

# ANTI-CORRUPTION HELPDESK

PROVIDING ON-DEMAND RESEARCH TO HELP FIGHT CORRUPTION

## THE EFFECTIVENESS OF CODES OF CONDUCT FOR PARLIAMENTARIANS

### QUERY

Has the effectiveness of parliamentary codes of ethics been proven in practice? Best practice examples of the adoption procedures and codes would be much appreciated.

### PURPOSE

After recent corruption-related scandals involving high parliamentary politicians, the chapter would like information on the positive impact such codes may have.

### CONTENT

1. How effective are codes of conduct?
2. Codes of conduct for parliamentarians: Best practices
3. References



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### CAVEAT

There is little research on the effectiveness of codes of ethics or codes of conduct. This answer is mostly based on the findings of a study conducted in the United Kingdom in 2004.

### SUMMARY

The overall purpose of codes of conduct for parliamentarians varies across countries. They usually aim at promoting ethical behaviour and preventing unethical behaviour, providing for a set of ethical standards, increasing public trust in and respect for the institution, as well as establishing rights and responsibilities for parliamentarians. In terms of scope and content, codes for parliamentarians that are referred to as “good practice” codes often articulate general principles of ethics and address conflicts of interest, gifts and favours, asset declaration, outside activities, nepotism, post-public employment and relations with lobbyists.

Studies have shown that the existence of a code is perceived by parliamentarians as helpful in certain situations, such as in preventing technical infringements, “protecting” them when dealing with constituents and local parties, as well as increasing scrutiny both inside and outside the house.

There are also ongoing discussions among scholars of what constitutes an effectively designed and well implemented code. The effectiveness of a code of conduct for parliamentarians may depend on a range of factors, including a process of consultation and discussion prior to the enactment of the code, the existence of an active civil society, free media, a functioning integrity system, an effective protection mechanism for whistleblowers, and on parliamentarians’ commitment. The simplicity/accessibility of the code and oversight mechanisms also appears to be important.

## 1 HOW EFFECTIVE ARE CODES OF CONDUCT?

### Codes of ethics vs. codes of conduct

The terms *codes of ethics* and *codes of conduct* are usually used interchangeably. However, they are different from each other. According to Stapenhurst and Pelizzo (2004), “[E]thics codes tend to be fairly general documents: they formulate broad principles of behaviour but they do not define what is appropriate and what is inappropriate behaviour, nor do they establish sanctions for violations of the code.” Codes of conduct, in contrast, “... contain a list of the kinds of behaviour required in a given set of circumstances and provide direction to those whose conduct they govern. They contain enforceable behavioural standards with sanctions for violation.” (Willa Bruce 1996, quoted in Pelizzo, Stapenhurst 2004).

It is usually considered good practice to provide for effective enforcement mechanisms to ensure that the code serves its purpose. Therefore, within the framework of this answer, we will focus on codes that are accompanied with viable enforcement mechanisms that can be effective in preventing conflicts of interest and unethical behaviour

### Has the effectiveness of codes of conduct been proven in practice?

There are not many studies measuring the impact of codes of conduct or codes of ethics in parliamentary behaviour. Even if behaviour changes are recorded, it is difficult to attribute them to the introduction of a code alone as they are likely to depend on many other political, social and institutional factors. This makes it difficult to isolate a direct causal relationship between the enactment of a code of conduct and parliamentarians’ conduct.

A code of conduct is also unlikely to bring about its expected results in the short term and may even have an intermediary negative impact on public perceptions of corruption. The introduction of new rules and monitoring mechanisms may reveal the existence of misconduct which was previously hidden or not recognised as such, and ultimately increase perceptions of corruption (European Parliament

2011).

### *The effectiveness of the United Kingdom Code of Conduct for Members of the Parliament*

The study conducted by Allen in the UK in 2004 (Allen 2009) analyses how Members of the Parliament (MPs) have responded to the new ethical rules and apparatus established in the 1990s, and whether the reforms have actually affected MPs behaviour, values and preferences vis-à-vis regulatory arrangements. The research draws on media coverage, as well as on official documents and interviews with MPs<sup>1</sup>.

According to the findings, nine out of the thirty-eight MPs interviewed admitted to never having read the Code of Conduct. Many justified this by saying that as they do not hold any outside interests or assets, they would not have a reason to read it. Others confirmed that they considered it easier to call the Standards in Public Life office when they have a question or doubt, rather than reading the code. MPs also agreed that the detailed knowledge of the code is unlikely to influence an MPs’ behaviour, as the content is considered to be of common sense, and they all believe that MPs generally know what is right and what is wrong. As stated by one of the parliamentarians: “a code of conduct is unlikely to turn a bad apple good” (Allen 2009).

