

# **THE HOUSE OF COMMONS COMMISSION**

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## **Risk-based exclusion of MPs: consultation response and proposals**

*Report presented to the House of Commons by the Speaker*

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*Ordered by The House of Commons to be printed 5 June 2023*

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## Commissioners

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Secretary to the Commission: Gosia McBride

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#### Introduction

1. In November 2022, the Commission agreed “to launch a consultation on excluding Members charged with violent or sexual offences from the Parliamentary estate until any such cases are concluded, noting it would be for the whole House to ultimately decide on any such power. The Commission also agreed that the restriction should apply to Parliamentary-funded travel.”
2. On 5 December, the Commission published more detailed [consultation proposals](#). All Members received a link to the proposals via email and a communication was published on the intranet to draw the consultation to the attention of staff. In addition, Mr Speaker wrote formally to each of the whips’ offices, relevant select committees and the inter-parliamentary groups. Staff unions and associations and relevant Workplace Equality Networks were also alerted to the consultation. A reminder email was sent to Members on 17 January. The consultation closed on 31 January.
3. The consultation received:
  - 22 submissions from individual MPs, six from individual members of staff and one from a journalist who is a frequent visitor to the House of Commons.
  - Submissions from the following groups:
    - Committees of the House: Liaison, Procedure (who published its submission as an [annex](#) to its third report of the session), Standards (whose [published submission](#) also covered Privilege-related issues).
    - Executive Committees or UK boards of three of the inter-parliamentary groups: Commonwealth Parliamentary Association (CPA UK), British American Parliamentary Group (BAPG) and British Group of the Inter-parliamentary Union (BGIPU).
    - Unions and staff associations: Members and Peers Staff Association (MAPSA), Prospect, House of Commons Trade Union Side, Parliamentary branch of Unite and GMB.
    - Workplace equality networks: Parligender, ParliOUT and ParliReach.
  - Informal discussions were also held with party whips.
4. The Commission considered the submissions at its meetings of 27 February and 15 May 2023. The Commission is grateful to all those who took the time to respond.
5. Section A of this report summarises key themes from the consultation, illustrated by a range of indicative quotes from the submissions. Section B sets out the Commission’s response. Section C outlines next steps.

## Section A: Main themes out of the consultation

6. In relation to the **principle of excluding Members** from the estate and Parliamentary-funded travel:

- While acknowledging the challenges, **the great majority of respondents either proactively supported or expressed no objection to the principle of exclusion, in relation to alleged violent or sexual offending.**
- Two out of 19 Members explicitly disagreed, citing the principle of innocent until proved guilty. No other individual or group explicitly disagreed.
- Staff representatives very strongly supported an exclusion mechanism.

*“[...] exclusion of Members accused of sexual misconduct is a welcome step forward in protecting victims, making the House of Commons a safer working environment for everyone, and increasing trust in the political institutions.” (A Member)*

*“We do not believe that exclusion of an MP on arrest on suspicion of a sexual or violent offence is a panacea ... It will, however, be a small but positive step in Parliament’s necessary efforts to rebuild its prestige and esteem in the eyes of the people it is here to serve, and will be seen by female and male staff as a sign that Parliament, as an employer, is serious about fulfilling its duty to provide a safe workplace.” (House of Commons Trade Union Side)*

*“If charged, were it considered that a member was dangerous to the public, then he or she would be held on remand, and therefore, unable to be present on the estate anyway. To exclude a member who has not even been charged, whatever accusations might be made, would be a fundamental denial of the principle that people are innocent until guilt is properly determined.” (A Member)*

7. In relation to the **threshold at which exclusion would be considered:**

- **There was disagreement regarding the stage of the investigative process at which exclusion might apply.**
- Of the 17 Members not opposed to exclusion in principle, four explicitly agreed with the Commission’s proposal that criminal charge was the right threshold for considering exclusion and this was the implied position of a further two. This was also the impression gained from the evidence of Member witnesses to the Committee on Standards. This position was often informed by unease about the potential for vexatious complaints at a lower threshold.<sup>1</sup>
- However, 11 Members argued explicitly that the mechanism should be triggered at arrest or earlier.
- The Standards Committee argued explicitly that a threshold of charge is too high; and the Procedure Committee suggested that setting such a high threshold might not achieve the stated policy aims.
- Most staff submissions argued for a lower threshold; and respondents were keen for the Commission to take account of the personal and career impact of investigations on complainants as well as on those subject to allegations.
- The length of time between arrest and charge was cited as an argument both in favour of setting the threshold at arrest and of setting it at charge.
- A small minority of responses disputed the scope of the offence categories:

<sup>1</sup> However, other respondents including several Members and the TUS cautioned against overstating this risk and of the danger of Parliament taking a position that implied that victims of sexual violence would not be believed.

