

## Contents

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	<b>Resolution Letter: Mr Brendan Clarke-Smith MP</b>	<b>2</b>
	Letter from the Commissioner to the complainant, 30 September 2021	2
	<b>Summary</b>	<b>3</b>
5	<b>Written evidence</b>	<b>4</b>
	1. Letter from the complainant to the Commissioner, 20 April 2021	4
	2. Letter from the Commissioner to Mr Brendan Clarke-Smith MP, 19 May 2021	6
	3. Letter from Mr Brendan Clarke-Smith MP to the Commissioner, 25 May 2021	11
	4. Letter from the Commissioner to Mr Brendan Clarke-Smith MP, 10 June 2021	12
10	5. Letter from Mr Brendan Clarke-Smith MP to the Commissioner, 23 June 2021	14
	6. Letter from the Commissioner to Mr Brendan Clarke Smith MP, 29 June 2021	15
	7. Letter from the Commissioner to the Clerk of the Journals, 29 June 2021	16
	8. Letter from the Clerk of the Journals to the Commissioner, 1 July 2021	17
	9. Letter from the Commissioner to the Clerk of the Journals, 22 July 2021	20
15	10. Letter from the Clerk of the Journals to the Commissioner, 26 July 2021	20
	11. Letter from the Commissioner to Mr Brendan Clarke-Smith MP, 29 July 2021	23
	12. Letter from Mr Brendan Clarke-Smith MP to the Commissioner, August 2021	24

## Resolution Letter: Mr Brendan Clarke-Smith MP

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### Letter from the Commissioner to the complainant, 30 September 2021

5 I wrote to you on 20 June 2021 (dated 18 May 2021),<sup>1</sup> to inform you that I had started an inquiry into your allegation that the decision of Mr Brendan Clarke-Smith MP's Chief of Staff, [name redacted], to use House-provided stationery and a postage paid envelope to send a 'Cease and Desist' letter to you on 15 April 2021 breached paragraph 16 of the House of Commons Code of Conduct for Members ("the Code").

10 Having reviewed the information available to me, including advice from the Clerk of the Journals, I concluded the evidence submitted did not demonstrate that a breach of the Code had occurred for the following reasons:

- The letter in question was written in support of Mr Clarke-Smith's parliamentary duties.
- 15 • There was no evidence that, in sending the letter, Mr Clarke-Smith or [name redacted] conferred any undue personal or financial benefit on themselves or undue advantage on their political party.
- It was evident that the letter was from the office of Mr Clarke-Smith MP and related to specific comments that had been made about him in his capacity as an MP. The letter does not refer to Mr Clarke-Smith's political party, policies or campaigns.
- 20 • There was no reference in the letter to suggest that it had been sent with the House's collective authority. Additionally, there was no indication that the letter had been sent with Parliamentary authority or Privilege, or that the legal advice being sought was anything to do with the House.

25 I will publish my decision and the written evidence pack shortly on my [webpages](#) and I will report the outcome to the Committee on Standards in due course.

Thank you for bringing this matter to my attention. I confirm that the matter is now closed.

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<sup>1</sup> Due to an administrative error, there was a delay in sending this letter to the complainant.

## Summary

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I started an inquiry on 19 May 2021, following a complaint received by my office on 20 April 2021, that Mr Brendan Clarke-Smith MP had breached the 2019 House of Commons' Code of Conduct. It was alleged that, contrary to Rule 16 of the Code of  
5 Conduct, Mr Clarke-Smith's Chief of Staff inappropriately used House-provided stationery and a postage-paid envelope to send a 'cease and desist' letter to the complainant on 15 April 2021.

During my investigation, I sought comments from Mr Clarke-Smith and his Chief of Staff. I also sought advice from House Authorities on the Rules for the use of  
10 stationery and postage-paid envelopes provided by the House of Commons, and the use of the crowned portcullis.

Having considered the information available to me, I found no evidence that Mr Clarke-Smith used the stationery for party political purposes, or that the use of parliamentary stationery and the crowned portcullis emblem suggested that the  
15 letter was written with Parliamentary authority or Privilege. It was my view that the letter was written in support of Mr Clarke-Smith's parliamentary duties, therefore the use of parliamentary stationery was not in breach of the rules on stationery.

In view of the above, I found no evidence suggestive of a breach of the Code of  
20 Conduct for Members of Parliament and take no further action in this matter.

## Written evidence

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### 1. Letter from the complainant to the Commissioner, 20 April 2021

I enclose a copy of a letter that I have sent to the Speaker of the House.

