

HANSARD SOCIETY

POLITICAL ACCOUNTABILITY AND TRANSPARENCY



Briefing Paper 1: Restoring Trust in the House of Lords

INTRODUCTION

On January 25 2009 *The Sunday Times* published allegations suggesting that four peers had indicated a willingness to accept financial inducements – from an undercover reporter posing as a lobbyist – in order to influence legislation due to be scrutinised in the House of Lords.¹

A full investigation was undertaken by the House of Lords Committee for Privileges which published its findings on May 14 2009. Two of the peers were asked to make a personal apology to the House for ‘unwise’ comments to journalists and ‘inappropriate attitudes to the rules governing the conduct of Members’ respectively.² However, the other two peers were found to have expressed a willingness to breach the House of Lords Code of Conduct in respect of the prohibition on paid advocacy, and to have ‘failed to act’ on their ‘personal honour’ as required by the Code.³ It was recommended that both peers be suspended until the end of the current session of Parliament. The constitutionality of this sanction – a suspension of approximately six months – was much debated by the Privileges Committee before they made a final recommendation⁴ which members of the House voted to enforce on May 20 2009.⁵

This case has raised serious questions about standards of conduct in the House of Lords, the regulation of peers’ interests and the enforcement of sanctions for breaches of the Code of Conduct. These questions have subsequently been augmented by wider public debate about the pay and allowances available to parliamentarians arising from problems related to the conduct of members of the House of Commons and further allegations made against specific peers in respect of possible abuse of their allowances, in particular the ‘overnight subsistence’ rate and the ‘accommodation maintenance allowance for a

second home’.

The problems confronting both the House of Commons and the House of Lords raise generic concerns with regard to the ethics of our parliamentarians and their sense of appropriate public conduct in the service of the nation. Both Houses face common issues of principle in relation to transparency of conduct and behaviour, independent monitoring as opposed to self-regulation and the effective enforcement of sanctions when misconduct comes to light.

However, the problems confronting each House are rooted in very different institutional settings and as such, while common principles need to be borne in mind, any coherent set of reform proposals must specifically respond to and take account of the differences between the two Houses.

Key Recommendations (see page 16 for full list)

- Significantly revise the Code of Conduct, including setting out a clear ethos and mission for the House of Lords and extending the Code to cover the use of allowances and expenses.
- Consider the introduction of a hybrid payments system for allowances and expenses to better reflect the degree of each peer’s involvement in the work of the House.
- Establish a hierarchy of possible sanctions that may be applied for breaches of a new Code of Conduct up to and including permanent expulsion from the House.
- Establish a system of external independent regulation for the management of the Lords allowances and expenses system and enforcement of the Code of Conduct.
- Empower the office of the Lord Speaker to be able to better represent and act on behalf of the House and take forward a mandate for reform.

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With this in mind, the Hansard Society co-hosted a seminar, with the Lord Speaker, on May 20 2009, drawing together a group of peers, academics, journalists, and people with a background in complex ethical and regulatory matters, to explore these issues.⁶

The ideas and recommendations set out here draw on some of the views discussed at the seminar. This briefing paper, however, reflects additional issues and ideas derived from Hansard Society research in recent years and as such is not a record of the seminar itself.

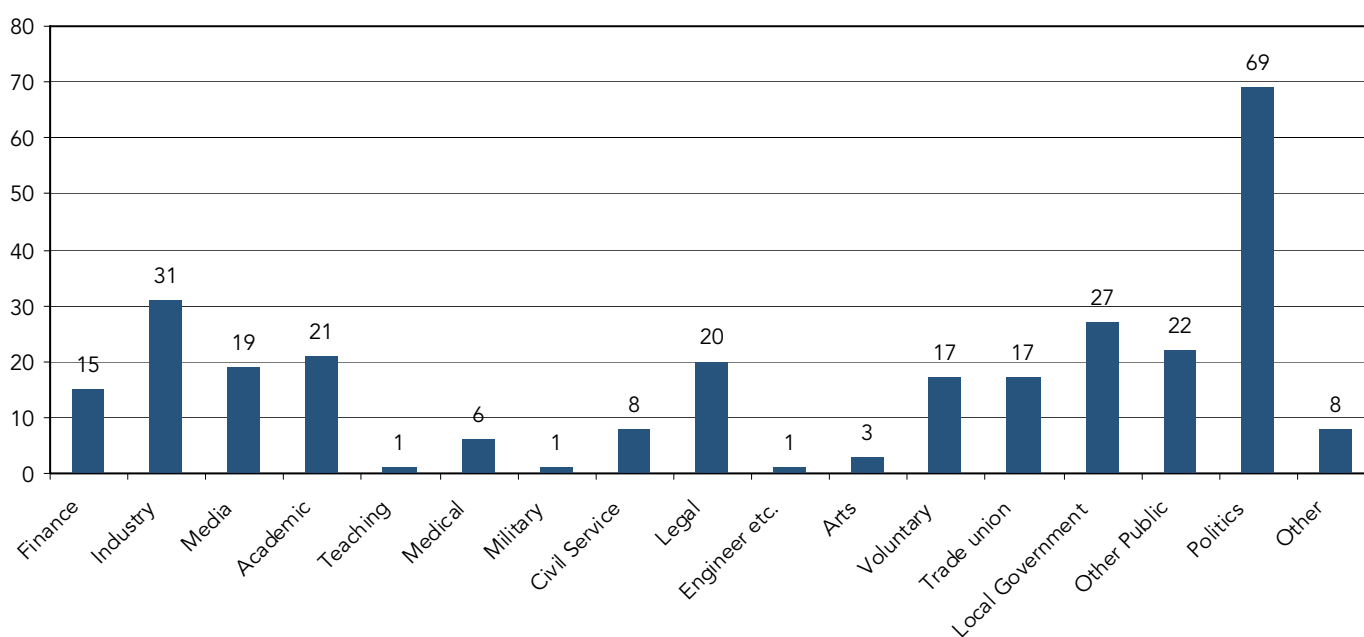
It seeks to illuminate some of the complex issues of ethics, regulation, standards and trust that specifically affect the House of Lords and makes recommendations for reform predicated on its institutional standing and requirements. In particular it looks at the concept of a 'professional' Upper House, issues of ethos and integrity, the application of a principle and rules-based regulatory framework, the desire for internal and external regulation, the problems associated with conflicts of interest and paid advocacy, proposals to revise the Code of Conduct and establish a sanctions and enforcement regime, and finally the need for clear leadership in the House in the future.

