

Independent Expert Panel

The Conduct of John Nicolson MP

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The Independent Expert Panel

The Independent Expert Panel was established by resolution of the House of Commons on 23 June 2020. The Panel:

- Hears appeals against decisions made by the Parliamentary Commissioner for Standards (the Commissioner), and considers referrals from the Commissioner and determines sanctions in cases involving an allegation against an MP of a breach of Parliament's Sexual Misconduct Policy or the Bullying and Harassment policy, under the Independent Complaints and Grievance Scheme; and
- Hears appeals against decisions by the Committee on Standards in cases involving an allegation against an MP of a breach of the Code of Conduct for Members of Parliament.

Current membership

Mrs Lisa Ball
Monica Daley
Mrs Johanna Higgins
Sir Stephen Irwin (Chair)
Professor Clare McGlynn KC (Hon)
Miss Dale Simon
Sir Peter Thornton KC
Dr Matthew Vickers

Powers

The Panel's powers are set out in House of Commons Standing Orders Nos 150A to 150D. These are available on the internet via www.parliament.uk.

Publication

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Panel staff

The Secretary to the Panel is Ian Bradshaw. The Deputy Secretary to the Panel is Chloe Freeman.

Contact

All correspondence should be addressed to the Secretary to the Panel. The Panel's email address is independentexpertpanel@parliament.uk.

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Report by the Chair of the Panel

- 1.1 The Independent Expert Panel (the Panel) was established by the House of Commons on 23 June 2020. The Panel hears any appeals from decisions by the Parliamentary Commissioner for Standards (the Commissioner) on complaints against a MP, or former MP, under the Independent Complaints and Grievance Scheme (ICGS); and considers referrals from the Commissioner to determine sanctions where they have upheld a complaint in serious cases. These are cases involving an allegation of a breach of the Bullying and Harassment Policy for UK Parliament, or the Sexual Misconduct Policy for UK Parliament. It also hears appeals against decisions by the Committee on Standards from MPs who have been found to have breached the Code of Conduct for MPs.
- 1.2 The Panel is guided by the principles of natural justice, fairness for all parties, transparency and proportionality. We understand the seriousness of, and the harm caused by bullying, harassment and sexual misconduct. We are rigorously independent, impartial and objective, acting without any political input or influence.
- 1.3 This is a Report of the decision of the Panel on the appeal following a referral by the Commissioner of a complaint under the Bullying and Harassment Policy that he had upheld against the respondent, Mr John Nicolson MP, the Member for Ochil and South Perthshire.
- 1.4 The complainant, the Rt Hon Nadine Dorries MP, the Member for Mid Bedfordshire was the Secretary of State for Digital, Culture, Media and Sport at the time in which the alleged bullying and harassment took place, November 2021. In October 2022, she made a series of allegations to the ICGS about Mr Nicolson including his behaviour as part of Parliamentary proceedings, his tweets and tweets that he had liked and retweeted. It was said these actions constituted bullying and harassment. The ICGS reviewed the allegations, and two were investigated. They were that over a 24-hour period in November 2021, Mr Nicolson had tweeted, liked or retweeted disparaging material about Nadine Dorries 168 times and that in the course of that time, he had 'liked' tweets which described Ms Dorries as "grotesque", a "vacuous goon", and as having been "rag-dolled" by him during Parliamentary exchanges.

- 1.5 The Investigator recommended that Mr Nicolson had not breached the Bullying and Harassment Policy. The Commissioner disagreed with the Investigator and concluded that Mr Nicolson’s behaviour “in both instances amounts to both bullying and harassment” in breach of the ICGS Policy. He therefore upheld the complaint.
- 1.6 The Commissioner referred the case to the Panel to determine sanction in a memorandum dated 19 April 2023. After a short extension of time, on 26 May 2023, the respondent appealed the Commissioner’s decision, on the grounds that the Commissioner’s decision was unreasonable and there was credible fresh evidence which the respondent had not been able to present before the Commissioner made his decision. I appointed the following sub-panel to consider the respondent’s appeal:
- Mrs Lisa Ball
 - Sir Stephen Irwin (Chair)
 - Professor Clare McGlynn KC (Hon)
- 1.7 The sub-panel has upheld the respondent’s appeal for the reasons set out in its decision in section 2 of this report. It therefore did not need to consider the referral to determine sanction.
- 1.8 The sub-panel found that Mr Nicolson’s actions could not properly be shown to have breached the Bullying and Harassment Policy. That Policy had to be interpreted so as not to preclude vigorous opposition to government, or vigorous defence of government policy and actions. Such is our political system. Parliament must have intended that the Policy should be interpreted consistently with that system. The Commissioner’s approach had not fully considered that, or fully analysed how the terms and definitions of the Policy must be understood in this very specific context.
- 1.9 The approach was also in error in that the Commissioner excluded from consideration the complainant’s own record of tweeting, which was potentially relevant to elements of the tests for bullying and harassment. The Commissioner also did not consider the evidence that the complainant had made other complaints of this broad nature that have been dismissed or rejected. Nor did the Commissioner consider the possible inferences to be drawn from a detailed

examination of the chronology leading up to the complaint. A close examination of that evidence might have shed light on the true subjective reaction to the tweets on the part of the complainant, and whether her reaction was reasonable. For those reasons, the decision had to be set aside.