5 I am sorry to have to bring this to your attention, but you are the custodian of Parliamentary Standards and this behaviour brings Parliament into disrepute.

#### **Enclosure: letter from the complainant to the Speaker of the House of Commons, 20 April 2021.**

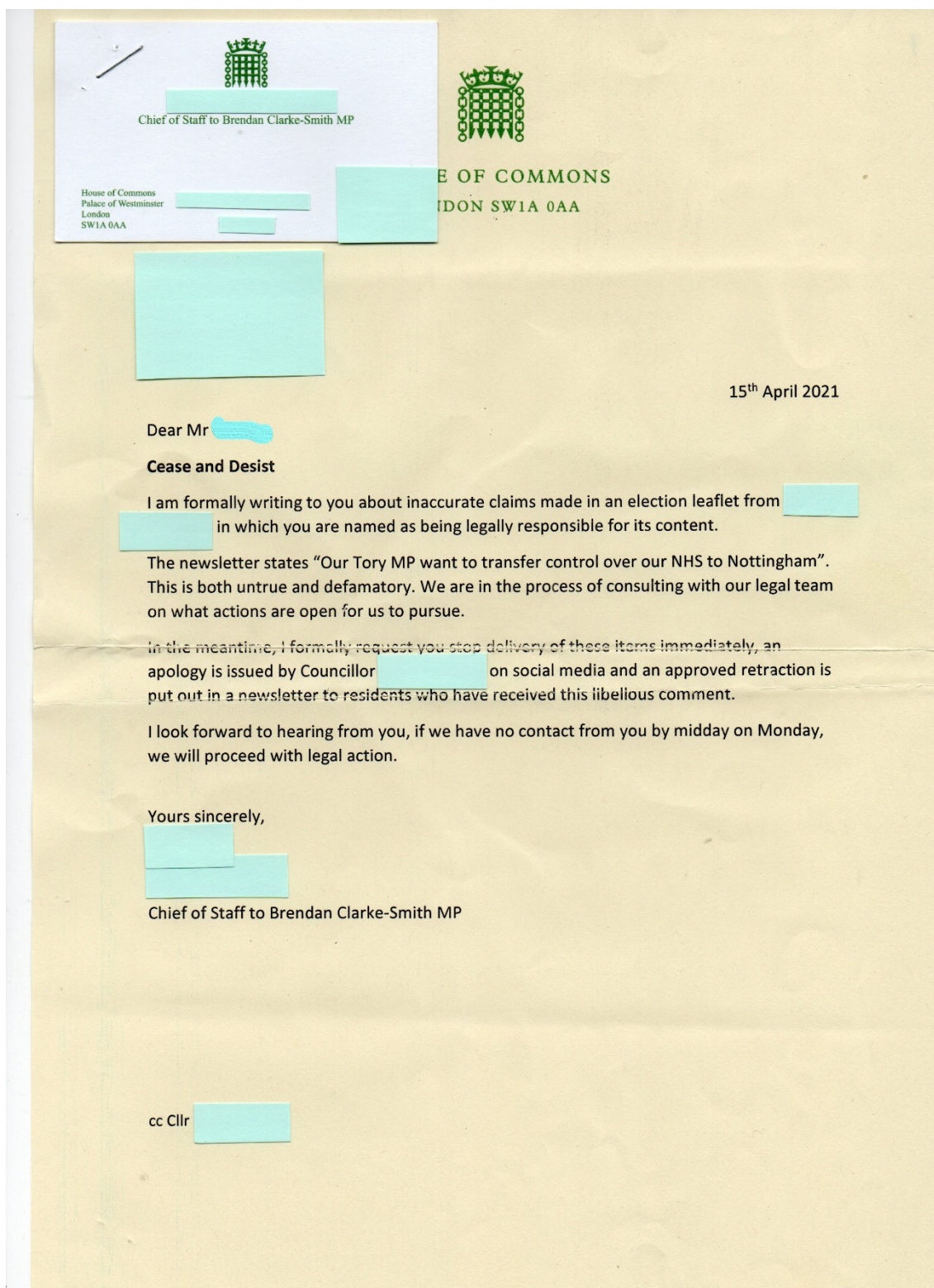
I enclose an attempt at a legal threat sent on Parliamentary headed paper and which can only be seen as suggesting Parliamentary authority and Privilege.

10 The threat is nonsense, however the principle of an election agent for the current county council elections, using Parliamentary headed paper is a significant one.