- One Member was uneasy about including any non-violent offences.
- Another suggested the scope be redefined as any offence to which a term of imprisonment of more than 12 months applies.
- Standards also questioned the rationale for limiting exclusion to certain offence categories, given the use of risk assessment.

*“I am concerned about malicious claims towards MPs, which are constantly on the rise and members being excluded without it being a charge, often these are politically motivated.” (A Member)*

*“Where staff of MPs have had to lodge a criminal complaint about sexual or violent misconduct, it is very likely that this will have been a traumatic experience.” (Unite)*

*“I think we would take the view that we need to give due weight to the presumption of innocence. Charge, therefore, is a clear point where it makes sense. There could be exceptional cases where a different view might be taken. I know there is always a drive towards codification of things now. Sometimes it’s quite sensible to maintain a little bit of flexibility and to be able to respond to circumstances as they arise.” (Sir Graham Brady MP on behalf of the 1922 Executive Committee, HC1049, Q63)*

*“The Commission’s proposed threshold ... is too high. Indeed, it arguably prevents the process from being properly ‘precautionary’, since a formal charge would be likely to come at a relatively late stage ... It is conceivable that the circumstances in which a Member is arrested could provide a weight of evidence that easily meets a risk-based threshold for exclusion.” (Committee on Standards)*

*“I am extremely concerned that these proposals would result in individuals that are known to police still having access to the Parliamentary estate. The threshold of a criminal charge is extremely high and given the length of time it often takes to bring a case to charge, this could be an unacceptable length of time for a risk to be posed to potentially vulnerable people on the estate.” (A Member)*

*“The GMB believes that anyone who has been **arrested** for a sexual or violent crime should be excluded as a precaution. We do not see the value in “precautions” if they let the threat get so far.” (GMB)*

*“Our view to date has been that there should be powers to prevent an MP from accessing the workplace **during an investigation of sexual misconduct**, following appropriate risk assessment.” (Parligender)*

#### 8. In relation to **the terms of exclusion**:

- **Of the 11 Member respondents who commented on this aspect of the proposal, all bar one supported giving excluded Members a proxy vote, on the basis of ensuring that the impact on constituents was minimised.** The Committee on Standards agreed that Members should be facilitated to vote.
- The opposed Member noted the limited circumstances in which proxy voting currently applies and was concerned about extending it in these circumstances. The Procedure Committee also expressed some reservations on this point.
- The Procedure Committee considered that more clarity was required on what an excluded Member was and was not able to do.

- A few responses specifically argued for restrictions to be extended to cover remote participation in Parliamentary-funded activity.

*“Constituents should not be disadvantaged or excluded from representation. A proxy vote should therefore be established, and tabling written questions, writing to ministers and responding to constituents should all be permitted.” (A Member)*

*“I do not believe there would be sympathy either within or outside the House with allowing Members charged with a serious violent and/or sexual offence to have a proxy vote.” (A Member)*

*“If a Member otherwise excluded were still able to join virtual meetings, workshops or webinars, then there would be continuing risk to colleagues and delegates, and to the reputation of Parliament and bodies such as our own.” (CPA)*

*“There are limited opportunities to carry out parliamentary activities in the House without being physically present, but they are by no means a coherent package. We believe that the House should consider carefully what activities (if any) a Member excluded under such a measure should have access to, and if necessary make further provision for wider participation or none at all”. (Procedure Committee)*

**9. The proposal to exclude Members from Parliamentary-funded travel<sup>2</sup> was uncontentious amongst respondents and explicitly supported by the Liaison Committee and some of the inter-parliamentary groups.**

*“We are keen to endorse the proposal in principle that any Member subject to exclusion from the Parliamentary Estate should also be excluded from Parliamentary-funded travel.” (Liaison Committee)*

*“BGIPU supports and would mirror any policy as proposed in paragraph 20 of the consultation document.” (BGIPU)*

*“CPA UK has itself had to navigate through the lack of clarity surrounding such cases, including at the time of writing. While CPA UK will of course still need and want to carry out its own risk management processes, clear House policies are extremely helpful.” (CPA UK)*

*“Excluding Members from domestic or foreign travel funding by the House of Commons Estimate is reasonable, given that this is not an essential function of the role.” (A Member)*

**10. The most contentious aspect of the proposed terms of exclusion was the absence of constituency offices from the scope.** Although some respondents accepted the fact that the House authorities had no jurisdiction in relation to constituency offices; others did not accept that the House could not make a decision about them, or influence relevant third parties to do so, if it wanted to.