A CHANGED HOUSE OF LORDS

The House of Lords, unlike the House of Commons, is a part-time unpaid chamber. Its composition, character and culture have changed significantly over the last decade. Following the 1999 removal of all but 92 of the hereditary peers, over 50% of the current membership is new to the House of Lords in the last decade. It is now largely (though not solely) a body of active legislators, many of whom have an alternative external occupation, and who bring to the scrutiny process within the Lords a significant level of specialist expertise and experience (see Box 1).

Members are rightly expected to be professional in their approach to their work and their conduct but are not treated institutionally as parliamentary professionals as their role is an entirely voluntary one. Rather than remuneration, peers are eligible for a range of reimbursements and allowances to cover subsistence, travel, office and secretarial costs, as well as the costs of maintaining a second home.⁷ The only exceptions to this are peers who are in receipt of an official salary either as a Government Minister, a Law Lord or as an Office Holder of the House (the Lord Speaker and two deputies).

Box 1: Peerage creations by background 1997-2008



Source: House of Lords Library Note (July 2008), *Peerage Creations, 1958-2008*.

Politically, there is no longer a permanent inbuilt majority following the abolition of the hereditary peers. As no single party now has overall control, the Liberal Democrat and crossbench peers tend to hold the balance of power (See Box 2).

An increasing number of women and black and ethnic minority peers have been appointed and as a result the social and demographic make up of the reformed House of Lords is now, in some respects, more broadly representative of the wider public than the House of Commons (see Box 3).

Following the reform of the position of Lord Chancellor, the House of Lords is presided over by the Lord Speaker, a role that now encompasses an important ambassadorial function for the Upper House. However, leadership of the second chamber remains complex and diffuse with authority to be found in several different loci: with the Lord Speaker; with the Leader of the House of Lords; and with the leaders of each political party as well as the convenor of the crossbenchers.

All these institutional reforms over the last decade have made the House of Lords both more effective and more visible, as a consequence of which it is subject to more attention and scrutiny from the public and the press and is of greater interest to lobbyists than ever before.

However, governance standards within the House have not kept pace with these institutional reforms and the members' deep attachment to self-regulation has been found unfit for purpose in a 21st century legislature. As a result, the House has been rendered vulnerable to serious challenge in relation to the individual ethics of peers and the

collective ethical functioning of the institution itself.

A 'PROFESSIONAL' HOUSE

The House of Lords is a revising chamber in which unelected members derive authority from their personal stature and character, a proven effectiveness in carrying out their parliamentary role, particularly in relation to legislative scrutiny, and the personal contribution that each peer makes to that role, drawing on their specific knowledge and expertise.⁸

The public welcome the less overtly partisan nature of conduct and debate in the Upper House and this, coupled with the fact that its members are not seen as part of the professional political class, might be considered a useful long-term attribute given the current public anger against political parties and professional politicians.⁹ Paradoxically, the public also support a reformed elected second chamber, a position that cannot easily be squared with the desire to see a less partisan one.¹⁰

Similarly, the public welcome the expertise that professionals – be it in business, education, medicine, science, or technology – bring to the chamber, but they do not want to see the Upper House become a professional one in the sense of being remunerated.¹¹ In short, there is an important distinction to be made between a more professionally active House and a non-professional institution, between the concept of professional members and that of a professional House.

But the issue of remuneration has to be confronted as money matters go to the heart of the debate about public confidence and trust in the House of

Box 2: Breakdown of Lords by party and type of peerage (as at July 20 2009)

Party	Life Peers	Hereditary: Elected by Party	Hereditary: Elected Office Holders	Hereditary: Royal Office Holder	Bishops	Total
Conservative	145	39	9	0	0	193
Labour	211	2	2	0	0	215
Liberal Democrat	66	3	2	0	0	71
Crossbench	169	29	2	2	0	202
Bishops	0	0	0	0	26	26
Other	15	2	0	0	0	17
TOTAL	606	75	15	2	26	724

NB Excludes 12 members who are on leave of absence, two who are suspended and one disqualified as an MEP. Source: www.parliament.uk

Box 3: Parliamentary Demographics

Average age

House of Lords – 69 years

House of Commons – 51 years

Women's representation

House of Lords – 148 (20%)

House of Commons – 127 (20%)

Ethnic origin representation

House of Lords – 40 (5.4%) (Non White-British)

House of Commons – 15 (2.3%) (Non White-British)

NB Ethnic origin data is estimated. Sources: www.parliament.uk, Dod's Parliamentary Companion, Operation Black Vote and House of Commons Library notes. Data as of June 2009.

Lords particularly in relation to alleged and potential misuse of allowances.

Involvement in the House of Lords is a national public service. Professionals who give their time voluntarily however, cannot be expected to be left out of pocket as a result of that public service. It would be equally undesirable if public anger about the current financing of peers resulted in a backlash that meant only those with sizeable private incomes were able henceforth to become legislators. Such a development would be socially and democratically regressive. Some form of recompense is therefore necessary to reimburse members for the basic costs they incur in order to carry out their public duties.

At any time, but particularly during a recession, there will be limited public support for an increase in the House of Lords' share of public expenditure. Were such an increase to be pursued it would almost certainly undo, if not wholly eradicate, any other good that might emerge from the Lords reform agenda. The core challenge then, is not whether and how the funding of the Lords should be increased, but rather how the existing funding pot can be better divided to reflect the balance of work in the House undertaken by individual peers and to defray the costs that they accrue in doing so, and how that funding can be appropriately audited and the regulations governing its use properly enforced.