15 This is one of a series of inappropriate uses of Parliamentary headed paper [by] the MP's office and this is based on the authority and access given to them by MP Brendan Clarke-Smith. It is clearly outside the standards in public life requirement for MPs and their staff and the Parliamentary Code of Conduct.

I have copied this letter to the Parliamentary Commissioner for Standards, but it might also be an issue for the Electoral Commission as this could be deemed to be correspondence that requires itemising in election expenses.

20 I am sorry to have to bring this to your attention, but you are the custodian of our Parliament and this action brings Parliament into disrepute.

**Enclosure: Letter from the Chief of Staff in the office of Mr Brendan Clarke-Smith MP to the complainant, sent 15 April 2021**

## 2. Letter from the Commissioner to Mr Brendan Clarke-Smith MP, 19 May 2021

5 I would welcome your help with an inquiry I have begun following an allegation I have received from [name redacted], concerning an alleged breach of paragraph 16 of the House of Commons Code of Conduct for Members. I enclose a copy of [name redacted] letter and the enclosures sent with it.<sup>2</sup>

### The scope of my inquiry

10 My inquiry will focus on a letter sent to [name redacted] by your Chief of Staff, [name redacted]. I will consider whether, through [name redacted] use of House-provided stationery and a postage-paid envelope to send this letter, you have breached paragraph 16 of the House of Commons' Code of Conduct for Members. If the scope of my inquiry changes, I will update you in writing.

### The Code of Conduct

15 The overarching rules on the use of resources provided by the public purse are found in the *House of Commons' Code of Conduct for Members*.<sup>3</sup>

### Paragraph 16 of the Code states:

20 "Members are personally responsible and accountable for ensuring that their use of any expenses, allowances, facilities and services provided from the public purse is in accordance with the rules laid down on these matters. Members shall ensure that their use of public resources is always in support of their parliamentary duties. It should not confer any undue personal or financial benefit on themselves or anyone else, or confer undue advantage on a political organisation."

25 In a footnote to the introduction to the *Guide to the rules relating to the conduct of Members* it states that, "**Members are personally responsible** for their adherence to the Code including when breaches may have been caused by the actions of a member of staff." [My emphasis]

30 The *Rules on the use of stationery and postage-paid envelopes provided by the House of Commons*, and for the use of the Crowned Portcullis state the following<sup>4</sup>

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<sup>2</sup> Allegation received on 23/04/2021 with a scanned copy of the stationery used. My office requested the original letter and envelope be submitted; this was received 13/05/2021.

<sup>3</sup> <https://www.parliament.uk/business/publications/commons/hoc-code-of-conduct/>

<sup>4</sup> <https://www.parliament.uk/documents/facilities/Accommodation-and-Logistics/Stationery-rules-March-2015.pdf>

## Principles

5 2. These rules are not expected to cover every eventuality; Members should therefore always behave with probity and integrity when using House-provided stationery and postage. Members should regard themselves as personally responsible and accountable for the use of House-provided stationery and postage. They must not exploit the system for personal financial advantage, nor (by breaching the rules in paragraph 3 below) to confer an undue advantage on a political organisation.”

## 10 Rules

3. House-provided stationery and pre-paid envelopes are provided only for the performance of a Member’s parliamentary functions. In particular, this excludes using stationery or postage:

15 1. *In connection with work for or at the behest of a political party (including fund-raising for a political party, advocating membership of a political party or supporting the return of any person to public office);*

...

**Paragraph 4** of these rules says, among other things, that “*Pre-paid envelopes may only be used for correspondence sent by or on behalf of Members....*”

20 **Paragraph 9** of these rules is specifically concerned with the use of the Crowned Portcullis.

It begins:

25 “The principal emblem of the House is the Crowned Portcullis. It is a royal badge and its use by the House has been formally authorised by licence granted by Her Majesty the Queen. It should not be used where its authentication of a connection with the House is inappropriate, or where there is a risk that its use might be wrongly regarded or represented as having the authority of the House. It may be used by Members on their stationery provided by the House or

30 used for their parliamentary functions....”

