226</sup>
14. We retrieved these documents in response to the Commissioner's findings in the Report. The documents provide further evidence of what Mr Perry identifies as the Commissioner's failure to investigate.
15. This is not a criminal Court of Appeal considering the fairness of admitting fresh evidence after a full police investigation, jury trial, cross examination, and all of the other safeguards. The issue is whether this Committee should endorse findings made by the Commissioner in light of this material, after an investigation with none of those features, and in which the Commissioner herself noted the absence of experienced colleagues to assist her.<sup>227</sup>
16. It would be wholly unfair in this context for the Commissioner's findings and the proposed penalty of expulsion to be endorsed by this Committee where there now exists objective evidence demonstrating that some of the key and most serious allegations are not correct. That is so even if it were the case that any of the material could have been found earlier. It would be troubling if the Commissioner were suggesting otherwise.

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225 Appeal Bundle 8. [reference is to a document that has not been published]

226 Grounds paragraphs 51 – 56.

227 Report, paragraph 90.

## Supplementary submission from the Commissioner: response to Lord Lester's submission "Fresh Evidence"

In this response I set out Lord Lester's assertions and my responses, and use the following abbreviations:

R = my Report and appendices [appendices documents have not been published]

C = my Comments on the Grounds of Appeal

N = Lord Lester's Note on 'Fresh Evidence', received on 31 October

### 1. Assertion (N1)

*That late evidence should be admitted as it shows that my findings are unsafe*

#### *Response*

Lord Lester's note repeats several points made in his Grounds of Appeal; which he says should be considered by the Committee, even though they rely on evidence that he did not produce during the investigation. I have previously dealt with this in my Comments (C 34-41). I am concerned that Lord Lester has not dealt with my comments in this note, so I now deal in more detail with the unlikelihood of one of the assertions that depends on the 'new' evidence: that he first met the complainant on [REDACTED—4 days before the Herne Hill events], rather than several months earlier.

In his evidence during the investigation Lord Lester has said: '*I first met [REDACTED] in my Chambers in September or October [REDACTED]*' (R96 at para 3) [reference is to a document that has not been published]; that it was '*then or soon thereafter that I agreed to go [REDACTED] to launch her book*'; and that before he invited [REDACTED] to spend the night at his house she had been working with him '*for a few weeks*' (R 97 at para 7) [reference is to a document that has not been published]. In his second statement, dated 25 May, he confirms that when he first met the complainant was in about September '*after I came back from our family home in West Cork when I invited her to my Chambers to discuss her book [REDACTED]*'. (R109 at 15) [reference is to a document that has not been published].

This seems a more plausible scenario than that he agreed to go to her book launch without ever having met her or spoken to her, and that he invited her to the event on [REDACTED—date of the Herne Hill events], and the dinner afterwards having only met her 4 days before, and then to spend the night at his house after having only met her once before (a weekend intervened between [REDACTED—dates 4 days apart]).

In support of an earlier first meeting, I note that in her interview with me Lady Lester recalled that before the complainant stayed the night '*she and Anthony had had quite a bit to do with each other*' (R122 at 20). Reference is to a document which has not been published.

He also said that after first meeting her, she '*continued to come to meetings in Parliament organised to rally support for the [REDACTED]*' (R97 at para 13) [reference is to a document that has not been published]; and that these meetings took place '*before Christmas*.' He recalls that it was at one of these meetings that Baroness Butler-Sloss said that he should involve S, who was at the meeting, as she was a rising star. (R109 at 25). Reference is to a document which has not been published.

In her evidence S includes an email which shows that Baroness Butler-Sloss raised this with S in December, which supports the accuracy of Lord Lester's recollection that the complainant was attending meetings with him before Christmas.

If I had had Lord Lester's diary during the course of the investigation, all the discrepancies between what Lord Lester originally said and what he is now saying could have been explored.