The Senior Salaries Review Body has been asked to review the expenses and allowances system and in

doing so it should give thought to whether a hybrid payments system can and should be introduced. Some peers spend more time and carry out more scrutiny work in the House of Lords than others, in large part predicated on whether or not they have another occupation or position outside the House. That all are entitled to the same allowances with little differentiation between those performing a full or part-time function is inequitable and unsustainable. A hybrid system would allow those performing a full-time role to be more substantially recompensed than those present only on a part-time basis.

In designing such a system it is vital that it is seen to fairly recompense the different roles, and that it is administered scrupulously. The model of a daily attendance allowance, most notably used by the European Parliament, has been roundly criticised for encouraging members to attend simply to collect expenses before leaving. A system which simply requires peers to register their daily attendance in order to make expense claims risks public and media criticism. Whatever system is adopted, the highest standards of reporting and transparency for expense and allowance claims must apply, including online publication of all claims each quarter.

ETHOS AND INTEGRITY

Recent events have raised questions about the very ethos of the House of Lords. As a physical building the Palace of Westminster, more than most, carries profound ideological symbolism in relation to probity and integrity based on implicit understandings about the nature and morality of law. Such understandings need to be refreshed and reasserted in the context of the modern Upper House.

Any institution which lacks a clear ethos is weaker and more vulnerable than those which have such a sense of mission. A clear vision of the reformed House of Lords' collective mission and the role each member has to play in this is therefore vital, with each individual having a clear appreciation of the collective damage that can be inflicted on the institution when mistakes are made and things go wrong. A return to a traditional appreciation of public service not as a career from which one

should expect to profit but rather a vocation demanding personal (including perhaps financial) sacrifices would be beneficial. A wide ranging induction process for all new members of the House of Lords is thus required to ensure that they are aware of and appreciate the nature of that collective ethos and mission.

In reality, individual cases of bad behaviour can and do emerge in any institution. While clear regulations are needed, there is nonetheless no more potent an instrument to protect against abuse than an individual's sense of moral conscience and ethical behaviour. The sense of what is 'the right thing to do' must be culturally embedded in the institution supported by a keen sense of peer pressure and an expectation that a transgression, regardless how small, will be subject to heavy and very public sanction, placing the offender 'beyond the pale'.

PRINCIPLES AND RULES

There has been much debate in recent weeks about the rules governing the expenses and allowances of parliamentarians and the degree to which these absolve members of any responsibility for error in respect of their claims. But peers, as is also the case with MPs, have never been solely guided by and subject to a rules-based system. The rule book aside, all parliamentarians are subject to the Seven Principles of Public Life, namely selflessness, integrity, objectivity, accountability, openness, honesty and leadership.¹² These are set out clearly in the House of Lords Code of Conduct under the heading of personal conduct and the Code also makes clear that all members should 'act always on their personal honour'.¹³

It would be a retrograde step if this collective ethos of high standards – enshrined in the concept of members acting on their 'honour' – were to be replaced entirely by a tick-box, rules-based system. Indeed rules, however they are defined, always require an act of interpretation or judgement linked to factors such as custom or practice, ethos or precedent. There are also different types of rules – those that are prohibitive and those that are permissive. Each places a different onus on interpretation so that when interpreting the rule

careful consideration needs to be given not just to the letter of the rule but its spirit as well, to what was intended by and at the time of its introduction.

In terms of systemic regulation there already exists an appropriately robust upper layer of principle enshrined in the Seven Principles of Public Life. There then exists a lower layer of rules-based guidance. What is missing is a mechanism or approach to clearly and coherently knit together the upper layer principles with the lower layer rules within the context of the specific institutional ethos of the House of Lords. Here is where a new regulatory framework and a revised Code of Conduct must come into play.

INTERNAL AND EXTERNAL REGULATION

In a time of crisis there is often a tendency to erect a dichotomy between the need for internal or external regulation and assume it is imperative to choose one or the other. This is a false choice.

Self-regulation need not be entirely dispensed with – it is important to reinforce the individual conscience of peers acting on their 'honour' and the ethos of the House of Lords should therefore be augmented not replaced. It should also be recognised that external regulation is not a panacea and carries its own risks. Whilst it brings objectivity, a dependency culture can also emerge, removing the perceived need of individuals to apply their own conscience and their own personal sense of integrity and probity to a decision, instead leaving it to others to make decisions on their behalf.

The Upper House, unlike the House of Commons, has demonstrated in its response to its particular problems in recent months that it is capable of some degree of self-regulation. The response of

Box 4: Sittings of the House of Lords

Number of sitting days:

Session 2007-08: 164 days

Length of average sitting day:

Session 2007-08: 6 hours 46 minutes

Number of late sittings (past 10pm):

Session 2007-08: 53

Source: www.parliament.uk

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the Leader of the House of Lords to the allegations in *The Sunday Times* was swift, the investigation undertaken by the Committee for Privileges was rigorous, robust, fair-minded and relatively quick, and members of the House acted speedily on its recommendations.

Given the ethical problems that have beset both Houses of Parliament however, there is clearly a strong case for determining a common set of parliamentary standards.

It was initially envisaged that the Independent Parliamentary Standards Authority (IPSA) would be the body to oversee this. However, the fast-tracking of the Parliamentary Standards Bill raised profound constitutional questions and the Leader of the House of Lords indicated during the second reading of the bill that IPSA would not apply, as originally intended, to the House of Lords during the current session of Parliament.¹⁴ Subsequently a decision was made to exempt the House of Lords from IPSA's remit entirely.