- 1.10 This is a very unusual case under the Bullying and Harassment Policy. The complainant and the respondent have had no private relationship. Neither has been the employee of the other. They are neither of them colleagues, save that both were Members of Parliament at the relevant period. The complaints arose entirely from their relationship as Secretary of State for Digital, Culture, Media and Sport, and spokesperson on that portfolio for the Scottish National Party, respectively. During the relevant period, there were no private communications between them, written or oral.
- 1.11 The actions complained of have all been in public, or published on Twitter. As indicated, the tweets which are at the heart of the complaint arose from the complainant's appearance before the Select Committee on Digital, Culture, Media and Sport in November 2021, where the respondent was present and questioned the complainant as a member of the Committee. The original complaint contained an allegation that the respondent had subsequently made a "spurious Point of Order" in the Chamber of the House of Commons.
- 1.12 These facts are very far removed from the usual context of a complaint of bullying, a feature of the case which is crucial to the decision of the sub-panel.
- 1.13 The complaint was leaked to the press in March 2023 and the fact of the complaint is public knowledge. Given that fact, and the fact that the respondent has succeeded in his appeal, then irrespective of the public features of this case, it would be the normal practice of the IEP to publish the decision where the complaint has been dismissed following an appeal.
- 1.14 In an ordinary case, the published decision would maintain the anonymity of the complainant. However, that is impossible here. Both the narrative of events and the outcome would be incomprehensible otherwise. In any event, the identity of the complainant would be immediately apparent to any interested person, however bowdlerized an account of the facts was given.

- 1.15 For those reasons, this decision is published in full and without seeking to anonymize the complainant.
- 1.16 I therefore make this report to the House pursuant to Standing Order No. 150A. All other information about this case, including the Investigator's report and the Commissioner's memorandum remains confidential.

Rt Hon Sir Stephen Irwin
20 June 2022

Appeal against the decision of the Commissioner

Decision of the sub-panel on appeal against the decision of the Commissioner

Mrs Lisa Ball; Professor Clare McGlynn KC (Hon); Sir Stephen Irwin (chair)

Introduction

2.1 On 12 October 2022, the complainant Rt Hon Nadine Dorries MP, Member for Mid Bedfordshire and formerly Secretary of State for Digital, Culture, Media and Sport, complained about Mr John Nicolson MP, Member for Ochil and South Perthshire in respect of a number of matters, alleging that those matters constituted bullying or harassment contrary to the Bullying and Harassment Policy for the UK Parliament. After initial discussion and assessment, the Independent Investigator concluded that a number of those matters could not be taken forward, either because the Independent Complaints and Grievance Scheme (ICGS) does not consider anything forming part of the proceedings in the House or in Committee, or because the matters alleged were evidently incapable of amounting to bullying or harassment. Following discussion with the complainant, it was agreed on 5 December 2022 that the allegations to be assessed were as follows:

“Over a 24-hour period starting on 23rd November 2021, John Nicolson MP: a. tweeted, ‘liked’ or retweeted disparaging material about Nadine Dorries 168 times, and in particular b. ‘liked’ tweets which described Nadine Dorries as ‘grotesque’, a ‘vacuous goon’, and as having been ‘rag-dolled’ by him during Parliamentary exchanges.”

2.2 The complaint relates to the respondent’s Twitter activity following the complainant giving evidence before the Department for Digital, Culture, Media and Sport, (DCMS) Select Committee during her tenure as Secretary of State. The respondent was a member of the DCMS Select Committee and holds the SNP shadow brief for that department. During a hearing of the Committee on 23 November 2021, the complainant was questioned by the respondent on a variety of topics of considerable public interest, including her use and alleged abuse of social media.

- 2.3 Following the committee meeting, the respondent posted six tweets relating to his questioning of the complainant. These tweets are appended as Annex 1. It is agreed that the respondent's own tweets were proper and could not be regarded as bullying or harassing. The respondent's tweets received thousands of notifications (likes or comments). The respondent liked a selection, and retweeted one, of the comments made by the public in response to his tweets. He also liked some of the tweets of others commenting on the exchanges between the complainant and respondent in the committee.
- 2.4 The sequence of the investigation and of interviews is relevant to our decision and is set out below. On 28 March 2023, the Investigator reached the conclusion that the matters set out in the allegation did not amount to bullying or harassment, and he reported in those terms to the Parliamentary Commissioner for Standards (the Commissioner).
- 2.5 In his decision of 19 April 2023, Daniel Greenberg CB, the Commissioner, having set aside the Investigator's report and undertaken his own analysis of the evidence and reached his own independent conclusions, found that Mr Nicolson had breached the Bullying and Harassment Policy. He further found that he was unable to conclude the matter under the powers granted to him by the House of Commons Standing Order No. 150 and referred the matter to the Independent Expert Panel (the Panel) for sanction. Again, part of the sequence of the process adopted by the Commissioner is relevant to our decision and is summarised below.
- 2.6 On 26 May 2023, Mr Nicolson appealed the findings and conclusions of the Commissioner to the Panel, lodging grounds and submissions, after a short extension of time, allowed on 23 May 2023.
- 2.7 On 31 May 2023, the sub-panel met and concluded firstly, that there was substance in the appeal; secondly, that we were prepared to consider further evidence submitted by Mr Nicolson; thirdly, that we did not require oral submissions or a hearing in person to address the appeal; and fourthly, that we would consider the appeal before sanction.

- 2.8 This is the decision we have reached on that appeal. It is unnecessary for us to consider any sanction.
- 2.9 We will refer to Ms Dorries as the complainant, and Mr Nicolson as the respondent.
- 2.10 In this case there have been breaches of confidentiality, in that the fact and some of the alleged substance of the complaint have been reported in the media. For that reason, and because the case may be important as a precedent and as guidance, this decision will be published.

Report of the Independent Investigator

- 2.11 The first full interview with the complainant took place on 21 October 2022. There were subsequent discussions leading to the formulation of the allegations as recited above. The Commissioner had an initial meeting with the complainant on 10 January 2023, and an initial meeting with the respondent on 11 January 2023, in each case formally to launch the investigation. Thereafter, the Investigator conducted an interview with the respondent on 31 January 2023. That was followed by a further interview with the complainant on 16 February 2023. The respondent was never re-interviewed by the Investigator, nor was he asked to respond to the further matters advanced by the complainant in her interview of 31 January.
- 2.12 The Investigator focused on three tweets which he found to contain “critical and offensive material of a kind which the complainant may well have found upsetting”, and which the respondent had liked or retweeted. However, he concluded it was not reasonable for the complainant to interpret this as bullying or harassment, because in cases of tweets “over which the original tweeter has no control”, liking or retweeting such posts “will not generally amount to bullying or harassment since it will be clear who the original author is”. He considered that there may be cases in which the ‘liked’ or retweeted material is “so grossly offensive or otherwise unacceptable that ‘liking’ or retweeting could amount to bullying or harassment” but in this instance, liking or retweeting did not “cross the line”. There was no abuse of power, no purpose or effect “of violating a person’s dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment”.