When I interviewed Lord Lester on 10 April I asked him if he had any records of meetings, and he said he did not know. (R110/111). [reference is to a document that has not been published] He knew it was important, but apparently did not take the suggestion seriously until after he received my report. His Chambers diary, not produced until yesterday, would have been extremely helpful during the investigation. However, his late production of this evidence, for no good reason that I can see, has now made it impossible for me to test it with witnesses or others mentioned in the diary. It would be grossly unfair to rely on the evidence produced after the end of the investigation to reject my findings.

## *2. Assertion by Lord Lester (N 2)*

*The Committee will recall that the Commissioner found that I abused my power by excluding the complainant from relevant meetings about the [REDACTED—parliamentary business] between the events in Herne Hill (now agreed to be on [REDACTED]) up until the [REDACTED—media event] on [REDACTED] (a six-day period).*

### *Response*

The footnote to this assertion shows that Lord Lester is relying on C85. C83-85 show that my finding was the opposite of this:

“Lord Lester has introduced new evidence, which he says undermines some of the complainant's claims even more than he considers the previous evidence had done. I have dealt with the general unfairness of this above, and now deal with his assertion, based on new material, that the complainant's claim to have been excluded from meetings ‘for several weeks’ cannot have been true. (R Appendix A p8 at para 31, GA 42-44). [reference is to a document that has not been published].

His claim entirely relies on the complainant's original belief that she spent the night in his house in [REDACTED—around 2 or 3 months before the actual date], and that the alleged exclusion must have been before the [REDACTED- media event] on [REDACTED]. Once it was established that the night at the house was on [REDACTED], there was clearly no time between then and [REDACTED - media event] for the complainant to have been excluded for several weeks.

However, the complainant's statement does not say that the exclusion happened before the [REDACTED—media event] on [REDACTED], but that it occurred with ‘the [REDACTED—parliamentary business] fast approaching’. The House of Lords [REDACTED—parliamentary business] took place on [REDACTED], so there were 12 days between the night at Lord Lester's house and the [REDACTED—parliamentary business] during which I accept the complainant could not have been excluded ‘for several weeks’. However, there were then the further stages of the [REDACTED—parliamentary business] during which there would have been meetings to which the complainant could have contributed.”

### 3. Assertion (N4)

*'The Commissioner then found, for the first time in the Report, that the correct timeframe for any possible exclusion was in fact only between [REDACTED] (now agreed to be the date on which the complainant stayed in Herne Hill) and the [REDACTED—media event] on [REDACTED—6 days after the Herne Hill events] or in the run up to the [REDACTED—parliamentary business] on [REDACTED—11 days after the Herne Hill events]..*

#### Response

I never said or suggested this.

Lord Lester refers to R168, which sets out the recollection of one of the complainant's witnesses as to the order in which events took place, and an email exchange between me and Lord Lester about a conversation that he had had with S in which he alleged that the complainant had felt 'edged out' by her. S recalled that this conversation had taken place between [REDACTED—the day of the Herne Hill events] and an event in [REDACTED] which S gives as [REDACTED - around 7 weeks after the Herne Hill events] (R145). [reference is to a document that has not been published] Two points arise:

- This evidence relates to the complainant feeling 'edged out' by Lord Lester's witness, not to being excluded from meetings.
- Even if an assumption could be made that this involved exclusions from meetings, the period from [REDACTED—the day of the Herne Hill events] to [REDACTED—around 7 weeks after the Herne Hill events] easily covers the complainant's evidence that she was not engaged with the work 'for a number of weeks' (R65 para 31).

### 4. Assertion (N footnote 10)

*The complainant's allegation is that the exclusion from meetings ended with the [REDACTED—media event] on [REDACTED—6 days after the Herne Hill events]. See Appendix A to the Report, paragraph 33 (page 65) and Appendix S to the Report, pages 134-5. [reference is to a document that has not been published]*

#### Response

These exchanges were not about whether the exclusions happened before the [REDACTED—media event], but when the harassment started.

### 5. Other assertions and my response

The remaining assertions in this late submission were made in the Grounds of Appeal and responded to in my Comments. I refer to C 34-37 and my responses above in relation to the assertions in LS 9-12, and C92-99 in relation to the assertions in LS 13 and 14.