However, MPs shared the opinion that the code is important and helpful in certain situations, such as in preventing technical infringements and giving them “protection” when dealing with constituents and local parties as it provides a formal code against which their behaviour can be judged. According to the MPs interviewed, they can use the code to tell constituents and the local party exactly what they cannot do.

The study also points to other positive effects brought about by any ethics reform, such as MPs’ behaviour being subject to greater scrutiny both inside and outside the house, and MPs being more cautious about how others perceive their behaviour.

<sup>1</sup> The author interviewed thirty-eight MPs and seven current and former parliamentary officials before and after the 2005 general election. In addition, two MPs and one former official offered their views by correspondence.

However, the author concludes that whether this effect has translated into actual changes in behaviour cannot be assessed with certainty. The official view of the Committee on Standards in Public Life, shared by MPs themselves, is that patterns of behaviour which caused public concern in the 1980s – especially MPs' links to lobbyists – have greatly diminished (Allen 2009). However, misuse of allowances, expenses and facilities continued to be a problem despite the code (or perhaps such misbehaviour was uncovered because of the code), leading the government to introduce a new Act in 2009 that established an independent committee responsible for overseeing allowance issues.

Moreover, Allen also concludes that codes of conduct have done little to diminish public cynicism about politicians' conduct in the UK. A recent study conducted by Transparency International United Kingdom reflect this trend, with Parliament being considered the third most corrupt institution in the country, and 55.7 per cent of respondents believing that Parliament is affected by corruption (TI UK 2011).

### Factors contributing to the effectiveness of legislative codes of conduct

There are several other factors which may influence the behaviour or a change in behaviour of parliamentarians. It is unlikely that the creation of an ethics regime will by itself solve all the problems faced by an institution. The principles, "rules and regulations should be viewed as only one part of a wider effort to improve the functioning of the institution." (Power 2009).

In this context, the effectiveness of a code of conduct for parliamentarians might depend on a range of factors, such as (Power 2009; Williams 2011):

- strong implementation mechanisms
- the existence of a functioning civil society
- free media
- the existence of an effective integrity system,
- an effective protection mechanism for whistleblowers
- parliamentarians' commitment

- parliamentarians' attitudes and culture
- an extensive process of consultation and discussion
- the simplicity/accessibility of the code
- an oversight mechanism
- clear and appropriate sanctions
- an oversight institution with the mandate of enforcing the rules but also training and advising MPs
- broad application (including lobbyists and parliamentary officials)
- compatibility with other relevant laws (for example, anti-corruption laws, electoral and party financing regulations, etc)

#### *Attitudes and culture*

Previous studies have shown that legislative codes of ethics are more likely to be followed and therefore succeed if legislators support them (Mancuso 1995). Other studies have also highlighted the importance of parliamentarians having homogeneous ethical standards (Pelizzo, Ang 2008). In sum, a code is likely to be effective if MPs share similar attitudes and values, a common understanding of the problems that the code is designed to prevent, and a common understanding of the appropriate solutions for those problems (Mancuso 1995).

#### *Consultation and Discussion*

The development process of the code may also contribute to its effective implementation and ultimate impact on parliamentarians' attitudes and behaviours. It is important that parliamentarians feel ownership of the rules if they are to regard them as legitimate (Power 2009). To achieve this, codes of conduct should not only take into consideration commonly-accepted standards, but also ensure that parliamentarians agree on and support the detailed rules of the code.

The literature highlights the importance of an extensive process of consultation and discussion, involving parliamentarians as well as other relevant groups (for example, civil society organisations) (Williams 2011). Hence, it is fundamental that MPs are involved at every stage of the code's design process through an extensive consultation, discussion and deliberation process (Power 2009).

Finally, it may be necessary to make changes to the rules or clarify any uncertainties that arise. Systems should therefore remain responsive to address emerging challenges. For example, in the UK, a revision of the “Guide to the Rules relating to the conduct of Members [of the Parliament]” already occurred in 2009 following an extensive consultation process which started in 2006. A second consultation is currently taking place aimed at improving the Guide to the Rules and making the necessary changes according to experiences and current expectations. The Consultation is open to all MPs and other stakeholders.

### Sanctions

Countries may or may not provide clear sanctions for breaches. Sanctions may therefore vary from suspension from office, fines, warnings, public announcement and, less often, to criminal liability. For example, in the UK, members who have not submitted their declarations are obliged to apologise in front of the House. In Germany, a breach of rules of conduct may result in a fine, warning or publication of the violation. In the US, on the other hand, members who present false information can be punished with imprisonment for up to one year or with a fine. Most important, sanctions should be reasonable and appropriate to the misconduct.

A study conducted by Demmke et al., (2007) shows that the majority of Central and Eastern Europe (CEE) and Commonwealth of Independent States (CIS) countries generally do not have criminal sanctions in place. The authors highlight that the introduction of a sanction regime should take into account the time it takes for members to become familiar with new procedures, as well as the importance of training and education to help with the understanding of the new rules.