The Bullying and Harassment Policy

- 2.13 Paragraph 2.3 of the April 2021 edition of the UK Parliament's Bullying and Harassment Policy (the Policy) defines bullying as:

Bullying may be characterised as offensive, intimidating, malicious or insulting behaviour involving an abuse or misuse of power that can make a person feel vulnerable, upset, undermined, humiliated, denigrated or threatened. Power does not always mean being in a position of authority and can include both personal strength and the power to coerce through fear or intimidation.

- 2.14 The Policy continues to define bullying at paragraph 2.4:

Like harassment, bullying can take the form of physical, verbal and nonverbal conduct. Bullying behaviour may be in person, by telephone or in writing, including emails, texts or online communications such as social media. It may be persistent or an isolated incident and may manifest obviously or be hidden or insidious. Whether conduct constitutes bullying will depend on both the perception of the person experiencing the conduct and whether it is reasonable for that person to have perceived the conduct as bullying.

- 2.15 The Policy goes on to define harassment at paragraph 2.6:

Harassment is any unwanted conduct that has the purpose or effect of violating a person's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for them. All harassment, regardless of whether or not it relates to a protected characteristic, is covered by this policy.

- 2.16 The definition of harassment continues at paragraph 2.9 of the Policy:

Harassment can be intentional or unintentional. It can occur where A engages in conduct which has the effect of violating B's dignity or creating an intimidating, hostile, degrading or offensive environment for B, even if A didn't intend this. Whether conduct constitutes harassment will depend on both B's perception and whether it is reasonable for B to have perceived A's conduct in that way.

- 2.17 Parliament's Bullying and Harassment Policy confirms at paragraph 5.4 that the balance of probabilities test will be used as the standard of proof for full assessments of a complaint.

The tests for bullying and harassment applied

- 2.18 As is normal practice, in reaching his decision, the Commissioner applied the relevant parts of the Policy. His formulation to test the allegation of bullying reads:

(a) Did Mr Nicolson's conduct involve offensive, intimidating, malicious or insulting behaviour?

b) Was an abuse or misuse of power involved in that behaviour?

c) Was Ms Dorries left feeling vulnerable, upset, undermined, humiliated, denigrated or threatened?

d) Was it reasonable for Ms Dorries to have perceived Mr Nicolson's conduct as bullying?

30. For a finding of bullying to be safely made, I have to be satisfied that on the balance of probabilities the answer to all four of those questions is "yes".

- 2.19 The Commissioner's formulation to test the allegation of harassment reads:

a) [...] Was the conduct unwanted by Ms Dorries?

b) Did the conduct have the purpose or effect of violating Ms Dorries' dignity?

Or

Did the conduct create an intimidating, hostile, degrading, humiliating or offensive environment for Ms Dorries?

c) Did Ms Dorries perceive Mr Nicolson's conduct as harassment and was that perception reasonable?

32. For a finding of harassment to be safely made, I must be satisfied that on the balance of probabilities the answer to the first and last questions is "yes" and that the answer to one of the two limbs of the

second question is also "yes".

2.20 We accept the Commissioner's formulations as correct.

Decision of the Parliamentary Commissioner

2.21 As we have indicated, the Commissioner differed from the Investigator and came to his own view on the basis of the evidence provided. It is to be noted that the matters raised by the complainant in her second substantive interview of 31 January were never put to the respondent, before the Commissioner reached his (differing) conclusions.

2.22 In the course of his consideration, the Commissioner observed:

25. In undertaking my analysis, I have noted that at the Committee hearing of 23 November 2021 [a reference to the Digital, Culture, Media and Sport Select Committee] Ms Dorries was questioned about her past social media activity. Mr Nicolson has also raised that issue in his own evidence. The [past] social media activity [of the complainant] was not part of the activity to which the complaint relates, and I am satisfied that Ms Dorries' past social media conduct does not form a valid part of the investigation and is not relevant to the decision on the present complaint.

26. In undertaking my analysis, and reaching my conclusions, I have also been careful to distinguish legitimate political discourse and challenge from behaviour that crosses from reasoned criticism into bullying or harassment in the form of abuse or insults. I have been particularly mindful of the essential role that the legislature has in holding Ministers, and their decisions, to account; nothing in this decision should be read as an attempt to curtail the fair scrutiny of the executive or expressing any views about the tone or language of political intercourse.

2.23 All agree that the respondent's own tweets were perfectly proper, and could not be the basis of complaint. In reviewing the material in the case, the Commissioner went on to conclude that, of the 110 tweets which the respondent 'liked', 41 were "disparaging". He attached a list of these tweets to his decision. We likewise attach the schedule of "disparaging" tweets as Annex 2.

2.24 The Commissioner recited the complainant's evidence that she found the tweets to be "thoroughly unpleasant" and said that the period under review was "intimidating and disturbing". The Commissioner also recited the evidence of the respondent that the majority of the tweets were addressing how he had behaved and only a small proportion were "unflattering" about the complainant. He also highlighted the fact that he had not copied the complainant into any of these tweets. The Commissioner also stated that "he had no concerns about the tweets directly authored and posted by [the respondent]". His concern was focussed on what he referred to as the "more offensive" tweets. He stated that liking a social media post "is not a neutral act" and that some of the material liked "went far beyond fair criticism and was both hostile and insulting in nature". In the Commissioner's view "the liking of the tweets, and considering their volume, the content and the short time window in which they were posted, can reasonably be described as *offensive, intimidating, malicious or insulting behaviour*". He therefore found the first limb of the test for bullying to be made out.