## Transcript of Lord Lester's oral appeal to the Committee for Privileges and Conduct, 1 November 2018

Members present:

Lord McFall of Alcluith (The Chairman)  
 Earl Cathcart  
 Lord Dear  
 Lord Eames  
 Baroness Evans of Bowes Park  
 Lord Hope of Craighead  
 Baroness Jay of Paddington  
 Lord McAvoy  
 Lord Mackay of Clashfern  
 Lord Newby  
 Baroness Smith of Basildon  
 Lord Stoneham of Droxford  
 Lord Taylor of Holbeach  
 Viscount Ullswater

Celia Marr, Peters and Peters Solicitors LLP, and Lord Pannick QC were in attendance.

### *Examination of witness*

Lord Lester of Herne Hill

**Q1. The Chairman:** Lord Lester, I welcome you and your colleagues, Lord Pannick and Celia Marr, to the Committee. At the beginning, I take the opportunity to remind you, as we know from correspondence, that you must represent yourself. Your colleagues may not speak, but you can consult them at any point. If you wish to adjourn for a short time while you consult your advisers, that is more than permissible. You have Committee Room 3, adjoining us, for that. If you need a break at any time, we can adjourn for a short period.

I assure you that the papers have been read carefully and you need not repeat the points already made in them. In your letter to me yesterday, you indicated that you are aware that you have 30 minutes to make a statement to the Committee. After that, we will ask you to withdraw for a short period to decide whether the Committee has any questions to put to you. If we do have any questions, we will invite you back in.

I remind you that the Committee's remit is, first, to hear your appeal; secondly, to decide on the balance on probabilities whether the Commissioner's conclusions are correct; thirdly, to decide whether the recommended sanction is appropriate; and, fourthly, to be mindful of the Guide to the Code, where it states that, "the Committee will not reopen the Commissioner's investigation". I believe that there was discussion outside about whether you can be present if we hear from the Commissioner. It is almost certain at the moment that we will not be hearing from the Commissioner.

With that, I ask you to submit your case. Thank you.

**Lord Lester of Herne Hill:** My Lord Chairman, thank you. I am very grateful to the Committee—for being here, among other things. What is at stake could not be more significant for me. I would be the first Peer ever to be expelled. The allegations are of abuse of power, corruption and sexual harassment almost [REDACTED—

over a decade] ago, of which I am innocent. I did not abuse my power. I did not harass the complainant. I did not offer her a peerage in return for sex or threaten her. I did not exclude her from meetings about the [REDACTED—parliamentary business]. I did not threaten her with repercussions if she did not sleep with me. It is not in my character to do any of those things, and I did not do them.

Because I thought it helpful to have the views of an objective authority on fairness in parliamentary and disciplinary procedures, my solicitor approached David Perry QC to ask if he would give an independent opinion on whether the Commissioner's approach to evidence and investigation here accorded with natural justice.

I had no communication with David Perry and have never met him. He agreed to give an independent opinion to be placed before the Committee. He said that he felt so strongly that something had gone badly wrong that he would do so pro bono. As Mr Perry explains, the Commissioner's approach was fundamentally flawed.

First, the Commissioner wrongly considered that all of the allegations stand or fall together. She should have assessed each allegation separately to see if it was proved. Secondly, she should have identified the particular allegations which, if proved with strong and cogent evidence, would amount to a breach of the Code. Thirdly, since the allegations depend on credibility and veracity, either I should have been able to cross-examine or the Commissioner should have tested the evidence by probing questioning.