### Institutionalisation

An OECD study on implementation of codes of conduct states that in order to have a proper understanding as well as realistic expectations, the code should be administered by an independent commission or council responsible for its implementation and enforcement (Paliduskaite, no

date). In the case of codes of conduct for parliamentarians, as previously mentioned, experience has shown three different approaches for establishing the institution in charge of *advising* parliamentarians and *enforcing* the rules (i.e., self-regulation, e.g., European Parliament; co-regulation, e.g. UK; and independent regulation, e.g. US).<sup>2</sup>

### Education and Training

Promoting the development of a culture of integrity within the public administration is a fundamental part of any ethics regime. This can be done by a competency-based training approach to professional ethics, which can provide a relevant framework for building integrity among public officials (Whitton 2009). Similarly, parliamentary training can contribute to the effectiveness of an ethics regime by clarifying what qualifies as misconduct and identifying ways of eliminating it (Stapenhurst & Pelizzo 2004). Education around the provisions of the regime should also be included in any induction programme for new MPs.

In addition, based on the idea of providing training and guidance, a number of parliaments have developed guides to serve as reference sources for MPs. These documents are generally used as supplements to the rules of procedure, explaining the institution and its processes (Power 2009) (for example, the UK “Guide to the Rules related to the conduct of Members”).

### Other factors

According to a study conducted in 2005, ethics codes may have an impact on ethical behaviour within organisations for three different reasons: (i) when ethical standards are clearly known, people are more likely to identify and denounce wrongdoing (ii) people are often hesitant to commit an unethical act if they believe that everyone else around them knows it is wrong and (iii) individuals believe that they are more

<sup>2</sup> **Self-regulation and control:** either through political groups or at the parliamentary assembly level; **co-regulation or hybrid-regulation:** combination of self-control with an independent commission; **external-regulation:** an external body monitors and enforces compliance with the code.

likely to get caught in environments that emphasize ethical behaviour (Gilman 2005).

## 2 CODES OF CONDUCT FOR PARLIAMENTARIANS: BEST PRACTICES

Codes of conduct are an important part of the anti-corruption framework. They are less common in countries with a Roman law tradition, which tend to rely more on “hard-law” for ethics management, but more widely spread in common law countries. Recently, however, traditional Roman law countries also started to look for “soft-law” approaches in dealing with ethical issues within the public sector, and are implementing codes of conduct (Demmke et al. 2007).

One of the main benefits of codes of conduct is that they organise the institution’s ethical framework in one single and comprehensive document: they provide specific guidance for members of parliament on how to deal with difficult situations and ethical dilemmas and spell out mechanisms for addressing and preventing conflicts of interest. It is also important to note that what is often permitted by law might not necessarily be ethical. The document is therefore supposed to provide clarity on these types of issues, identifying ways of addressing them through training, advisory services and enforcement mechanisms.

### Objectives

The overall purpose of codes of conduct for MPs will vary according to the circumstances in which the code was enacted. However, they typically set objectives such as:

- provision of a set of ethical standards for parliamentarians
- promotion of ethical behaviour and discouragement/avoidance of unethical behaviour
- provision of guidance when a parliamentarian is faced with difficult decisions
- establishment of values and responsibilities
- provision of defence against unfounded accusation
- increase/restore citizen’s trust in the institution

- increase accountability
- statement of professional conduct

### Content

While the scope and content of codes of conduct can greatly vary across countries, they typically cover three main dimensions (Power 2009):

1. **Principles:** stating the general ethical principles and values to be followed by parliamentarians (for example, honesty, integrity, openness, transparency, etc.)
2. **Rules:** stating the detailed provisions which identify acceptable and unacceptable conduct and behaviour. They usually cover, among other things, conflicts of interest, transparency and disclosure of interests, nepotism, outside activities, gifts and favours, travel expenses, post-employment, and use of state property/facilities.
3. **Regulatory framework:** containing the mechanisms for enforcing rules and applying sanctions as well as giving advice to MPs.

### Good practice examples

The codes of conduct for MPs of the UK and the United States are often referred to as good practices as they cover most of the ethical issues concerning parliamentarians. They also provide for clear sanctions and an independent authority/office responsible not only for overseeing the code but also for advising MPs on ethical issues (Power 2009). The recently approved Code of Conduct for Members of the European Parliament (although too early to measure its impact) is also considered to be robust and comprehensive (Transparency International 2011).

#### *United Kingdom*

##### **Adoption procedure**

In the UK, a new and more comprehensive system for monitoring ethical behaviour was introduced in the mid-1990s. The system was established to deal with political, public and media concerns about unethical conduct amongst MPs, including accepting financial incentives for tabling parliamentary questions and issues over procedures for appointment to public

bodies.