2.25 The Commissioner next considered the power to be ascribed to Members of Parliament, as follows:

45. Members of Parliament enjoy a high public profile and a privileged position in society. Their words and action carry weight and can influence both local sentiment and the national mood. Those factors give all Members of Parliament power. It is important that power is used responsibly. On this occasion, I am satisfied that Mr Nicolson's public endorsement of hostile and insulting content about another Member was a misuse of his platform and power. I am therefore satisfied that the second limb of the bullying test is met. (I note that I do not understand this limb of the ICGS definition of bullying to be limited to abuse of a power imbalance between complainant and respondent but is capable of encompassing any abuse by a respondent of the power that attends the status of MP.)

2.26 The Commissioner considered the complainant's evidence about her reaction and the issue concerning her own use of social media. He stated:

47. Ms Dorries' evidence on impact is summarised at paragraph 39 above and I find no reason to doubt the credibility of her evidence on this

point. I am therefore satisfied that Ms Dorries was "left feeling vulnerable, upset, undermined, humiliated, denigrated or threatened" by Mr Nicolson's conduct and that the third limb of the bullying test is met.

48. I have noted above that I do not consider Ms Dorries' own record of using social media relevant to how she would perceive being abused or insulted by others. I am satisfied on the balance of probabilities that whatever her own record of social media language, Ms Dorries did feel vulnerable, upset, undermined, humiliated and threatened by Mr Nicolson's conduct.

2.27 The Commissioner then simply concluded that the complainant's claimed reaction to the retweet and liked tweets was reasonable. He went on to conclude that the allegation of bullying was made out under allegation 1(a) – that is to say, in relation to all 168 tweets, liked tweets or retweets, or by implication, at least those which he considered disparaging.

2.28 The Commissioner then considered allegation 1(b), that concerned three specific tweets, set out by the Commissioner. The tweets in question read in full:

"This has to be seen again. A masterclass from John Nicholson (sic). Dorries is grotesque, has too much power & is as thick as two short planks. Exposed...and she doesn't like it."

"The different (sic) being that Nicolson has integrity Nadine Dorries a mendacious, vacuous goon you wouldn't employ to baby sit your dog"

"Nadine Dorrie's (sic) being completely rag-dolled (again) by a Scottish MP is the perfect remedy to a cold autumn night here. They hate the fact that we have them taped and that they have no right to dine on their misplaced superiority. Bravo John Nicholson (sic)"

2.29 In relation to these three tweets, the first two of which were 'liked' by the respondent and the third retweeted, the Commissioner found the tests for bullying and harassment to be satisfied, for similar reasoning as that he had followed under allegation 1(a) set out in paras 2.26 and 2.27 above.

Grounds of Appeal

- 2.30 The respondent gives as his principal ground of appeal that it was unreasonable of the Commissioner to overturn the conclusion of the Investigator, and unreasonable to find, even on the alternative approach adopted by the Commissioner, that he had bullied or harassed the complainant. A number of strands feed into this principal ground.
- 2.31 The complainant was in a more powerful position than he was himself. His responsibility was to oppose the complainant, to expose her inadequacies and errors vigorously. His own tweets of which she complained were proper expressions of opposition. That was accepted by the Investigator and the Commissioner.
- 2.32 His liking or retweeting of the tweets of others were incapable of amounting to bullying or harassment: there were a small number of them, and they were not violent or couched in foul language. He had arranged matters so that the complainant would not see them or be aware of them unless she set out to find them. He did not tag her Twitter name or handle. He had clearly not set out to create a "pile-on", as she had claimed, in other words to instigate a flood of hostile material landing in the complainant's Twitter feed.
- 2.33 Social media, including Twitter, are essential tools or fields of activity for the modern politician. If the approach of the Commissioner were accepted, then effective opposition would be seriously impeded. Proper vigorous opposition through social media would be swamped by spurious complaints, taking advantage of far too low a bar for bullying and harassment. Moreover, the complainant was a frequent and aggressive tweeter, using terms far more threatening and aggressive than he had done, or indeed than were to be found in the tweets he had liked or retweeted. Some of that was public knowledge and should have been taken into account.
- 2.34 The true explanation for the complaint was that he had been effective in exposing the complainant's weakness as a minister and exposing problems with her own record, which might militate against her being accorded a peerage. The motive for the complaint was 'both political and personal', rather than a genuine complaint of bullying. The chronology of the complaint supported that (Annex 3). That was never considered in the interpretation of the

facts.

- 2.35 The respondent also complains that he was not given sight of the complainant's claims about him until after the Commissioner had decided to overturn the conclusions of the investigator. After the decision was taken by the Commissioner, he was able to see that the complainant had expanded her complaints about him. He had not been able effectively to counter much of what she had advanced, nor to address the re-interpretation of the facts by the Commissioner. Now that he was aware of the full extent of her claims, he was able to advance further evidence which would demonstrate "that an unreasonable amount of trust and faith has been placed in [the complainant's] testimony despite evidence that she is an unreliable witness". That evidence included a number of occasions where the complainant has advanced spurious complaints of harassment or bullying, which have been rejected or dismissed.

Permission to introduce fresh evidence

- 2.36 We considered that there was potentially substance in the respondent's appeal, and decided that the appeal could proceed. We also decided to admit the fresh evidence *de bene esse*, that is to say on a provisional basis, so that it could be considered fully as to whether it was helpful in the appeal.

Analysis

- 2.37 We are concerned by two aspects of this case which we consider were not fully, or indeed adequately, reflected in the Commissioner's decision. Firstly, this was a case in a highly charged political context, concerning the performance of opposition; a political struggle partly conducted through Twitter. In our view that was an essential filter through which all these events had to be regarded. We have set out above paragraph 26 of the Commissioner's decision, which records his determination to have in mind the distinction between "legitimate political discourse" and bullying or harassing behaviour. However, we have come to the conclusion, with great respect to the Commissioner, that he did not consider this question in sufficient depth, or with a close enough analysis of the language in the Bullying and Harassment Policy, and how that language relates to the realities of Parliamentary politics. Secondly, the complainant's own history of use (and alleged abuse) of social media, in particular Twitter, some of which is a matter of public record, was never considered and indeed was set aside by the Commissioner in reaching

his decision. It appears to us that, on the facts of this case, both matters are important and capable of affecting the interpretation and application of the tests for bullying and harassment. The case also throws up concerns as to some aspects of the ICGS policies as affecting the process of Parliamentary opposition, and political debate more generally.