The Commissioner did not do any of those things. She admits candidly that she did not consider the evidence relating to each of the allegations separately. As she wrote in her report, "This is not a case where I have to examine in great detail each of the allegations made by the complainant". That is because she saw this case as being about, "the complainant's credibility", as she put it in her comments, "with the allegations standing or falling together". All the allegations "generally stood", as she put it, for two reasons that she gave: first, because the Commissioner formed the view that the complainant was credible on the basis that, "I could think of no rational reason why a woman of the complainant's apparent sanity and probity" would make these allegations; secondly, because the Commissioner thought she was "bound to accept" the complainant's "account of events" because "no alternative is given, other than that the events did not happen". In other words, because I did not think it appropriate to speculate about why the complainant might have made the complaint, the Commissioner thought that she should believe her account in full.

David Perry has explained that the approach of believing the complainant unless there is contrary evidence reverses the burden of proof and puts too much weight on the absence of explanation for the complaint. The courts have rejected this, along with the approach that all allegations stand or fall together. A person's credibility and reliability are not a "seamless robe", as the Court of Appeal has put it—evidence and witnesses can be reliable on one point but not on another, particularly after [REDACTED—over a decade ago].

There are numerous examples of how this approach led the Commissioner to accept even the most serious allegations without any evidential basis. I only have time to give one example. In half an hour, I cannot reply to all the extra points made by the Commissioner last week, defending her decision in 28 pages of comments and an appendix.

The finding that I had excluded the complainant from relevant meetings about [REDACTED—parliamentary business] has led to my proposed expulsion. The first point to note about this allegation is that the Commissioner did not even mention it in the note that she gave to the sub-committee in seeking permission to proceed with the investigation. Mr Perry explained that it is basic to natural justice that the accused is informed which are the allegations that, if proved, would breach the code. The Commissioner in response says that she did not have to give me that information because she was “clear in her own mind” what they were, and she told the sub-committee what these were. But exclusion from meetings was not even mentioned as one of the allegations that would breach the code if proved.

The complainant’s allegation on this was that there were “a number of weeks” between [REDACTED - date] and [REDACTED—around 2 or 3 months later] during which I no longer invited her to take part in relevant [REDACTED—parliamentary business] meetings, because she had refused my sexual advances in Herne Hill.

This allegation underpinned both the findings of abuse of power said to warrant expulsion: first, exclusion from meetings and, secondly, that I threatened to exclude the complainant from meetings as a “repercussion” if she did not agree to become my mistress. The Commissioner should have treated exclusion from meetings as a distinct serious allegation that required investigation—not as one allegation that could be upheld with all the others if the Commissioner found the complainant to be generally credible. So what was the evidence that I excluded her from meetings?

The complainant’s evidence was that she had “no idea how many meetings I would not have been invited to ... All I know is there was an absence”. The complainant said that her recollection was unclear and she had no notes or diaries from the time.

The only reason she alleged that she had been excluded from meetings was that she said that witness A had told her that he had noted her absence. So A’s evidence was obviously key.

But we now know from the Commissioner’s note to this Committee – it is not in the report – that she telephoned A and he could not recall anything at all about exclusion from meetings. All A said was that the complainant had told him something about the allegations at the time, but he could not be more specific and could not say anything about exclusion from meetings.

The Commissioner is appointed as “an independent and impartial investigator whose task is to establish the facts of the case”. But she never investigated whether there were in fact any relevant [REDACTED—parliamentary business] meetings during the period when the complainant says I excluded her from them, nor whether I in fact did exclude her from any.

My own evidence was that I did not exclude her from any meetings, for any reason. I did not do so. The Commissioner asked me no questions about this. She did not put to me that I must have been mistaken, that there were in fact relevant meetings and that I had excluded her because she had rebuffed my sexual advances. After my interview, until I saw the report, I assumed that she had accepted my evidence.

Not only that. The Commissioner also ignored evidence that fatally undermines the allegation. The evidence of S—you know that S is a senior serving judge—was that the date of the complainant’s key allegation was incorrect: the night that the

complainant had stayed in Herne Hill was [REDACTED], not [REDACTED—2 or 3 months earlier]. On reflection, after seeing S’s clear evidence of this, the complainant and I both accepted this correction of the dates. The Commissioner found that “the complainant’s inaccurate recollection of the timing of events is not significant in undermining her account”, but in fact the timing and dates were crucial in undermining the complaint.