<sup>2</sup> This **includes** domestic or foreign travel that is funded from the House of Commons Estimate: select committee travel, delegations to the Parliamentary Assemblies of the Council of Europe, North Atlantic Treaty Organization and the Organization for Security and Co-operation in Europe, and inter-parliamentary group travel. It **excludes** travel funded by IPSA or other sources, such as travel to and from constituencies and APPG travel.

*“The primary concern of [Members’] staff mainly arises from the specific exclusion of constituency offices from any proposals. We recognise that this is a complicated area to consider due to the individual nature of each office, however when the ICGS was introduced it was felt essential to include constituency offices by use of the phrase ‘parliamentary community’, to ensure they were fully included in the Behaviour Code. This could be considered here too.” (MAPSA)*

*“An exclusion should also preclude access to their constituency office or confer on their constituency staff an automatic right to work from home for the duration of the exclusion.” (A Member)*

*“Although IPSA's policies fall outside the remit of the Commission, we understand that IPSA-fundable staff posts must have contracts that meet IPSA's requirements. 1 One such contractual requirement could be that Members' staff have a right to work from home (and not to attend a constituency office) where this is requested as a part of a risk mitigation plan; or during any period their Member is subject to an exclusion from the precincts.” (Committee on Standards)*

11. Linked to some of the points above, **a number of submissions argued in favour of setting a new exclusion mechanism within the context of a broader risk assessment process:**

- The Committee on Standards argued that exclusion should be a last resort, as one part of a wider, formalised risk mitigation process.
- The Liaison Committee argued that, where there are concerns about the potential risks posed by an individual, a risk assessment should be conducted to explore how these risks can be managed effectively on Committee visits and to implement safeguards accordingly or restrict travel for that Member.
- MAPSA and Unite requested that, should the threshold be set at charge, this should not preclude action at an earlier stage on the basis of a risk assessment.

*“It may be possible to put measures in place to minimise risk by for example requiring members to stay away from certain areas of the estate. This may well enable democratic duties in the chamber to be carried out without risking interactions with victims of other groups considered at risk.” (A Member)*

*“If the Commission does decide to set the threshold at charge, we would not want this formal system to preclude earlier action.” (Unite)*

*“The Commission could include information about the steps it would take if the Member harassed victims remotely using electronic communication or phone calls. Would it also consider making a formal communication to the Member's constituency staff that the Member had been excluded from the Estate? What support might be available for them?” (A Member)*

*“Select Committee travel involves a close working environment, and there are challenges in providing safeguards and support services away from Parliament that would normally be available on the Parliamentary Estate. The Committee suggests that the Commission should consider whether the threshold for conducting a risk assessment might be lowered when considering individuals' participation in Committee Travel.” (Liaison Committee)*

12. In relation to **the proposed process**, by which a risk assessment would be undertaken by a small panel of senior officials with relevant expertise, who would make a recommendation to an adjudication panel comprising Members and a lay member appointed by the House:

- There was recognition that the current system of what some termed “gentleman’s agreements” was insufficient.
- **There was widespread support for the proposal that decisions be taken on a case-by-case basis, informed by a risk assessment.**
- There was strong consensus amongst Members that the decision to exclude should be made partially or exclusively by Members. Few objections were expressed to the proposed membership of the adjudication panel, although some felt there should be more lay input and this view was shared by the TUS and Parligender.
- Alternative suggestions for the proposed composition of the panel were the Speaker as single decision-maker; or a Member and a lay member from the Committee on Standards, and a member of the Independent Expert Panel (who would recuse themselves from any case related to the Member concerned that might subsequently come before their respective bodies).
- However, some staff respondents felt that Members should not be involved at all in the decision-making because of the risk of politicisation.

*“There is an urgent need for clarity of process from the perspective of a) the victim b) the alleged perpetrator or offender c) the greater parliamentary estate and general public - who we must also remember go on to the estate and d) from a whips office perspective. The current system is fragmented, involves multiple stakeholders, and the lack of a clear process and/or pathway means every case has the potential to be treated differently.” (A Member with recent experience of working in a whips office)*

*“Basically, it should be in the hands of people who are elected and therefore accountable. The problem with officials is that they are not accountable.” (John Cryer MP, Parliamentary Committee of the Labour Party, HC1049, Q 68)*

*“The House’s difficulty in dealing with the problem of bullying and harassment has demonstrated that Members cannot fairly judge each other’s behaviour in HR matters, so Members should not be part of an adjudication panel.” (A staff member)*

*“If this is to be fair for all it must have professional and continued external advice and support. Anything less and the risk is it will always be deemed 'political'.” (A Member)*

13. **Both the Procedure Committee and Committee on Standards suggested the final decision to exclude could or should be put to the House**, with different proposals for how this might operate in practice (see below).