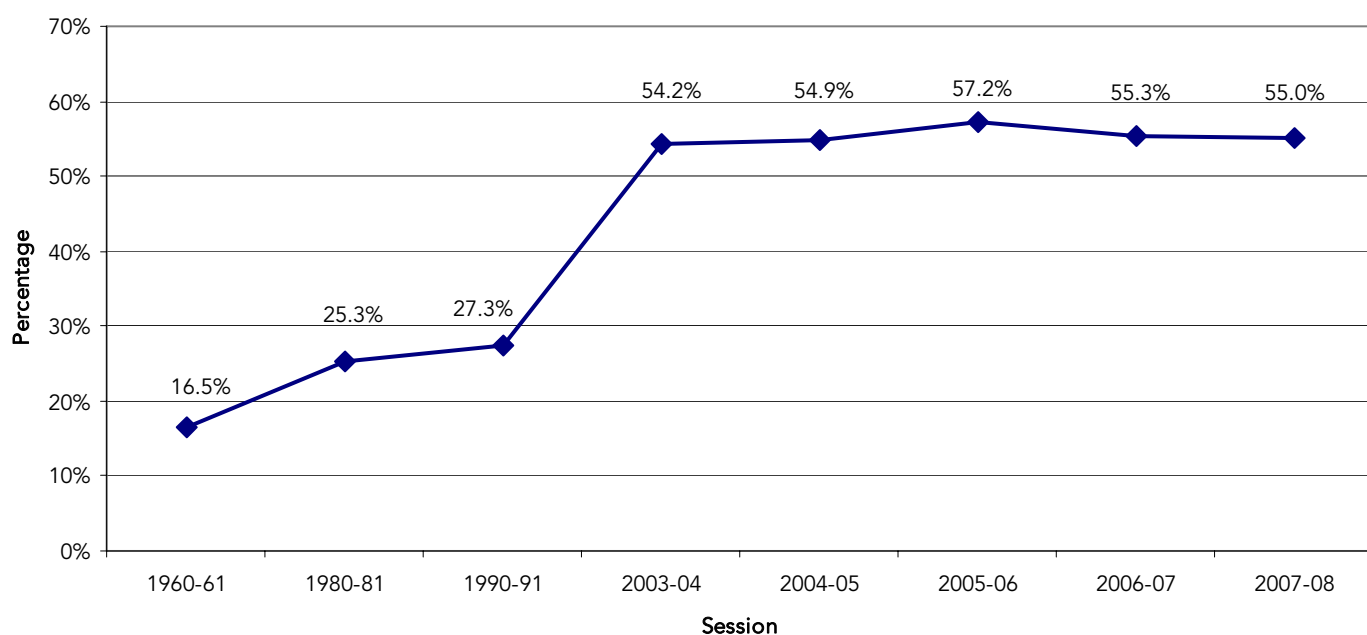
It will now be for the House of Lords and the Government to reflect on what new structure, if any, should be established to deal with these issues in the future. Some form of external independent regulation is required and the

changes in practice and procedure that may consequently be needed could be profound in terms of future governance of the House of Lords. However, it does now have the opportunity to learn lessons from the establishment of the IPSA.

CONFLICTS OF INTEREST AND PAID ADVOCACY

When the House of Lords first adopted a Code of Conduct in 2002 it incorporated a mandatory requirement that peers register their relevant interests.¹⁵ The Code states that members of the House must register all relevant interests, both financial and non-financial, 'in order to make clear what are the interests that might reasonably be thought to influence their actions'.¹⁶ The test of a 'relevant interest' is defined as 'whether the interest might reasonably be thought by the public to affect the way in which a member of the House of Lords discharges his or her parliamentary duties'.¹⁷ Supplementary guidance on members' interests has been provided on a number of occasions in the intervening years, the most significant of which was that in 2008 when the Committee for Privileges recommended that the pre-2001 guidance be incorporated into the Code, namely that: 'For the purposes of declaration of interests, relevant interests include future interests, that is to say interests where a member's

Box 5: Average Daily Attendance in the House of Lords as a Percentage of Total Membership



Source: www.parliament.uk

expectation has passed beyond vague hope or aspiration and reached the stage where there is a clear prospect that the interests will shortly arise.¹⁸

The changed composition of the House of Lords makes the issue of the potential for conflicts of interest more pressing than ever before. A House increasingly composed of professional experts drawn from external organisations raises new challenges in regulatory terms. How can a proper regulatory regime be brought to bear to ensure that people who come into the House of Lords because of their expertise cannot and do not have scope to misuse their legislative power? When a member speaks on an issue, how can the public be assured that the peer concerned is bringing to bear their expertise in an independent manner in the national interest, and not acting solely as a spokesperson for their profession or the organisation which employs them outside the confines of the House of Lords?

At present many peers feel that the definition of what constitutes an 'interest' and what therefore might be held to be a 'conflict' is unclear. There are certainly many potential 'grey' areas in the regulations and establishing alternative clear, bright lines on this issue will be difficult.

What is valuable about the House of Lords is the specialist experience that so many members bring to bear in legislative scrutiny and debate. To require members with any kind of interest – pecuniary or otherwise – in an issue to withdraw from debate would be to devalue the process and ultimately weaken the chamber.

Clear registration of a member's interest in line with the Code of Conduct, coupled with a clear announcement of that interest at the start of any contribution in the chamber or committee, should be sufficient to alleviate concern in most cases.

However, there is scope for the Code of Conduct to provide greater clarity with regard to political consultancy interests and what activity in this area is permissible. This is a new and growing vulnerability for the House of Lords and greater guidance and transparency is therefore needed.

More often than not concerns relating to interests actually arise out of public and media discomfort with interests derived from the business sector in particular. There is no ready solution to this beyond the adoption of a less disingenuous stance and a more mature approach to our politics. Business and commercial interests are a crucial component of our society and expert knowledge and understanding of them are an essential facet of our legislators' skill set if they are to properly scrutinise financial and legal matters linked to the economy, taxation and public spending. If a peer advocates for a particular approach – for example, to bring money into a certain section of the economy or towards a particular business sector – then this is no less or more important than a peer advocating the same for a charity or public sector organisation.

Yet the public and media are naturally more comfortable with the advocacy of the latter than the former. A charity or a public sector organisation is seen as more honourable, less threatening, and generally more appropriate for a peer to be associated with than a business or commercial organisation. In truth however, a peer advocating in the financial interests of one sector of our national life is no different and no more or less valuable than one advocating in the interests of another sector. That is why the Code of Conduct requires that peers who are members of public bodies such as hospital trusts, governing bodies of universities, schools, local authorities, museums and galleries and other voluntary organisations must register these interests. Until such time as this is accepted as normative behaviour in the public domain and by the media, the issue of conflicts of interest will continue to pose a problem. One route to resolving this problem would be through a revised Code of Conduct.