## Next steps

I would welcome your comments on the allegation of a breach of paragraph 16 of the Code of Conduct for Members. I would also be grateful for your answers to the following questions:

1. Were you aware of the Rules regarding the use of House-provided stationery and postage-paid envelopes?
2. Have you made [your Chief of Staff] aware of the rules concerning the use of House-provided resources?
  - 5 a) If so, please tell me when you did so and in what manner.
3. Were you aware of the letter sent by [your Chief of Staff] to [name redacted] on 15 April?
  - a) If you were, did you approve the contents of the letter before it was sent? and
  - 10 b) Were you also aware it was written on House-provided cream paper, embossed with the Crowned Portcullis, and sent in a House-provided postage-paid envelope?
4. Do you consider it was appropriate for [your Chief of Staff] to use paper bearing the Crowned Portcullis, and a House-provided postage-paid envelope, to write to [name redacted] regarding the matter detailed in the letter?
  - 15
5. Do you know if [your Chief of Staff] sent an identical letter to Cllr [name redacted], as indicated in the letter to [name redacted]?
  - a) If so, do you know if this was also sent using House-provided stationery in a postage-paid envelope?
- 20 6. What arrangements or policies do you have in place to ensure your staff use House-provided resources, including stationery but also IT equipment and other facilities, in accordance with the rules as set out by the House?

I would be grateful if you would also ask [your Chief of Staff] the following questions and send his replies to me when you send your response to this letter.

25 **Questions for your Chief of Staff [name redacted]**

1. Are you aware of the rules on the use of House-provided stationery and postage-paid envelopes, and the rules on the use of the Crowned Portcullis?
2. How and from where did you obtain the paper and envelope used to send the letter to [name redacted], dated 15 April 2021?



3. Before using this stationery, did you consider whether the use of the Crowned Portcullis might give the impression your correspondence would be regarded as having the authority of the House?
4. Do you consider now that using this stationery risked giving that impression?
- 5 5. Did you consider whether it was appropriate to send the letter using postage-paid envelopes?
6. Do you consider now that it was appropriate to do so?
7. The letter of 15 April 2021 indicates it was copied to another person, Cllr [name redacted]. Was this second letter sent?
- 10 a) If so, was this copy also printed on paper bearing the Crowned Portcullis and sent using a House-provided envelope with pre-paid postage?
8. Has there been any other correspondence sent by you, when you have used House-provided stationery and/or postage-paid envelopes, which has not been directly related to the parliamentary duties of Mr Clarke-Smith?
- 15 a) If so, were these letters approved by anyone ahead of being sent.  
b) If other letters have been sent using House-provided stationery, please provide further details about the recipients of such correspondence, the number of letters sent, and copies of the letters if available.

20 It would be helpful to receive any evidence to support responses to the above questions when you reply to this letter. Any other points you or [your Chief of Staff] wish to make to help me with this inquiry would also be welcome.

### **Important information**

25 My inquiries are conducted in private. However, following the decision taken by the House on 21 April 2021, I will shortly publish on my webpages the fact that I am conducting an inquiry about your alleged breach of the Code of Conduct. If contacted, my office will not comment on any aspect of this specific inquiry to third parties. They will answer direct factual questions about the processes I follow, and the standards system more generally, but will not provide any comment or details  
30 about the particulars of this inquiry.

This letter and any subsequent correspondence between us in connection with this inquiry is protected by parliamentary privilege. It should be kept confidential until the outcome of my inquiry is published. The same requirement extends to [name redacted].

Given the inquiry touches on an employment relationship, should you wish to seek HR advice from the Members' HR Advice Service you may contact this team on [details redacted].

### **Procedure**

5 I enclose a copy of the Commissioner's Information Note, which sets out the procedure for inquiries. Please note that this has not yet been updated to reflect the changes flowing from the decision of 21 April 2021.

10 While I do not, at this stage, know whether it will be necessary to interview you or [your Chief of Staff] about this matter, it would be open to you both to be accompanied at any such interview. I am, of course, very happy to meet with you at any stage if you would find that helpful.

I should say now, as a matter of courtesy, that I may seek the advice of the House authorities and others as part of this inquiry. If I do so, I will share that correspondence with you.

15 Information provided to me during the course of my inquiry will be retained, and disposed of, in accordance with the House of Commons' Authorised Records Disposal Policy.

### **Potential outcomes**

20 Inquiries are generally concluded in one of three ways. If the evidence does not substantiate the allegation, it will not be upheld. If the evidence demonstrates a breach of the rules, I may, in circumstances defined by Standing Order No. 150, uphold the allegation and conclude the inquiry using the rectification procedure, without making a referral to the Committee on Standards. Where an allegation is not upheld or is rectified, the investigation material, including our correspondence,  
25 will be published on the Parliament website.

If I uphold the allegation, and it is either unsuitable for the rectification procedure, or you do not accept my decision, I must make a referral to the Committee on Standards. My memorandum to the Committee will be published as an appendix to the Committee's own Report.