The correction of dates meant that the allegation that I had excluded the complainant from meetings after the Herne Hill night of [REDACTED] for “several weeks” until [REDACTED—media event] on [REDACTED—six days after the Herne Hill events] in the run-up to [REDACTED—parliamentary business] on [REDACTED—11 days after the Herne Hill events] was impossible. There were only six days between the Herne Hill event and [REDACTED—media event] during which she could have been excluded from meetings.

One of them was a Saturday. As I now know, I was in Strasbourg for two of them. The Commissioner did not investigate whether there was even a [REDACTED—parliamentary business] meeting on the remaining two days. She did not ask the complainant whether she might have been mistaken. Instead, she found, based on what I have summarised and nothing else, that the allegation was proved and that in no longer inviting the complainant to relevant meetings about [REDACTED—parliamentary business], I abused my power.

The report says that this was proved because the complainant’s exclusion from meetings “was communicated to A at the time of the events complained of”, but A specifically said that he could not remember what the complainant had told him, and he said nothing at all about exclusion from meetings.

In her response to my grounds of appeal last week, the Commissioner now says that even though A said he could not remember saying anything about exclusion from meetings, the Commissioner herself thinks it plausible that A had in fact contacted the complainant at the time “because she was not at meetings”. My Lord Chairman, this is pure invention by the Commissioner—A expressly said that he could not remember.

Secondly, although the Commissioner had to accept that the complainant could not have been excluded for several weeks, her response last week now says that “there were then further stages of [REDACTED—parliamentary business] [REDACTED—dates up to 6 months after the Herne Hill events], during which time there would have been meetings to which the complainant could have contributed”. That is quite extraordinary. No one, not even the complainant, has made any allegation of exclusion after [REDACTED—parliamentary business], which was on [REDACTED—11 days after the Herne Hill events]. I think that Lord [REDACTED] will remember that debate because he spoke in it.

This is a new allegation by the Commissioner herself, who has not put this to anyone. It is completely untrue. There were no meetings to which she could have been invited before the end of [REDACTED—around 6 months after the Herne Hill events]. After [REDACTED—parliamentary business 11 days after the Herne Hill events] the [REDACTED—parliamentary business] was taken over by the government—[REDACTED], in particular—took charge of meetings with civil servants to [REDACTED]. It is regrettable that the Commissioner should have thought it appropriate to make lengthy submissions in this appeal as if she were an adversary in litigation, forcefully advocating and seeking to bolster her decision, even with new allegations of her own invention, rather than being a

neutral independent and impartial finder of fact available to assist the Committee with evidence under paragraph 139 of the guide.

The contemporaneous evidence about what occurred during those few weeks is also impossible to reconcile with the other allegations, not just exclusion from meetings. The day after I am said to have harassed her in Herne Hill, which it now appears was only four days after I first met her, witness M said she was told I was in a taxi making unwanted sexual advances. M's evidence was not tested. In fact, it turns out that I was on my way by train to Gatwick Airport to fly to Strasbourg at 11 am.

The complainant and I appeared together on [REDACTED—media event] on [REDACTED—6 days after the Herne Hill events]. On [REDACTED—1 or 2 days after the media event], I arranged for the complainant to sit below the Bar during the [REDACTED—parliamentary business] on [REDACTED—11 days after the Herne Hill events], and I [REDACTED—information relating to the parliamentary business].

On [REDACTED], only eight days after the events in Herne Hill, the complainant signed her book for me at the book launch she had invited me to in [REDACTED]. That, and her second book inscription, which she signed, are at tab 2: “Thank you so much for your love and support. It has been my pleasure to meet you. Love and admiration”; and she signed.

This normal, friendly interaction continued. On [REDACTED—around 7 weeks after the Herne Hill events], the complainant forwarded me an email from a victim of [REDACTED] and wrote the following: “How sad are the lives of [REDACTED]? Please read this, I have offered my hand of friendship and will meet her one day soon. We need to develop a ‘Friendship Network’ for [REDACTED]! Will you help me achieve this goal for [REDACTED]? Lots of love xx”.