In 1994 the UK Prime Minister established the Committee on Standards in Public Life, headed by Lord Nolan, with the task of investigating the state of standards in public life in the UK. As a result, the committee adopted the “Nolan Principles” for public life which then informed the work of the House of Commons Committee on Standards and Privileges as it drafted the first Code of Conduct for Members of Parliament, adopted by the House in 1996 ([Committee on Standards in Public Life](#)).

#### Content

The UK Code of Conduct and Guide to the Rules relating to the Conduct of Members and the Code of Conduct for Members of the House of Lords are based on the principles of freedom of speech, selflessness, integrity, objectivity, accountability, openness, honesty and leadership. The codes also establish, among others things, the obligation of members of the House to declare financial and non-financial interests, avoid conflicts of interest and to not share confidential information. The codes also set several incompatibilities, for example, exercising other public/private function simultaneously.

The main purpose of the code is “to assist Members in the discharge of their obligations to the House, their constituents and the public at large” (The Code of Conduct 2009).

The full text of the Code as well as the Guide to the Rules can be accessed [here](#).

#### Enforcement

The Committee on Standards in Public Life, established in 1994, is an independent advisory body to the Government and responsible for monitoring, reporting and making recommendations on all issues relating to standards in public life.

In 2009, the Parliamentary Standards Act created an Independent Parliamentary Standards Authority which is responsible for monitoring and enforcing provision related to MPs expenses and allowances. The authority was established after an expenses scandal involving MPs. After the scandal it was acknowledged that an agency independent of the Parliament, Government and political parties could enhance citizens’ trust and provide better control of

MPs expenses.

For more information please see: [Committee on Standards in Public Life](#); and [Parliamentary Standards Authority](#).

#### Weaknesses

According to Transparency International UK (TI UK), in spite of the creation of this new authority, some of the ethical mechanisms are still not working as well as they should (TI UK, 2011).

Another weakness of the UK Code of Conduct for Members of the House is the absolute lack of provisions prohibiting nepotism.

#### *European Parliament*

##### Adoption procedure

Concerns over unethical and illegal negotiations between Members of the European Parliament and special interest groups led the European Parliament to strengthen its internal ethics regime.

##### Content

The Code of Conduct for Members of the European Parliament (MEPs) has the potential to expose undue influence and reduce the threat of corruption, bribery, and conflicts of interest. It establishes detailed disclosure requirements of financial interests as well as an explicit ban on receiving payments or any kind of reward in exchange for influencing parliamentary decisions. The code also provides for clear rules on the acceptance of gifts (gifts worth more than €150 are not allowed) and on the possibility of former MEPs working as lobbyists.

The code is available [here](#): (Annex I, p.128)

##### Enforcement

The code establishes an advisory committee responsible for implementing the code, advising MEPs and examining alleged breaches. Sanctions range from a reprimand to depriving an MEP of an official parliamentary post.

##### Weaknesses

Transparency International welcomed the adoption of a strong and comprehensive code of conduct for MEPs but highlighted that the text still has some weaknesses. For example, the code does not include

a “cooling off” provision to prevent MEPs from moving straight into lobbying jobs after the end of their term and does not require MEPs to keep a record of all significant meetings with representatives of interest groups in connection with their work (a “legislative footprint”). Moreover, the code does not ban all types of outside activities that could create a conflict of interest and neither does it provide for stricter sanctions in the case of serious breaches of the code (Transparency International 2011).

### United States

#### Adoption Procedure

In the United States the 1974 Watergate scandal helped open room for the Ethics in Government Act of 1978, which set out requirements for financial disclosure by employees and officials in the legislature, executive and judiciary.

#### Content

The codes of conduct of the House and the Senate establish ethical rules that members of the Congress and all congressional employees must comply with. The codes complement other ethical rules in place (for example, the US Criminal Code, Code of Ethics for Government, etc.).

The code is considered quite comprehensive, including restriction on conflicts of interest, gifts and travel, outside employment, and post-public employment. In addition, financial declarations must be published online.

The full text of the code is available [here](#) and the House of Ethics Manual is available [here](#)

#### Enforcement

The Committee on Ethics (named the Committee on Standards of Official Conduct until 2011) is responsible for (i) administering travel, gift, financial disclosure, outside income, and other regulations (ii) advising members and staff (iii) issuing advisory opinions and investigating potential ethics violations. The committee has sole jurisdiction over the interpretation of the Code of Official Conduct.

In 2008, the House created the Office of Congressional Ethics (OCE), an independent entity within the House to accept complaints of wrongdoing from the public, review such allegations and submit

recommendations to the Committee on Ethics.

More information available at: <http://ethics.house.gov/about>

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