30 Regardless of the outcome of my inquiry, I must emphasise that all the relevant evidence, including our correspondence, will be published when this inquiry is concluded. I routinely redact the personal data of third parties unless it is relevant to my decision(s). Please tell me if you provide sensitive material that you think I should redact. I will consider carefully any such request.

### **Action**

35 I would be grateful to have your response to this letter as soon as possible and no later than 2 June 2021. Please let me know before that date if you require more time to respond.

If you would prefer me to communicate with you by a different email address, please give the details when you reply to this letter. It would also be helpful if you were willing to provide a telephone number through which I might contact you.

5 Due to the Current health crisis, my team are working from home only, so I would be grateful if you could send your response electronically to; [standardscommissioner@parliament.uk](mailto:standardscommissioner@parliament.uk).

Thank you for your cooperation with this matter.

*19 May 2021*

10 **3. Letter from Mr Brendan Clarke-Smith MP to the Commissioner, 25 May 2021**

I would like to thank you for your letter dated 19 May 2021 in reference to a complaint received from [name redacted], concerning an alleged breach of Paragraph 16 of the House of Commons Code of Conduct for Members.

15 The letter in question was sent to [name redacted] about claims made in literature being distributed. In this literature, they made claims about my voting record and claimed I support a policy that I have never spoken publicly on or voted for. Claims were also made about Government Ministers.

20 My Chief of Staff sent the letter in his capacity as my Chief of Staff. In the letter he asked for the false claims to cease. My understanding is this is common practice among MPs to send this type of letter, cease and desist, to people who are making false and misleading claims. These claims led to an increase of calls and emails from concerned residents who had been told that my actions would result in the closure of Bassetlaw Hospital. Therefore, my Chief of Staff wrote to [name redacted] asking for him to cease his behaviour, which we did rather than us going down a legal  
25 avenue at the expense of the taxpayer.

I am happy to provide copies of the literature which was distributed if required.

I have attached a copy of the answers from my Chief of Staff to the questions you sent me.

30 I hope we can resolve this matter swiftly, so my team and I can solely focus on supporting my constituents through this pandemic, rather than dealing with vacuous claims from local Labour officials.

*25 May 2021*

**Enclosure: Letter from the Chief of Staff in the Office of Mr Brendan Clarke-Smith MP, 31 May 2021**

I have been asked to respond by my Member of Parliament, Brendan Clarke-Smith MP to your investigation.

5 I can confirm that I sent the letters, in my capacity as Brendan's Chief of Staff, to both [names redacted]. This was in response to inaccurate claims being made in publications circulated by [names redacted] about the future of Bassetlaw Hospital and inaccurate claims over Mr Brendan Clarke-Smith's voting record.

10 These inaccurate claims had resulted in an increase of casework, as concerned residents, mostly elderly women, contacting the office in a state of shock, panic and anger after being misled that the local hospital would be closing.

This resulted in an increased workload for my team, who were already working at full capacity trying to assist constituents through the pandemic. I am very proud of our team, that throughout the last 12 months, despite the increase in work, cases, and stress, they have managed to avoid a backlog of casework and assisted in over 15,000 cases.

The decision to use Parliamentary stationery was mine, I made this decision because the original claims made where about the MP, in his capacity as the MP.

20 I was also under the impression that this type of letter was commonly used by MP's offices, something I know several MP's offices do from my communications with them. This was reinforced during caseworker training I undertook in February 2020, which the trainer made clear that this type of letter was common practice.

I hope this clarifies and assists with your investigation. Should you require further information from me, I am more than happy to assist in any way possible.

25 *31 May 2021*

**4. Letter from the Commissioner to Mr Brendan Clarke-Smith MP, 10 June 2021**

30 Thank you for your letter dated 25 May 2021, and the accompanying letter from [your Chief of Staff] dated 31 May 2021. Although the information you have both provided is useful, there are still several questions from my initiation letter that have not been fully addressed.

It would be helpful if you could provide answers to those questions, which I have set out below.

### Questions for Mr Clarke-Smith

1. Were you aware of the Rules regarding the use of House-provided stationery and postage-paid envelopes?
- 5 2. Have you made [your Chief of Staff] aware of the rules concerning the use of House-provided resources?
  - a) If so, please tell me when you did so and in what manner.
3. a) If you were [aware of the letter sent to [the complainant]], did you approve the contents of the letter before it was sent?

10 In his complaint [name redacted] provided information that demonstrated both he and [your Chief of Staff] were acting as election agents for a number of candidates standing in the 2021 Nottinghamshire County Council elections.