These events and messages are impossible to reconcile with the allegations. Yet, as David Perry explains, the Commissioner did not even think the book inscriptions or friendly email merited an adverse inference, and dismissed the email on the completely irrelevant basis that the complainant and I have a generally informal email sign-off style. The complainant's suggestion that the dedication in her book [REDACTED] was dictated by me should have been tested and rejected. In any case, even if it were true, which it is not, it could not explain the second book dedication in similar terms.

In fact, there is not a single email or letter or other contemporaneous evidence showing inappropriate conduct by me—no threat, no sexual suggestion, no record of meetings cancelled as a so-called “repercussion”.

Had I been guilty of these things, there would be likely to be other women coming forward in the past nine months. People who abuse their power with sexual assault are likely to have many victims. I have none. The relevance of the statements at tab 8 [Not published], from people who have worked closely with me over the years, are relevant to credibility and propensity.

The Commissioner should welcome contemporaneous evidence as a finder of fact, but she now seeks to exclude from this Committee the fact that I was in Strasbourg on [REDACTED—the 2 days following the Herne Hill events] as an attempt to reopen the investigation. This cannot be right. I searched for records of those dates when it became clear for the first time in the report that the Commissioner had revised the dates of the Herne Hill allegation but concluded that nothing

turned on it—not in order to reopen the investigation, but to illustrate her failure to investigate what had happened in those days. I have explained all this in a separate note to the Committee on the evidence that the Commissioner seeks to exclude.

Searching for evidence nearly [REDACTED—over a decade] later is extremely difficult. I left my room in chambers years ago and the Odysseus Trust, my political office, is closed. The potential prejudice of investigating historic allegations is well known. That is why the new draft code draws a line at the current parliamentary term. But the Commissioner did not even tell the Sub-Committee that these allegations were [REDACTED—over a decade] old. She made no reference to the potential prejudice of proceeding as a relevant factor.

The Commissioner has now disclosed her note dated 23 January 2018, which shows that at what she calls the “pre-investigation stage”, she contacted four people at the complainant’s suggestion. Without having even met them, her assessment was that: “It was hard to think of a stronger set of statements, or a more convincing set of witnesses, including a senior lawyer, a senior civil servant, and a district judge”.

My Lord Chairman, that is extraordinary pre-judgment. In her report, she described their evidence as “extremely important” and relied heavily on what they wrote, but she never interviewed them and never tested their veracity or reliability. David Perry lists the numerous points on which their often vague and inconsistent evidence cried out for testing, but the Commissioner says she thought challenging them would have been “futile”, because they were all senior people doing their best to recall events from a long time ago.

The Commissioner notes what I said in the House of Lords in 2009 approving the Code of Conduct procedure in that case. That is a jury point. The requirements of fairness and natural justice depend on the circumstances of the particular case, not on what I said nine years ago about a different case not involving alleged sexual misconduct. As Mr Perry explains, this case turns on disputed historic issues of credibility, on pain of expulsion. The Joint Committee on Parliamentary Privilege, chaired by Lord Nicholls of Birkenhead, wrote in its 1999 report on disciplinary procedures: “the more serious the consequences, the more extensive must be the safeguards if the procedure is to be fair ... In dealing with specially serious cases ... Committees of both Houses should follow procedures providing safeguards at least as rigorous as those applied in the courts and professional disciplinary bodies. At this level the minimum requirements of fairness are for the member who is accused to be given: a prompt and clear statement of the precise allegations against the member; adequate opportunity to ... have legal assistance throughout; ... the opportunity to examine ... witnesses; the opportunity to attend meetings at which evidence is given, and to receive transcripts of evidence”.

The Committee went on: “In determining a member’s guilt or innocence, the criterion applied at all stages should be at least that the allegation is proved on the balance of probabilities. In the case of more serious charges, a higher standard of proof may be appropriate”.