- 2.38 We take matters in the order in which they arise in the tests for bullying and then harassment.

2.3 Bullying may be characterised as offensive, intimidating, malicious, or insulting behaviour involving an abuse or misuse of power...

- 2.39 It is a commonplace that political discourse, and in particular political opposition, can involve behaviour which, in a different context, would be regarded (at least) as offensive or insulting, and sometimes intimidating, without constituting an abuse or misuse of power. Opposition attacks and government counterattacks are commonly of that nature, in the Chamber of the House of Commons and beyond. Whether such an adversarial tradition is always effective, or always impresses the public, is perhaps neither here nor there.

- 2.40 It must be taken as read, when interpreting the Bullying and Harassment Policy for the UK Parliament, that Parliament did not intend to impede or prevent legitimate political debate, including vigorous opposition.

- 2.41 Whether conduct of this kind represents an abuse or misuse of power depends not merely on whether power has been acquired, but crucially on whether the power is used in an illegitimate way. In our political system, for an opposition spokesperson to disparage a minister, or vice versa, is far from necessarily an abuse or misuse of power. Successive rulings as to the appropriate modes of address in the Chamber have laid down the language which may or may not be employed there, and have given rise to a code or series of codes by which forbidden language (and some forbidden suggestions) may be expressed, so that all those knowledgeable listeners understand what is meant. Beyond the Chamber and the discipline of the Speaker, including on social media, the language used is often more direct, though still generally considered legitimate political discourse.

- 2.42 We have considered the material in the schedule of 41 tweets set out in Annex 2, and taken advice as to whether the language used would be acceptable if deployed in the Chamber. We emphasise that the special rules for the Chamber are in force for that specific context and do not apply beyond. However, it is of interest that it seems likely that in around two-thirds of the tweets in Annex 2, the language would be within bounds if used in the Chamber itself. The majority of those which would not be acceptable would be ruled out only by the implication of lying.
- 2.43 The question of power in the tests for bullying and harassment must be examined with a clear eye on the political context, particularly Parliamentary opposition. It is of course correct that, as the Commissioner put it, “power does not always mean being in a position of authority...”. We accept that the position of a Member of Parliament involves the acquisition of a measure of power. Additional power can often come to those in opposition from the circumstances of the moment, from the superior personal qualities or determination of the opposition representative, the weakness of a government position or of a particular minister. Such factors may equally operate to augment the power of a minister, beyond that which normally flows from office, and from the greater resources and support enjoyed by ministers.
- 2.44 Effective opposition may often legitimately include the attempt to diminish or even abolish the power of government, or of a particular minister or government spokesperson. A legitimate effort along those lines may sometimes include words and behaviour which, in another context, would be obviously offensive or insulting. So too a course of action, by government or in opposition to government, may be intended and have the effect, of intimidating the opponent, potentially making that opponent feel “vulnerable, upset, undermined, humiliated, denigrated or threatened”, conceivably all at once. Such conduct would not be legitimate or acceptable in any ordinary place of work. Nor would it be legitimate or acceptable as between a Member and a member of staff, a minister and a civil servant, or indeed between Members in the course of private interactions. But it is part of the fabric of Parliamentary politics, within the Chamber and beyond.
- 2.45 The approach to adjudicating the conduct of members against the terms of the Bullying and Harassment Policy must reflect those realities. It is also relevant to

consider the relative power of those involved in any such exchange. That consideration may not definitively answer the question at hand, but in our view it is a relevant question to ask and answer, when considering alleged bullying or harassment in a situation such as this. For a junior backbench Member to be insulting, or even abusive, to a senior minister speaking from the despatch box (or in correspondence) would be unlikely fairly to be described as bullying or harassment, given the relative power, or what might be described as the gradient of power, between them.

- 2.46 That is not to say that behaviour in the course of political opposition is without limits. It is to say that the Policy on bullying must not be interpreted so as to conflict with legitimate political activity.
- 2.47 Turning to harassment, there the first ingredient of the definition is that of “unwanted conduct”. No doubt much legitimate and effective opposition, at least outside formal activities in parliament where the roles are prescribed and the timetable agreed, is “unwanted” by the minister concerned. The same will apply with equal force to the opposition spokesperson. Whether we consider public speeches, appearances on media, or activity on social media, the more effective the opposition, or defence of the government’s position, the more unwanted it will be.
- 2.48 The next step in the test for harassment is whether the actions complained of had “the purpose or effect of violating a person’s dignity”. Unless the Policy is interpreted as we suggest it must be, this criterion might well be infringed by the performance of legitimate opposition, at least in the sense of reducing the dignity of the opponent in a political sense, as opposed to an intrusion into personal life or conduct. Depending on the particular facts, effective opposition might be thought to create an intimidating or hostile environment, although it seems very difficult to see that the deliberate creation of an offensive or degrading environment could fall within legitimate opposition. However, we emphasise that in all such cases the particular facts will determine the outcome.
- 2.49 It is important to keep in mind the term “environment”. While harassment (or bullying) can take place over a restricted time, or even in the course of a single day or one episode where the acts are more severe, the term “environment” may more naturally lend itself to a set of enduring conditions. Again, the