*“In the absence of a specific decision to exclude by the House, this places great weight both on the role of the official assessment and ultimately your ability to give effect to it. We recommend that the Commission considers again whether the recommendation of a single panel incorporating both internal and external expertise put to the House in the form of a specific resolution would be more robust ... It would assist any consideration by the House if a draft protocol on the sharing of information between the Crown Prosecution Service and the House of Commons Commission could be agreed and published.” (Procedure Committee)*



*“We therefore propose that the exclusion should be binding and confidential if the Member consents (i.e., if they agree to the exclusion, their pass is deactivated, and they cannot later withdraw their consent to this); but if the Member does not initially consent, that the House should be invited to approve their exclusion from the precincts on a simple motion which is taken forthwith, without amendment or debate. In practice, Members would have a significant incentive to agree, given the likely publicity of a decision by the House; but the principle would be preserved that only the House could take a decision on exclusion from the precincts to which a Member did not consent.” (Committee on Standards)*

14. **Other points** raised in the consultation included:

- Whether any excluded Member who receives an additional salary (for example, as Chair of a select committee or as a member of the Panel of Chairs) should continue to be paid this salary when they would be unable to undertake all or the vast majority of the relevant work;
- The need for transparency about replacement select committee chair appointments when chairs are excluded; and
- Whether a Member found guilty of a violent or sexual offence should also be considered for exclusion under this mechanism.

15. There were no obvious differences by political party other than in relation to the proposed threshold of charge, with Labour and Liberal Democrat members much more likely than Conservatives to argue for this to be lower. There were differences between men and women (no women objected to the principle of exclusion and women were more likely to consider the proposals did not go far enough) and between Members and staff (with staff more likely to argue the proposals did not go far enough).

16. In the consultation proposals, the Commission drew attention to two examples of office holders who are subject to relevant provisions (judges and clergy). The Committee on Standards took evidence from [Bar Standards Board, police professional standards and the Church of England](#) about their processes for interim suspension. The Procedure Committee found two Parliamentary examples of exclusion, in the New South Wales Legislative Assembly and the Senate of Canada.

## Section B: Commission response to the consultation

### *Risk-based decisions and the threshold for considering exclusion*

17. Amongst those who supported the idea of exclusion in principle, there was consensus that any decision to exclude should be considered case-by-case, based on an analysis of risk. The Commission agrees that any mechanism needs to retain an element of flexibility.

18. The Commission therefore proposes that, where the Clerk or the Director of Security for Parliament<sup>3</sup> is presented with credible allegations of sexual or violent offending by the police at any point in the criminal justice process, including but not confined to the point of arrest or charge:

- A staff panel<sup>4</sup> will make an initial assessment as to whether the severity and nature of the alleged offence warrants a full risk assessment.
- Should the staff panel proceed to undertake a full risk assessment, such an assessment would be undertaken on the basis of information provided by the police and would consider any relevant matters, which would include:
  - Whether the allegation concerns a relevant offence (i.e. is it violent or sexual in nature);
  - The nature of the alleged misconduct;
  - Whether there is any safeguarding concern relating to sexual abuse

A risk identification tool has been developed for this purpose, with external expert support, which will be published alongside this report.

- Should the process of risk assessment lead to a recommendation for exclusion, this would be put to the adjudication panel for decision (see paragraph 26-7 for details of the panel membership).

19. The Commission agrees with the Committee on Standards and other respondents that exclusion should be seen as one (ultimate) step in a wider risk mitigation process, under which mitigations falling short of exclusion are also considered. Officials already undertake risk assessments and the [service restriction guidance](#) agreed by the Commissions provides for other forms of risk mitigation (for example, banning passholders from bars). In addition, the Members Services Team approaches the offices of Members under investigation to offer support.

20. The risk identification tool therefore also enables the staff panel to consider a range of mitigations falling short of exclusion. (The Commission further agrees that there should be more clarity and transparency about existing processes and a comprehensive overview of risk mitigation processes by passholder group will also be published alongside this report.).

21. The staff panel will review its initial assessment should further relevant information come to light, using the same process, and make any further recommendation to

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<sup>3</sup> Under current protocols, the Clerk is formally notified of the arrest of a Member and the Parliamentary Security Director is routinely kept informed by the police about the progress of criminal investigations.