My Lord Chairman, none of that has been afforded to me.

Lord Nicholls’ Joint Committee has special authority, because its members included so many law officers, past and then serving, and a former Home Secretary, and it obtained an impressive amount of expert evidence.

The *Sun* newspaper called me “Lord Mo-Lester” when the complaint was leaked, and the *Times* published headlines, and my photograph, headed “Peer faces sex harassment inquiry” and, again with my photograph, “Lib Dem peer resigns over sex-pest allegations”. The Commissioner accepts that publishing my name and the fact of her investigation on her website did not, in her words, “work well” in terms of trying not to stir up interest. I have been in limbo for nine months. Yet the Commissioner, who kept me in the dark on what was happening until I read her report in September, now herself accuses me of “harassment” and “grossly inappropriate” behaviour for calling her office to inquire when this nightmare might end.

There must be a fair process for resolving complaints of this kind in Parliament, but it is essential that the process is fair for everyone. I ask you not to endorse the findings that the allegations were proved – corrupt inducement, threats of retaliation, exclusion from meetings, and sexual harassment – and not to endorse the penalty, for all the reasons set out in my grounds. Thank you for listening.

**The Chairman:** Lord Lester, I do appreciate how distressing and painful this has been for you. Your submission is a very succinct and very clear expression of your appeal and is very helpful to us. We as a Committee now need a few minutes in private to decide if we will put any questions to you. May I ask you and your colleagues to adjourn to Committee Room 3? We will ask you in again very shortly.

**Lord Lester of Herne Hill:** May I mention one other thing? I have had copies made of what I have just said, because the footnotes all give the correct references to where you find all the information. I will leave those copies behind for anyone who wants to check up the sources. I thought that might be useful.

**The Chairman:** Yes. Thank you very much.

*The Committee continued in private and then resumed with the witness present.*

**Q2. The Chairman:** Lord Lester, welcome back. As a Committee, we have no questions to address to you, but, in light of your late submission yesterday and the response from the Commissioner overnight, we feel it proper to give you the opportunity to respond. There will be a maximum of 10 minutes for you to do that. We have also decided not to hear from the Commissioner. Have you understood everything? .

**Lord Lester of Herne Hill:** Thank very much, Lord Chairman. Obviously this process of back and forth has to stop some time, so let me have an attempt. I am very grateful for the chance to respond to this further statement, which we have just been handed.

The Commissioner now seems to be suggesting that, although the evidence shows that the complainant came to Herne Hill on [REDACTED] and that I first met her only four days earlier—the complainant accepted that—it is more plausible that I had met the complainant months before. The Commissioner speculates, because she recognises the implausibility of the contention that I would have propositioned the complainant so soon after meeting her, and leaps to the assumption, for which there is no evidence, that I must have met the complainant long before, rather than drawing the much more obvious conclusion that the allegations are unsubstantiated.

The Commissioner also suggests that it is grossly unfair to rely on evidence produced after the report, but even she recognises that it is highly material. What

would be grossly unfair would be to expel me without considering evidence which exonerates me and which I found in response to the errors in the report, which I did not receive before the report was adopted. The first that I saw of the report and the analysis was in September. I have already given you a note explaining the difficulty that I have in trying to establish facts from [REDACTED—over a decade] ago, including finding bits of diary and other stuff.

All this shows the danger – I would say the grave danger – of purporting to decide on credibility nearly [REDACTED—over a decade] after the event without a rigorous procedure, which elementarily involves cross-examination of the complainant and the witnesses. I suggest to the Committee that it should reject the Commissioner’s speculation and reject her misguided attempt to shore up a report produced after an unfair procedure and a woefully defective process of reasoning. I am sorry to have to say all that.

**The Chairman:** Lord Lester, many thanks for that. We are very grateful that you have come back to give us your views. The staff will be in touch about the next steps. It is just for me to remind you that the proceedings remain privileged and private up to the point of publication. Many thanks again.

**Lord Lester of Herne Hill:** I understand. Thank you.