A REVISED CODE OF CONDUCT

A revised Code would help establish a more robust regulatory framework for the Upper House coupled with a clear sense of mission and ethos.

On May 21 2009 the Leader of the House of Lords announced that a Leader's Group was to be established, chaired by the Rt Rev Lord Eames, to consider the Code of Conduct and rules relating to

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members' interests. Its recommendations will pass to the Committee for Privileges and then to the whole House for approval.¹⁹

The Lords Code of Conduct is an uninspiring document, the tone and focus of which is derived from a negative mindset, setting out what members cannot or must not do, with no positive balance provided to highlight what members can and should do.

The most effective regulatory Codes are those which embody and articulate the ethos of an organisation, providing a living document which members can utilise in quotidian fashion. The Code of Conduct would therefore benefit from substantial revision, setting out the equivalent of a House of Lords 'mission statement' positively identifying the key aspects of the role of peers and their place within the wider constitutional and political fabric of our democratic system.

It should retain the necessary provisions in relation to personal conduct and the declaration and registration of interests. However, the latter should be augmented to assert that all sectoral interests are vested with equal weight (i.e. business interests are to be treated on an equal footing with public sector or charitable interests) and one cannot naturally be deemed inferior to or abridged by another. A new section should also be incorporated extending the reach of the Code to cover not just breaches in relation to interests, whether pecuniary or otherwise, but also explicitly to the use of the allowances and expenses system.

The final section on enforcement of the Code should then be significantly re-written. Currently it deals only with the process for enforcement and not the sanctions that might be applied for breaches of the Code. It contends in paragraph 19 (d) that 'In the investigation and adjudication of complaints against them, Members of the House have the right to safeguards as rigorous as those applied in the courts and professional disciplinary bodies'.²⁰ This is a worthy aspiration but in practice amounts to a lawyers' charter. In the investigation of any case of misconduct the House of Lords must have regard to natural fairness and due process but so too it must balance the need to provide a

robust and quick response in the public interest. In future cases this clause could hinder the reaching of a fair but expeditious conclusion to an inquiry and therefore run counter to the public interest. As such the clause should either be removed completely or redrafted in more judicious fashion.

SANCTIONS AND ENFORCEMENT

The application of sanctions is crucial. The conclusion of the Committee for Privileges report on *The powers of the House of Lords in respect of its members* is that the House has the power to discipline members but not to withhold the writ of summons that is issued to members at the start of each new Parliament. In short, the House can suspend members for a defined period, not longer than the remainder of the current Parliament, but cannot expel a member permanently.²¹ Beyond this, only an Act of Parliament can remove them on grounds such as treason and there has been no resort to such an Act since 1919. Peers can take a 'leave of absence' from the House but this is entirely voluntary and temporary and therefore unhelpful in the context of a sanctions regime.

From the perspective of the public interest, this is clearly an unsatisfactory situation. There is a public expectation that where a member has committed an egregious breach of trust and standards then it should be possible to remove the individual from the legislature. It is no longer possible to maintain public trust and confidence, particularly in what is now a largely appointed House, if members who breach the law, and in some cases face criminal conviction and prison, are able to retain their membership of the Lords and in so doing continue to exercise influence on the law of the land upon their release or the end of their suspension. Such a situation is incompatible with the public's sense of fairness and justice. It is also incompatible with the sanctions regime in the House of Commons where the rules bar anyone who has been convicted of a criminal offence and sentenced to prison for 12 months or more. There is no such sanction in the House of Lords. If a peer is sent to prison he or she can retake their seat upon their release. A sanctions regime therefore needs to be developed which has broad bi-cameral consistency.

The proposals in the new Constitutional Reform

and Governance Bill will go some way to addressing this anomaly by providing powers to evict peers where, for example, they have been convicted of a criminal offence and imprisoned. But the scope of the sanctions and enforcement regime also needs to be extended to take account of issues arising from appointments made by the House of Lords Appointments Commission. Since its establishment the Commission has, in effect, developed its own criteria for determining the suitability of an individual for appointment. This in itself is unsatisfactory. However, once an appointment has been made the Commission has no power to ensure that commitments given at the time of the appointment in accordance with the criteria are actually undertaken. This has proven particularly problematic where appointees have given assurances with regard to their tax residency status and their willingness to commit an appropriate amount of time to work in the House of Lords. There is no defined minimum attendance requirement for appointees and there is no means to apply sanctions to them if commitments on tax residency are not met. The Commission recently amended its appointment criteria to try and strengthen its hand with regard to future appointments but as long as there are no tools at the disposal of either the Commission or the House of Lords itself then it is in effect toothless once appointments have been made.²²

Overall then, the current scope for sanctions does not meet the need to put errant members 'beyond the pale' when they transgress. The currently available sanctions are simply insufficient to act as a potent deterrent against wrongdoing. This issue therefore needs to be resolved through the Eames Leadership Group review. A robust range of sanctions needs to be drawn up and set out in a revised Code of Conduct, amendments to Standing Orders and if necessary through further legislation.

LEADERSHIP IN A TIME OF CHANGE AND CHALLENGE

If any of these suggested reforms are to be taken forward then clear leadership is required.

In the past, much of the non-partisan leadership responsibility for the House of Lords has fallen to

the Leader of the House, alongside their political role. Since 2006, however, the House has had a full time Lord Speaker, who was elected by the House, and as such carries legitimacy and a mandate to represent and speak on behalf of all peers. The office of the Lord Speaker is non-partisan and has a growing ambassadorial function. This office has the scope and freedom to embody the institutional ethos and integrity of the House of Lords.

The office of Lord Speaker should be vested with clearer authority to represent and speak for the House of Lords institutionally and for peers collectively. In this new capacity the Lord Speaker should pursue the programme of reform, embody and articulate the ethos of the institution and the standards of the House, and act to ensure, without fear or favour, that a new Code of Conduct is introduced and rigorously enforced.