- question of fact will be of the greatest importance.
- 2.50 Of course, even strenuous political opposition may not involve any such relationship of the kind we describe. There must be many instances where the opposition spokesperson and the relevant ministers have mutual respect, and their opposing positions are presented and met in that way. This respondent suggests that has been the norm for him.
- 2.51 But it cannot always be so. What of the situation, as is suggested here by the respondent, where the relevant minister has forfeited the respect of her opponent? Is the opposition spokesperson prevented by the Policy from expressing hostility to the policy and practice of the minister? Is he or she debarred from seeking to intimidate the minister, at least in the sense of developing such authority over her or him which might be thought to create an “intimidating environment” for the minister when they clash in public, let us say in the Chamber or in committee?
- 2.52 The ensuing steps in the definition of harassment—the perception of the complainant and the reasonable quality of that perception—are also not necessarily easy to determine in this context.
- 2.53 The subjective perception of a complainant might superficially appear to be simpler to establish. Even in the context of political opposition, threatening language or violent imagery, used directly by one politician to another, might readily support a subjective account of the perception of a complainant, necessary to sustain a complaint. Even there, in our view the context of political opposition would require some investigation of the consistency and reliability of the account from a complainant, to ensure that the complaint is not being launched instrumentally, for political ends. Moreover, even if the account of the complainant is accepted, it is important that any finding as to the subjective perception of a complainant is causally connected to the effects of the particular conduct which satisfies the earlier elements of the test, and—we suggest—which is illegitimate. Even a genuine subjective perception of a complainant based on a whole course of effective but legitimate opposition would be insufficient. We accept that the other history of the relationship may well be relevant background. This may often be difficult to tease out, but in our view it will require elucidation before the requirement is satisfied. It cannot simply be assumed, but must be judged on the evidence.

- 2.54 The further requirement—that the complainant’s perception is reasonable - must also be examined in context.
- 2.55 The critical question here is not whether the words or behaviour concerned were likely to cause a reasonable individual to feel that their dignity was violated or created an “intimidating, hostile, degrading, humiliating or offensive environment for them”, or had the potential to do so. The first step in the test (even setting aside any refinement arising from the specific circumstances or considerations of minister and opposition spokesman) is to establish either that the purpose was to violate the person’s dignity or create such an atmosphere, or that it did in fact do so in the individual complainant. The second step is to establish whether such a reaction, if genuinely held, was reasonable.
- 2.56 Here, in our judgment, this complainant’s own history of use of Twitter was relevant to both these issues. First, a complainant who is an active and enthusiastic user of Twitter will have a different understanding of the norms and expectation of that medium. If it has been her custom to adopt arguably extreme or abusive language in the use of Twitter, then that may be highly relevant to the credibility and accuracy of her account of her subjective perception. The question whether she was genuinely shocked or disturbed is obviously capable of being affected by her own behaviour. If her own use of Twitter might at times be thought aggressive, or even threatening, it would suggest it was less likely that she was affected as she claimed. The same would apply if it could be shown she had made earlier, arguably similar, unsubstantiated claims of bullying or harassment.
- 2.57 Secondly, such a background will be relevant as to whether it was reasonable for that complainant to perceive the conduct as bullying or harassment. An obvious application of that would be if a complainant was shown to have used violent, threatening or insulting language to a respondent earlier in the same exchanges.
- 2.58 Those questions are both matters of fact. Neither turns on how the Investigator, or the tribunal of fact (the Commissioner or the Panel) would perceive the environment, or what they themselves would regard as being a reasonable perception of the environment. The questions are confined to the perception of the complainant. The first is: what did she perceive in fact? The second is: was it reasonable for her, in her circumstances, to hold that perception?

- 2.59 In the course of the evidence, this complainant agreed that she is used to “the rough and tumble” of politics, the “passionate debates” and the “fiery nature of politics”. She confirmed that she is “no wilting wallflower” and confirms that she has had “very robust exchanges throughout her 25 years in politics”. Some of the evidence provided to us demonstrates that the complainant herself has used strong language in tweeting, and that she has lodged complaints about others in the past. On one occasion she referred in a tweet to a journalist with whom she has had a sustained difficult relationship as “an apologist for Islamic atrocities”. She then complained about the journalist to his employers. The complaint was dismissed. On another occasion a tabloid journalist was investigating the funding of the complainant’s office and payments to one of her daughters. A press photographer took photographs of the complainant’s (adult) daughter in the street near her home. Subsequently the complainant tweeted that she would “nail [the journalist’s] balls to the floor using [the journalist’s] own front teeth”. She explained this to the Investigator by saying the photographer had taken photographs of her “teenage” daughter “inside her house”. The complainant lodged a complaint with the Independent Press Standards Organisation, which was rejected.
- 2.60 In our view, it would also have been appropriate to give close consideration to the chronology of events. The complaints in question here relate to tweets on 23 and 24 November 2021, immediately following the complainant’s appearance before the Digital, Culture, Media and Sport Select Committee of the House. The complainant made no complaint then. On 15 May 2022, the complainant appeared again before that Committee. A major issue was the then government proposal, of which the complainant had carriage, to privatise Channel 4. On that occasion the complainant claimed that a number of those appearing in a Channel 4 documentary were in fact actors, falsely presented as members of the public. There was subsequent correspondence between Julian Knight MP, Chair of the Committee, and the complainant. The management of Channel 4 investigated and rejected the complainant’s claim in a statement of 15 July 2022. On 19 July, the complainant stood by her claim.
- 2.61 On 20 July 2022, the respondent raised the matter of the complainant’s continued assertion with the Deputy Speaker in the Chamber of the House as a ‘point of order’. He had informed the complainant that he was going to take that step, so that she would be able to respond if she thought fit. The Deputy

Speaker ruled that the question of whether the complainant had sought to mislead the Committee was a matter for the Committee. It was this that the complainant described as a “spurious” point of order. She described this later as “misogyny, intimidation, bullying and harassment”. However, she made no complaint against the respondent then. On 12 August 2022, the respondent wrote to the House of Lords Appointment Committee concerning the complainant’s claims over the Channel 4 documentary. It was believed that the complainant was interested in obtaining a peerage. The respondent published the letter. On 23 September 2022, Mr Knight wrote again to the complainant over the Channel 4 issue. He asked her to “correct the record” since (he wrote) the issue was whether her assertion might be a “deliberate attempt to mislead the Committee”. On 11 October 2022, the complainant replied declining to alter her account.