15 In my initiation letter I explained the rules on the use of House-provided stationery and postage-paid envelopes should only be used in connection with a Member's parliamentary functions. The rules specifically state that this excludes using House provided stationery *"In connection with work for or at the behest of a political party..."*

Bearing this in mind it would also be helpful to have clear answers to these questions.

- 20 4. Do you consider it was appropriate for [your Chief of Staff] to use paper bearing the Crowned Portcullis, and a House-provided postage-paid envelope, to write to [name redacted] regarding the matter detailed in the letter?
6. What arrangements or policies do you have in place to ensure your staff use House-provided resources, including stationery but also IT equipment and other facilities, in accordance with the rules as set out by the House?

25 In your reply to my initiation letter you stated that your Chief of Staff had sent the letter to [the complainant], *"...rather than us going down the legal avenue at the expense of the taxpayer."*

30 In the letter sent to [the complainant] on 15 April, [your Chief of Staff] clearly states *"...if we have no contact from you by midday on Monday we will proceed with legal action."*

With these points in mind, I would appreciate your reply to the following additional question.

7. Do you consider that in using stationery bearing the Crowned Portcullis, the letter sent by [your Chief of Staff] might be regarded as having the authority of the House?

**Questions for [your Chief of Staff]**

- 5 Although [your Chief of Staff's] letter was helpful, I would appreciate a clear reply to this following question,
8. Has there been any other correspondence sent by you, when you have used House-provided stationery and/or postage-paid envelopes, which has not been directly related to the parliamentary duties of Mr Clarke-Smith?
- 10 a) If so, were these letters approved by anyone ahead of being sent?
- b) If other letters have been sent using House-provided stationery, please provide further details about the recipients of such correspondence, the number of letters sent, and copies of the letters if available.

15 In his letter to me [your Chief of Staff] explained he was under the impression that this type of 'cease and desist' letter was commonly used by MP's offices, and that this understanding was reinforced during caseworker training he undertook in February 2020. I would appreciate further details from [your Chief of Staff] about this training and ask the following,

- 20 9. Please provide the contact details for the team who delivered this training, and any relevant information that may have been given as a part of this training regarding the correct use of House provided stationery and/or the Crowned Portcullis.

25 It would be helpful to receive your replies by 24 June 2021. In the meantime, our correspondence remains protected by parliamentary privilege and I must ask that you continue to maintain the strict confidentiality of the inquiry.

*10 June 2021*

**5. Letter from Mr Brendan Clarke-Smith MP to the Commissioner, 23 June 2021**

30 Following your letter from 10 June 2021 about your investigation, I have responded below to the questions you asked.

1. I am aware of the rules in relation to the use of House-provided stationery and postage-paid envelopes.
2. I have raised this with all my team, I do not have details of the date.

3. I was aware of the letter and its consent (*sic*) prior to it going out. The letter was in response to a claim made against me as the MP and [my Chief of Staff] sent the letter in that capacity.
- 5 4. I do not agree that the voluntary role [my Chief of Staff] undertakes in his spare time has any impact on his role working for me. A lot of MP's staff have voluntary and/or paid roles either with political parties, local authorities, and trade unions. The letter was correct in using the Crowned Portcullis stationery, as the content was referring to claims made against myself as the MP from [the complainant]. I strongly support the action taken by [my Chief of Staff] in writing to [the complainant] asking him to cease the delivery of leaflets containing these untruths that was putting additional pressure onto my office in terms of casework, something that was already under extreme pressure due to the ongoing pandemic.
- 10 5. There was no question 5
- 15 6. I have provided guidance and will continue to do so to all my staff. I also believe house provided training should be available on this, very similar to the Data Protection training already offered.
7. No, I do not believe the letter could be regarded as having the authority of the House. It was very clear the letter was from my office and not from Parliament.
- 20 I hope this helps with your investigation.

*23 June 2021*

**Enclosure: Letter from the Chief of Staff in the office of Mr Brendan Clarke-Smith MP, 23 June 2021**

25 Thank you for your response to my previous letter, I can confirm that I have not sent out any similar letters using House of Commons stationery.

The training, I mentioned previously was 'Introduction to casework' and was provided by Parli-Training.

23 June 2021

30 **6. Letter from the Commissioner to Mr Brendan Clarke Smith MP, 29 June 2021**

Thank you for your letter and the letter from [your Chief of Staff], both dated 23 June 2021, and for the information provided.