CONCLUSION

Public trust has to be earned and then granted. Given the nadir to which public trust in our parliamentarians has now reached, it is clear that it will not readily be granted again in the near future unless the earning of it has been fundamental and in earnest. That is why incremental reform of the system will no longer do: a radical overhaul is necessary.

Collective action by both Houses of Parliament is required if public faith and confidence is to be restored in our parliamentarians generally. Specifically, the House of Lords must openly, honestly, and robustly address its shortcomings. What is required is a refreshing not just of personal integrity on the part of each peer but of the institutional integrity of the House itself by everyone associated with it. A new sense of ethos and mission is required alongside a new culture of open, transparent, independently monitored regulation coupled to new, robust sanctions for those who transgress. A culture of compliance, not just with the letter of a revised Code of Conduct but with its spirit as well, must guide all members. The reforms adopted must be substantial and wide ranging enough to stand the test of time, with an emphasis on the prevention of problems before they arise so that never again does the House of Lords find itself in this situation.

Box 6: Hansard Society Seminar Attendees – May 20 2009

Professor James Connelly, Professor of Politics, University of Hull (with a research interest in ethics)

Lord Hart of Chilton, Former Special Adviser to the Lord Chancellor

Baroness Hayman, Lord Speaker

Sir Paul Hayter, Former Clerk of the Parliaments

Rt Rev Christopher Herbert, Former Bishop of St Albans

Sir Donald Irvine, Former President of the General Medical Council

Baroness Jay of Paddington, Former Leader of the House of Lords

Peter Kellner, President, and Head of Political and Social Research, YouGov

Sir Philip Mawer, Former Parliamentary Commissioner for Standards

Lord Neill of Bladen, Former Chair, Committee on Standards in Public Life

Professor the Lord Norton of Louth, Professor of Government, University of Hull; Director of Studies, Hansard Society Scholars Programme

Peter Riddell, Chair, Hansard Society; Chief Political Correspondent, *The Times*

Dr Meg Russell, Reader in British & Comparative Politics, Constitution Unit, UCL (with a research interest in the House of Lords)

Baroness Shephard of Northwold, Former Member of Parliament and Secretary of State for Education and Employment

Lord Tyler, Former Member of Parliament for Bodmin and North Cornwall; Member of the Hansard Society Council

Baroness Valentine, Chief Executive, London First

Lord Wakeham, Former Leader of the House of Lords; Chair of the Royal Commission on House of Lords reform

Dr Tony Wright MP, Member of Parliament for Cannock Chase; Chair, Public Administration Select Committee

Sir George Young MP, Member of Parliament for North West Hampshire; Chair, Standards and Privileges Committee

REFERENCES

¹ J. Calvert, C. Newell & M. Gillard, 'Revealed: Labour lords change laws for cash', *The Sunday Times*, January 25 2009, p.1.

² House of Lords Committee for Privileges (2008-09), *Second Report, The Conduct of Lord Moonie, Lord Snape, Lord Truscott and Lord Taylor of Blackburn*, HL 88, p.12 & p.16.

³ *Ibid.*, p.19 & p.22.

⁴ House of Lords Committee for Privileges (2008-09), *First Report, The Powers of the House of Lords in Respect of its Members*, HL 87, pp.4-5.

⁵ HL Deb May 20 2009 vol.710 col.1418.

⁶ See Box 6 for details of the seminar participants.

⁷ See Appendix 1 for details of the reimbursements and allowances available to peers.

⁸ Hansard Society research published in 2007, drawing on a national opinion poll conducted in autumn 2006, demonstrated that the public believed holding the Government to account for its policies and expenditure and revising legislation were the House of Lords two most important functions (65% and 44% respectively). In contrast, only 3% of the public felt that its ceremonial role was important. See Hansard Society Briefing Note: *New Research on Public Attitudes to House of Lords Reform* (February 2007), p.2.

⁹ 57% of the public thought that members of a reformed House of Lords should be more independent of party politics than members of the House of Commons. *Ibid.*, p.3.

¹⁰ 82% of the public believed that at least some members of the House of Lords should be elected: 42% preferred a fully elected chamber and 40% would prefer a mixture of elected and appointed members. See Hansard Society Briefing Note: *New Research on Public Attitudes to House of Lords Reform* (February 2007), p.2. However, Hansard Society research at the end of 2007 found that only 36% of the public said they were dissatisfied with the way members of the House of Lords are chosen and just 16% identified it as a priority for reform. See Hansard Society (2008), *Audit of Political Engagement 5* (London: Hansard Society), p.28 & p.31.

¹¹ 54% of the public thought bringing external expertise into a reformed House of Lords was important. Hansard Society Briefing Note: *New Research on Public Attitudes to House of Lords Reform* (February 2007), p.3.

¹² Committee on Standards in Public Life, *The Seven Principles*, http://www.public-standards.gov.uk/Library/Seven_principles.doc

¹³ See Appendix 2 for the House of Lords Code of Conduct as adopted on July 2 2001 and amended on July 24 2001, paragraph 4b.

¹⁴ HL Deb 8 July 2009 vol.712 col.675.

¹⁵ House of Lords Code of Conduct as adopted on July 2 2001 and amended on July 24 2001.

¹⁶ *Ibid.*, paragraph 8a.

¹⁷ *Ibid.*, paragraph 9.

¹⁸ House of Lords Committee for Privileges (2007-08), *Third Report, Declarations of Relevant Interest in Debate*, HL 189, pp.5-6.

¹⁹ HL Deb 21 May 2009, vol. 710 cols.1434-1435.

²⁰ House of Lords Code of Conduct as adopted on July 2 2001 and amended on July 24 2001, paragraph 19(d).

²¹ House of Lords Committee for Privileges (2008-09), *First Report, The Powers of the House of Lords in Respect of its Members*, HL 87, pp.4-5.