<sup>4</sup> Appointed by the Commission but likely to comprise: Speaker's Counsel, the Director of Security for Parliament, the Managing Director of People and Culture and the Managing Director of the Select Committee Team. Where there are safeguarding considerations relating to sexual abuse, the Designated Safeguarding Lead; where there are cyber-related issues, the Managing Director of the Parliamentary Digital Service.

the adjudication panel as needed (including that an existing exclusion be withdrawn). An exclusion will automatically come to an end should a criminal investigation or charge be dropped or once a criminal trial has been concluded.

22. Should a Member be found guilty of a relevant offence, they would most likely receive a custodial sentence and be subject to the Recall of MPs Act 2015. Where they do remain at liberty to attend the House, there is precedent for the House to consider [expulsion](#).
23. In summary, this approach focuses on the nature of the risk and the severity of the alleged offence rather than the stage of the criminal justice process and allows for decisions to be made at different points of the process. It allows for a greater degree of discretion than the original proposals, although the decision-maker would still need to take account of the credibility of the evidence.

#### *The decision-making process: the adjudication panel*

24. The Commission proposed that a recommendation for exclusion be put to an adjudication panel whose membership be nominated by the Speaker and agreed by the House at the start of each Parliament. The Commission suggested that, in this Parliament, the proposed panel membership comprise Dame Eleanor Laing (Deputy Speaker (Chairman of Ways and Means)), Dame Rosie Winterton (Deputy Speaker (First Deputy Chairman of Ways and Means)) and Shrinivas Honap, a non-executive member of the Commission.
25. The Commission noted the alternative suggestions for membership (described in paragraph 12) but takes the view that on balance this composition remains the best option.
26. The Commission also considered the alternative suggestions from the Procedure Committee and the Committee on Standards (outlined in paragraph 13) by which the House itself would play a role in approving individual exclusions. While recognising the arguments put forward by both Committees, the Commission considers that it is neither practical nor advisable to put individual decisions to the House as a whole on the grounds of (a) the potential for decisions to become politicised (b) the improbability that sufficient information could be properly shared with the House to provide a basis for a decision and (c) the fact that decisions should be taken as quickly as possible.
27. Therefore, the Commission proposes that the decision to exclude be undertaken by an adjudication panel nominated by the House at the start of a Parliament or as necessary, following the publication by the Speaker of a memorandum indicating the names of those he considers should be nominated to sit on the panel.

#### *The scope of exclusion*

28. The Commission noted the prevailing view of respondents that, insofar as possible, constituents should not be disadvantaged by the exclusion of their elected Member. Excluded Members should receive a proxy vote and the appropriate changes to standing orders should be made.<sup>5</sup>

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<sup>5</sup> At the time of considering this response, the Commission noted that the House had recently extended the amendment to the Standing Order allowing proxy voting in cases of serious long-term illness or injury, until 30 June 2023.

29. In relation to calls for a ban on any virtual attendance (for example, at international workshops), the Commission acknowledges that this is not entirely risk-free for attendees and that there are also reputational risks to Parliament. However, the Commission believes that risk to individuals, which is the driver for the Commission's work on this issue, can be managed more easily in a virtual setting. Similarly, the Commission does not think it appropriate to remove any additional salary an excluded Member might receive as this is a sanction rather than a means of managing risk.
30. In response to the Procedure Committee, the Commission is not proposing any changes to what Members can and cannot do while absent from the estate beyond giving them a proxy vote. Guidance as to what any Member is and is not able to do when physically absent from the estate and/or Parliamentary-funded travel has been drawn up for clarity and will be published alongside this report.
31. The Commission noted the strength of feeling in relation to the management of risk in constituency offices and agreed to write formally to the Speaker's Conference to invite it to consider these issues, as part of its relevant work.

### **Section C: next steps**

32. The House will be asked in due course to debate this report and consider a motion which would enact an exclusion mechanism.
33. To assist the House in its deliberations, there will be published alongside this report:
- The [risk identification tool](#) that has been developed to support the risk assessment process, with external expert support.
  - Information about established [risk mitigation processes](#) for all passholder groups, of which exclusion of Members would form one further part.
  - The [terms of exclusion](#): guidance on what a Member is and is not able to do while physically absent from the Parliamentary estate and/or Parliamentary-funded travel.

Subject to the decision of the House:

- The Commission will ask Speaker's Conference to consider issues relating to risk management in constituency offices.
- Any relevant information-sharing protocols will be developed or amended to reflect the new mechanism.

**Annex A: Proposed process flowchart**