In my initiation letter to you of 19 May 2021, I said that I may seek the advice of the House authorities as part of my investigation. Today I have written to the Clerk of the Journals and a copy of that letter is included for your information (minus the enclosures previously shared with you).

- 5 Once I have received the Clerk's reply, I will write to you again regarding the next steps. In the meantime, this matter remains protected by Parliamentary Privilege and should continue to be kept confidential.

*29 June 2021*

### **7. Letter from the Commissioner to the Clerk of the Journals, 29 June 2021**

- 10 I would like to ask your advice on a complaint I have recently received about Mr Brendon Clarke-Smith MP. In essence, the allegation is that by permitting his office to send out a letter with the subject heading 'cease and desist' to an election agent, and using House-provided stationery and a postage-paid envelope, Mr Clarke-Smith acted in breach of paragraph 16 of the Code of Conduct for Members.

- 15 In my investigation I am considering whether the letter, which was sent on House-provided paper bearing the crowned portcullis, has breached paragraph 3.i and paragraph 9 of the *Rules for the use of stationery and postage-paid envelopes provided by the House of Commons, and for the use of the crowned portcullis*.

- 20 The letter sent by Mr Clarke-Smith's Chief of Staff and dated 15 April 2021, appears to address matters related to the recent Council elections. It also contains information suggesting that if a requested apology is not published both on-line and in a newsletter, legal proceedings will be commenced.

- 25 I enclose a copy of the correspondence and supporting evidence which led to me initiating this inquiry. I also enclose copies of my correspondence with the Member and his replies for your information.

I would like to ask for your advice on the appropriateness of using House-provided stationery bearing the crowned portcullis, and a postage paid envelope, in order to send the letter of 15 April to the complainant.

It would also be helpful to know the following,

- 30 1. Whether you consider this letter was sent "*...in connection with work for or at the behest of a political party...*" (paragraph 3.i of the rules).
2. Whether you believe it was in line with the *Rules for the use of stationery*, for a Member's office to send a letter headed with the crowned portcullis that demanded certain steps from the recipient, and contained the threat of future
- 35 legal action if these steps were not met.



3. Whether you consider that the use of the crowned portcullis in this instance was in line with the rules or whether “...*there is a risk that its use might wrongly be regarded or represented as having the authority of the House...*” (paragraph 9. of the rules).

5 It would be very helpful to have your reply as soon as possible and no later than 13 July 2021.

29 June 2021

### 8. Letter from the Clerk of the Journals to the Commissioner, 1 July 2021

10 You have sought advice from me on an inquiry relating to a letter sent from one of Mr Brendan Clarke-Smith’s staff, on Mr Clarke-Smith’s behalf, threatening action for defamation if certain statements were not corrected.

You ask my advice on the appropriateness of using House provided stationery bearing the Crowned Portcullis and pre-paid envelopes for such a letter and, in particular,

- 15 1. Whether you consider this letter was sent “...in connection with work for or at the behest of a political party...” (paragraph 3.i of the rules).
2. Whether you believe it was in line with the Rules for the use of stationery, for a Member’s office to send a letter headed with the crowned portcullis that demanded certain steps from the recipient, and contained the threat of future legal action if these steps were not met.
- 20 3. Whether you consider that the use of the crowned portcullis in this instance was in line with the rules or whether “...*there is a risk that its use might wrongly be regarded or represented as having the authority of the House...*” (paragraph 9. of the rules).

25 To deal with these questions I felt I had to step back and consider underlying principles as set out below. The advice I give is entirely my own, but I have discussed these principles with Speaker’s Counsel to clarify my thinking, although I have not discussed any details of the case with her.

### General Principles

30 **Is it proper to use headed stationery to issue a communication that a Member is considering legal action for defamation?**

In principle, I believe that if a Member considers defamatory remarks have been made which reflect on him or her, he or she has the right to take the steps another

citizen would. If the material in question relates to them as an MP then the use of headed paper and pre-paid envelopes is unexceptionable.

It would be for the courts, not me, to judge whether the material complained of was indeed defamatory.

- 5 *Do different principles apply if the statement objected to is in an election communication?*

This situation could only arise at a local election, since MPs lose their status and their rights to use headed paper etc at the dissolution of Parliament before a General Election.

- 10 I see no intrinsic reason why a Member should not object to content he or she considers defamatory simply because it is contained in election material. Indeed, given that such content will be widely disseminated, and the focus of the campaign should be on local issues, defamatory material conveyed in this way might be harder to counter without recourse to legal proceedings.