²² www.lordsappointments.gov.uk/news/090325_nppp.aspx

APPENDIX 1: ALLOWANCES

Members of the House of Lords do not receive a salary in respect of their parliamentary duties. However, members may be reimbursed for actual expenses arising out of these duties. A summary of the allowances is provided in the table on page 12. Of particular relevance are:

Night Subsistence & Accommodation Maintenance Allowance for Second Home

Members whose main residence is outside Greater London may claim for expenses of overnight accommodation in London while away from their only or main residence. The maximum daily limit is £174. A member whose main residence is outside Greater London and who maintains a residence in London for the purpose of attending sittings of the House may claim this towards the cost of maintaining such a residence. Claims for night subsistence are only permissible in respect of nights actually spent in London either immediately preceding or following attendance at a sitting or meeting. Members who maintain a second residence in London for the purpose of attending sittings of the House may claim up to £116 per night for continuing accommodation costs incurred whilst travelling as a representative of the House away from Westminster, on the same basis as Night Subsistence.

Day Subsistence

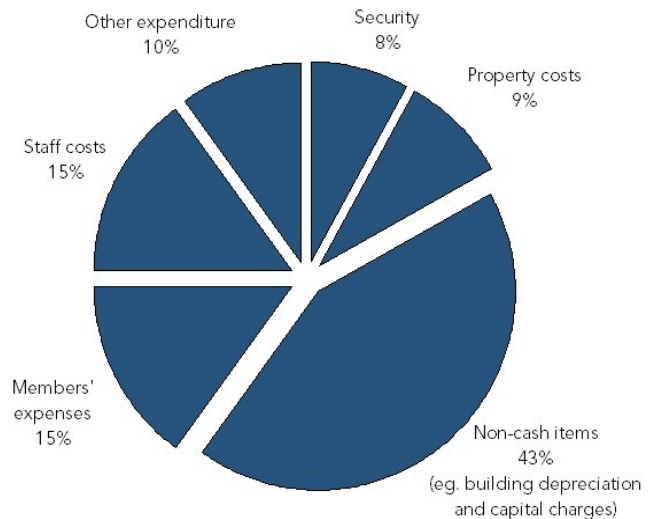
Members may claim day subsistence costs within a daily limit of £86.50 for each day of attendance. This is intended to cover such items as the cost of meals and incidental travel costs not separately recoverable (e.g. journeys within a five mile radius of Westminster, taxi fares, tolls and car parking charges). It also includes an element to cover the costs of providing refreshments for a member’s visitors to the House on official business.

Office Costs

Members may claim office costs within a daily limit of £75 for each day of attendance. Such claims may include the cost of secretarial help, research assistance, and additional expenses (e.g. providing and maintaining necessary office equipment, telephone, internet, computer and IT costs, domestic costs, purchase of books and periodicals

and professional subscription charges which arise out of parliamentary duties). Office costs may also be recovered in respect of up to 40 days when the House is not sitting, or the House is sitting but a member does not attend.

Box 7: The Financing of the House of Lords 2007-08 (net operating cost: £121.5 million)



Staff costs (15%) and other expenditure (10%): covers salaries of all professional and support staff, provision and printing of official papers, computer services, specialist advice to select committees, postage and telecommunications, research and information services, the Library, and support for the Law Lords in their judicial capacity. Expenditure is partially offset by receipt from fees on judicial appeals and Private Bills, and income via catering services.

Property costs (9%): covers all accommodation and building costs, including the Palace of Westminster (Grade 1 Listed) and its maintenance. The budget also covers substantive ongoing items like stonework restoration, the provision of cabling for data networks, and compliance with fire, health and safety regulations.

Security (8%): the House of Lords contribution to the overall cost of security on the parliamentary estate.

Source: House of Lords Briefing (March 2009), *The Financing of the House of Lords*.

POLITICAL ACCOUNTABILITY AND TRANSPARENCY

Member Category	Types of claim	Overnight Subsistence	Day Subsistence	Travel	Office/ Secretarial Costs	Accommodation Maintenance Allowance for a Second Home	Additional Office Costs
Members	Sittings of the House and Select Committee Meetings at Westminster	max £174 per night	max £86.50 per day	Yes	max £75 per day	No	max 40 days @ £75 per day
	Select Committee Visits	met directly	met directly	Yes/met directly	max £75 per day	max £116 per night	
	Members of parliamentary delegations	Foreign & Commonwealth Office rates	Foreign & Commonwealth Office rates	Yes	max £75 per day	max £116 per night	
	UK travel on parliamentary business	No	No	Yes	No	No	
	UK travel on armed forces and police service parliamentary scheme business	No	No	Yes	max £75 per day	max £116 per night	
	Lords outreach programme	No	No	Yes	max £75 per day	max £116 per night	
	Travel to Scottish parliament and devolved assemblies	max £174 per night	max £86.50 per day	Yes	No	No	
	European Travel on parliamentary business	Foreign & Commonwealth Office rates	Foreign & Commonwealth Office rates	Yes	No	No	
	Other visits as specified in handbook	No	No	No	max £75 per day	max £116 per night	
	Travel as a Representative of the House	met directly	met directly	met directly	max £75 per day	max £116 per night	
Salaried Members	Law Lord	No	No	Yes	No	No	
	Minister	payable with salary by departments	No	No	max £5,658 pa	No	
	Office Holder	payable with salary	No	Yes	max £5,658 pa	No	

APPENDIX 2: HOUSE OF LORDS CODE OF CONDUCT

Adopted on Monday 2nd July 2001
as amended on Tuesday 24th July 2001

Purpose of the Code

1. The purpose of this Code of Conduct is:

- (a) to provide guidance for Members of the House of Lords on the standards of conduct expected of them in the discharge of their parliamentary and public duties;
- (b) to provide the openness and accountability necessary to reinforce public confidence in the way in which Members of the House of Lords perform their parliamentary and public duties.

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

Public Duty

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

Personal Conduct

4. Members of the House:

- (a) must comply with the Code of Conduct;
- (b) should act always on their personal honour;
- (c) must never accept any financial inducement as an incentive or reward for exercising parliamentary influence;
- (d) must not vote on any bill or motion, or ask any question in the House or a committee, or promote any matter, in return for payment or any other material benefit (the "no paid advocacy" rule).