2.62 It was on 12 October 2022, that the complainant first made contact with the ICGS.

2.63 On 20 October 2022, the Committee published its Fourth Special Report of Session 2022–23. In the course of that report, the Committee unanimously concluded:

We do not find either the original claims [concerning the Channel 4 documentary], or the clarifications to be credible and have seen no corroboration of her claims that Channel 4 and Love Productions used actors in a reality television show. In contrast, the detailed investigation carried out by Channel 4 gives us confidence that her claims are groundless. We are concerned that Ms Dorries appears to have taken an opportunity, under the protection of privilege, to traduce the reputation of Channel 4.

2.64 The sequence of events, considered closely, might well have been thought relevant to the two questions: (1) what was the complainant’s subjective reaction to the tweets of November 2021, and (2) was that reaction reasonable?

2.65 This was not a case of alleged sexual misconduct, where a number of factors, such as misplaced shame, fear of publicity or reprisal, or understandable self-consciousness may often arise to explain late complaint. Nor is there any

- evidence of misogynistic activity by the respondent, or that the complainant took the view at any stage she was obliged to put up with misogynistic behaviour.
- 2.66 We emphasise that we make no finding about the complainant's behaviour in these terms. The point is that, in the context of this case, this area should have been investigated and fully considered before conclusions were reached adverse to the respondent.
- 2.67 Certainly, before adverse conclusions on the respondent were reached, he should have had an opportunity to address all of what was said against him.
- 2.68 We are concerned that the respondent was unable to respond to material before the Commissioner, coming from the second substantive interview with the complainant. This new material was relied on in part by the Commissioner in reversing the conclusion of the Investigator, which had been communicated to the respondent. In his appeal submission, the respondent drew our attention to the fact that he was not given sight of all the complainant's claims about him until after the Commissioner had rejected the Independent Investigator's report. As a result, he says that he was not given the opportunity to challenge the claims made about him which, he states, runs counter to natural justice. In his appeal, the respondent provides two examples where a claim made by the complainant was not disclosed to him and where his response was not considered by the Commissioner. The first is the matter of the 'spurious point of order' and the second is the complainant's claim that by writing to the Lords Appointments Committee the respondent was 'harassing' her. As a result of not being given full disclosure of the claims against him, we accept that the respondent was unable to respond fully to the complaint. It is for that reason we have accepted as fresh evidence the additional material which accompanied his submissions to us.
- 2.69 We should not be understood to imply that 'two wrongs make a right'. They do not. If the correct conclusion on the evidence would have been that the complainant was genuinely affected in the way required by the test, and that it was reasonable for her to be so affected, then those elements of the test for bullying and harassment might have been established, whatever criticisms there might be about the complainant's own behaviour at other times.

Conclusions

- 2.70 For the reasons set out above, we allow this appeal. The Bullying and Harassment Policy must have been intended by Parliament to be interpreted so as not to impede or prevent proper opposition, or proper and vigorous defence of government policy. The context of this case is far removed from a case of a Member alleged to have bullied a member of staff, or indeed from a case of behaviour between Members in private, or simply as colleagues. As in so many cases, context is vital to understanding a case and applying these tests. We emphasise that there are limits to behaviour even in the context of heated debate between government and opposition, but breach of those limits must be examined in the proper way.
- 2.71 When considering the question of power in such a case as this, it will usually be relevant to consider the relative power of those in question, accepting as we do (as the Commissioner observed in paragraph 45 of his decision quoted above) that the position of an MP does bring some power in its train. But the point usually to be determined will be the power over, or relative to, the complainant.
- 2.72 We agree with the Commissioner that 'liking' or 'retweeting' are not neutral acts. They might potentially lead to a breach of the Policy. In our view it was unwise of this respondent to like or retweet some of the tweets in question, albeit this was a much less direct act than to tweet in such terms himself. But we can conceive of tweets which would be so intimidating, hostile, degrading, humiliating or insulting that to 'like' or retweet them would breach the policy. It would be wise for Members to exercise considerable care before they associate themselves with messages in Twitter (or indeed any other social media) which might fall into that category, or even come close to it.

Annex 1: List of tweets posted by Mr Nicolson

No.	Content
1	“The BBC has itself admitted it has a problem with impartiality...so I rest my case” Nadine Dorries tells the @CommonsDCMS. The BBC is too left wing apparently.....
2	“Why do you think you know more about Channel 4 and broadcasting than the broadcasters who work there?” @DamianGreen asks Nadine Dorries @CommonsDCMS “I Couldn’t possible [sic] comment” the Secretary of State responds. “Yes you can” he replies.
3	Nadine Dorries defends her abusive (re)tweets – calling @MrJamesOB an “apologist for Islamist atrocities” – because, she says, she’s being assertive as a woman online. It’s a deeply offensive justification and shows how ill-suited she is as a custodian of online safety legislation
4	Nadine Dorries has a history of on line abuse. She defends her behaviour by saying she is a female politician on line. This does the gravest disservice to women in politics. She’s abusive not because she’s a woman. She’s abusive because she chooses to misuse her position.
5	Nadine Dorries is unsuitable for the role she currently holds.
6	Dorries’s record of online abuse is appalling. I challenged her about about her suggestion that @LBC journalist @MrJamesOB has mental health problems and her retweet calling him “a misogynist, a UK-hater and an apologist for Islamist atrocities.” Grotesque behaviour.