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

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

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

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

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

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

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

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

Primacy of the Public Interest

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

Register of Interests

7. There shall be established a register of Lords' interests referred to in this Code. The register shall be maintained under the authority of the Clerk of the Parliaments by a Registrar appointed by him. A Member of the House must register relevant interests before 31st March 2002 and thereafter within one month of acquiring them. The register shall be available for public inspection in accordance with arrangements made by the Registrar. The register shall be regularly updated and shall be reprinted annually. The annual publication shall include all interests registered since the previous edition and all continuing interests unless their termination has been notified to the Registrar.

Registration and Declaration of Relevant Interests

8. Members of the House must:

- (a) register in the Register of Lords' Interests all relevant interests, in order to make clear what are the interests that might reasonably be thought to influence their actions;
- (b) declare when speaking in the House, or communicating with ministers, government departments or executive agencies, any interest which is a relevant interest in the context of the debate or the matter under discussion. This is necessary in order that their audience may form a balanced judgment of their arguments. In cases where Members of the House vote in a division where they have a relevant interest that they have not been able to declare, they should register that interest within 24 hours of the division.

What is a Relevant Interest?

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

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

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

Relevant Financial Interests

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

- (a) any consultancy agreement under which Members of the House provide parliamentary advice or services. A copy of any such agreement, and the remuneration received by Members for advice in relation to parliamentary matters, must be deposited with the Registrar of Lords' Interests, so that details are available for public inspection.
- (b) employment or any other financial interest in businesses involved in parliamentary lobbying on behalf of clients, including public relations and law firms but Members of the House involved with organisations that offer commercial lobbying

- services are not obliged to refrain from participating in parliamentary business in connection with all clients of that organisation but only their personal clients;
- (c) any remunerated service which Members of the House provide by virtue of their position as members of Parliament, and the clients of any such service;
- (d) employment as a non-parliamentary consultant;
- (e) remunerated directorships;
- (f) regular remunerated employment (excluding occasional income from speeches, lecturing, broadcasting and journalism);
- (g) shareholdings amounting to a controlling interest;
- (h) provision by an outside body of secretarial and research assistance;
- (i) visits with costs paid in the United Kingdom and overseas, made as a member of Parliament, except any visits paid for from public funds.

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

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

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

Relevant Non-Financial Interests

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

- (a) membership of public bodies such as hospital trusts, the governing bodies of universities, colleges and schools, and local authorities;

- (b) trusteeships of museums, galleries or similar bodies;
- (c) acting as an office-holder or trustee in pressure groups or trade unions;
- (d) acting as an office-holder or trustee in voluntary or not-for-profit organisations.

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

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

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

Advice

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

Enforcement of the Code of Conduct

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

- (a) Any allegation should normally be raised first with the Member complained against. However, there may be circumstances when it is more appropriate to raise the matter with a party Leader or Chief Whip, or the Convenor of the Cross Bench Peers.
- (b) If the complainant chooses to pursue the matter, he or she should refer the allegation in private directly to the Sub-Committee on Lords' Interests, through its chairman.
- (c) The Sub-Committee will then examine the allegation and may decide to investigate it further or to dismiss it.

(d) In the investigation and adjudication of complaints against them, Members of the House have the right to safeguards as rigorous as those applied in the courts and professional disciplinary bodies.

(e) If after investigation the Sub-Committee finds the allegation proved, the Member complained against has a right of appeal to the Committee for Privileges.

(f) The conclusions of the Sub-Committee and of the Committee for Privileges are reported to the House.

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

SUMMARY OF RECOMMENDATIONS

A new Code of Conduct

- Review the ethos and mission of the House of Lords with a view to incorporating a statement of it in the revised Code.
- Extend the Code to cover all forms of conduct and behaviour, including the use of allowances and expenses by members.
- Provide greater clarity with regard to political consultancy interests.
- Ensure that all sectoral interests are vested with equal weight and one cannot be deemed inferior to or abridged by another.
- Ensure that the public interest in a fair but expeditious inquiry of alleged breaches of the Code is not unnecessarily infringed by overly legalistic, gold-plated, protections afforded to members as 'due process' for the conduct of such an inquiry.
- Plan appropriately robust induction measures to ensure all current and future members of the House are made aware of the new Code and its implications.

Review of allowances and expenses

- Consider the introduction of a hybrid payments system to better reflect the degree of each peer's involvement in the work of the House.
- Benchmark proposals against similar systems in other walks of life which provide subsistence in both remunerated and unremunerated environments, and against international

systems of support provided in other bi-cameral legislatures.

- Recommend the adoption of the highest standards of reporting and transparency for expenses and allowance claims, including online publication of all claims each quarter.

Sanctions and enforcement

- Determine a hierarchy of possible sanctions that may be applied for breaches of the Code, up to and including permanent expulsion from the House and, as far as possible, make them consistent with those available in the House of Commons.
- Extend the scope of sanctions to take into account enforcement of the criteria for appointment to the House of Lords.

External independent regulation

- The House of Lords and the Government must reflect on, and learn lessons from, the establishment of the IPSA, to determine what system of external independent regulation should apply for the management of its expenses and allowances system and the enforcement of its new Code of Conduct.

Leadership

- Empower the office of the Lord Speaker so that the office is better able to represent and act on behalf of the House, to embody the ethos and integrity of the institution, and to take forward a mandate for reform.

The ideas and recommendations set out in this briefing paper draw on some of the views discussed at a seminar co-hosted by the Hansard Society and the Lord Speaker on May 20 2009. The seminar was held under Chatham House rules. The briefing paper however, reflects additional issues and ideas derived from Hansard Society research and as such is not a record of the seminar itself. For more information, contact Dr Ruth Fox, Director of the Parliament & Government Programme at the Hansard Society.

The Hansard Society is the UK's leading independent, non-partisan political research and education charity. We aim to strengthen parliamentary democracy and encourage greater public involvement in politics. We are happy to invite analysis and discussion of the views put forward in this paper.

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