Annex 2: List of disparaging tweets liked by Mr Nicolson

No.	Content
1	Bravo Mr John Nicolson. Dorries is singularly unfit for the role of culture secretary.
2	I'll never not be amazed that she is in the job she is
3	She's utterly shocking
4	Spot on John! No forgiveness for using the misogynistic abuse and struggle of many of her colleagues as a justification. She's just a bully.
5	Thank you. She is extremely unpleasant. Her resentful attitude towards you was inappropriate.
6	(applause x3) keep up the good work. This woman is a disgrace. Her whole attitude is one of privilege, thinking she is untouchable. The Teflon coating is starting to flake for her and others in her position.
7	Thank you, John, for challenging this appalling woman. I'm pleased that you represent the constituency I live in. I do think @mrjamesob might consider, at least, demanding that she withdraw these defamatory remarks & issue an apology. This is a grotesque abuse of her position.
8	Thank you John, she is an appalling woman who regularly tweets abuse, @mrjamesob has never tweeted any abuse to her but she still insists he has, as if saying it makes it true, you held her to account as she should be
9	(applause x3) Bloody well said John! Painful to see Dorries throw up the excuse about women receiving online abuse (which they do, which we all do) but she somehow demeans the problem by fabricating accusations of @mrjamesob, who is a class act who IMO would never do as she alleges
10	Please keep up the good work, I can respect different opinions but not charlatans masquerading as MPs.
11	And yet she holds up the "it's cos I'm a woman" card. She's dreadful, thick and (sic) has no self awareness. These are just facts not opinions. She wouldn't have got near a cabinet in any other government but here we are (rolling eyes) you were brilliant and I cannot wait to listen to @mrjamesob
12	Lets also remember she retweeted a doctored video of the leader of the opposition that made him look complicit with child sex offenders. From a source linked to a far right terrorist group. Fair to say that Britain is really in dire circumstances when she holds any position of power.
13	Her attitude here as well...she's paid no attention to working on a coherent response, instead just laconically expecting her position to be the reason this should all simply be discarded. How on earth she's in any position of authority is incredible.

No.	Content
14	Thank you John. Dorries is not worthy of her position and demonstrated this admirably under your questioning. A thoroughly arrogant performance.
15	People like her are the reason they call it the nasty party
16	I listen to @mrjamesob every day and I've never heard him say anything remotely misogynistic. Dorries is abusing parliamentary privilege to defame him. She's a disgrace.
17	You've no doubt heard the old saying "is it better to keep silent and have people think you a fool, or speak out and leave them in no doubt". Could just be that Nicolson is paying out rope to her by the metre.
18	He doesn't appear to be on twitter, but can someone pass on my compliments to John Nicolson MP @thesnp, please for showing up @NadineDorriesMP as the ignorant arrogant waste of public money that she is
19	That's my MP – John Nicolson. Not scared to get stuck in to the horrible disgusting woman. Good on you John
20	She is sleekit, see how she easily turns to accuse John Nicolson of online abuse. If she had brains she would be dangerous.
21	The different being that Nicolson has integrity Nadine Dorries a mendacious, vacuous goon you wouldn't employ to baby sit your dog
22	John Nicolson shows up Nad's the utter vacuousness
23	Nadine Dorrie's (sic) being completely rag-dolled (again) by a Scottish MP is the perfect remedy to a cold autumn night here. They hate the fact that we have them taped and that they have no right to dine on their misplaced superiority. Bravo John Nicholson (sic)
24	This has to be seen again. A masterclass from John Nicholson (sic). Dorries is grotesque, has too much power & is as thick as two short planks. Exposed...and she doesn't like it.
25	Wow...what an arrogant individual she is. The self satisfied stance and her responses show her to be in her own eyes above the law. Another "do as I say not as I do" Tory. Well done John Nicholson (sic) for giving her a good grilling. This lot do my head in!!
26	John Nicholson (sic) is totally correct Nadine Dorries totally inappropriate person to be in this job
27	John Nicholson (sic) was magnificent tackling the useless Dorries on her history of offensive tweets attacking journalists #dcms

No.	Content
28	This is excellent. John Nicholson (sic) taking no nonsense from the woefully over-promoted Nadine Dorries
29	How the f**k is she in charge of anything? Sweet Jesus
30	She is no match for Nicholson. The intelligence gap is a gigantic, yawning chasm
31	My word, she is a right piece of work...
32	No draw. Won by TKO. She was punch drunk and talking gibberish. Well played.
33	No way was it a draw. A heavyweight will always beat a bantamweight.
34	And she is our minister for CULTURE, MEDIA and sport – how could this be right on any level? #GTTO
35	The sense of entitlement and arrogance on display are just sickening
36	Good for you. @NadineDorries is the worst of us. She thinks she can say what she wants to who she wants when she wants, yet play the victim when it comes back at her. As we say in Newcastle, she can give it oot, but she canna tek it.
37	Unqualified. Unlikeable. Detached from reality. Perfect for this government
38	Well done to John Nicolson for showing the world this person is clearly not fit to hold a Ministerial role.
39	You are very very good at getting under her skin. She is hopeless (applause x3)
40	Excellent line of questioning. We've all had colleagues we've wondered how on earth they got to where they are.
41	I would have to say that John Nicholson (sic) is even more impressive in this than Nadine Dorries is shocking, just wtf was that

Annex 3: Chronology of the complaint

Date	Event
23 November 2021	The complainant appeared before the DCMS Committee. The respondent tweeted before and after the session, liking and retweeting responses to his tweets which are the subject of this investigation.
15 May 2022	The complainant appeared before the DCMS Committee and claimed that actors falsely appeared in a Channel 4 documentary presenting as members of the public
15 July 2022	Channel 4 publish a statement rejecting the complainant's claim.
19 July 2022	The complainant stood by her comments made in Committee on 15 May
20 July 2022	The respondent raises a "point of order" in the Chamber on whether the complainant had misled the DCMS Committee with her claims about Channel 4
12 August 2022	The respondent writes to the House of Lords Appointment Committee on the complainant's claims about Channel 4. This was published by the respondent.
23 September 2022	Julian Knight MP, then Chair of the DCMS Committee writes to the complainant asking her to "correct the record" over her claims about Channel 4
11 October 2022	The complainant responds to the DCMS Committee without correcting the record
12 October 2022	Complainant contacts the ICGS
20 October 2022	The DCMS Committee published their Fourth Special Report on the Rt Hon Nadine Dorries MP