- 15 *Is it legitimate for MPs' staff to act as election agents?*

- As a general proposition, those who take part in and facilitate elections are acting in the public interest. Party politics is a fundamental part of our democratic system. So it is legitimate for a member of an MP's staff to act as an election agent. However, it is of course settled that such activities should take place in a staff member's own time, and not be paid for by public funds.
- 20

### **The specific case**

I now consider the questions you posed.

### **Question 2**

- 25 I consider that as a point of general principle it is legitimate to use headed paper to send a letter objecting to material considered defamatory, and asking for steps to be taken to remedy it, if the defamatory material is related to the MP's role as such. The initial response to you says the decision to use the paper was because "the original claims were made about the MP, as the MP."

- 30 Given that the law permits action to be taken against defamatory statements, and for those who consider themselves to have been injured to suggest ways of remedying the injury, I do not consider there is anything intrinsically wrong in using House stationery to send a letter saying that legal action may be taken if steps are not taken in respect of the allegedly defamatory material.

**Question 3**

I do not consider the letter in question could be regarded as having the authority of the House. The letter is clearly from an individual MP's office, relating to comments about the MP. There is no indication that the legal advice sought is anything to do with the House. There is no reference to the House's collective authority. The use of the paper simply indicates that it is, as is the case, sent on behalf of the MP concerned.

**Question 1**

This is a particularly difficult matter. First, it is not clear what "at the behest of a political party" might mean at the margins. The rules are unclear about how formal any request for action has to be, and how much local or national party formal structures need to be involved. The central meaning is clear – if a political party asks all MPs to send a particular communication to their constituents, that would fall foul of the rules. The request or instruction would have come through party machinery. But there are significant areas of uncertainty.

In circumstances like those of the present case, if the MP had seen the material to which they objected and directed a member of their staff to write a letter indicating their intention to take legal advice, I consider that would not be at the behest of a political party. I also think it would not be at the behest of a party if a member of the MP's staff who had no active role within a party had seen material they considered defamatory and consequently suggested that such a letter be sent and the MP had agreed to that.

Conversely, if those involved in the campaign had drawn the matter to the MP's attention and asked him to write, then I consider this might well be understood as being at the request of a political party, even if there was no local or central party decision to do so.

There are inevitably uncertainties – what if the MP's attention had been drawn to the matter by a party member involved in the campaign without any such request? Which side of the line would it fall?

Those uncertainties are in this case increased by the fact that the person who sent the letter was both a member of the MP's staff, and, in another capacity, an election agent. The member of staff says he decided on the use of headed paper, although the reason he gave for doing so was one I consider legitimate. I note Mr Clarke Smith describes this as "a voluntary role [...] undertakes in his spare time." I have already noted that those who enable elections are performing what can be described, in the widest sense, as a public service, but there is obvious potential for what is at the very least an apparent confusion of roles here.

[Additional details redacted as they are not relevant to the inquiry]

1 July 2021

### 9. Letter from the Commissioner to the Clerk of the Journals, 22 July 2021

5 Thank you for meeting me on Tuesday 20 July.<sup>5</sup> It was a very useful opportunity to talk things through. Please could you confirm your response to the following questions? We started to discuss them and ran out of time:

1. Would it have been more appropriate for the Member to have used his own stationery or his party's stationery to send this letter?
- 10 2. If the letter had been sent by another member of the office staff, using House-provided paper, would that have made any difference in this matter?
3. The complainant felt this was a threat that carried the weight of parliamentary authority. Therefore, do you think this potentially proves the point, set out in paragraph 9, that this letter can be seen to carry the authority of the House?

15 [Additional details redacted as they are not relevant to the inquiry]

Thank you again for your assistance with this matter and for your time in meeting with me.

22 July 2021

### 10. Letter from the Clerk of the Journals to the Commissioner, 26 July 2021

20 Thank you for your letter of 22 July, asking further questions relating to the case of Mr Clarke-Smith. Those questions and my replies are below.

1. *Would it have been more appropriate for the Member to have used his own stationery or his party's stationery to send this letter?*

25 Given that Mr Clarke-Smith's Chief of Staff was also an Election Agent, sending the letter on personal or party stationery would have avoided any confusion of roles, and would certainly have been prudent and so more appropriate.

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<sup>5</sup> A meeting was arranged between the Commissioner and the Clerk of the Journals, to enable the Commissioner to better understand the Clerk's advice regarding general principles and how they applied to this specific case.

2. *If the letter had been sent by another member of the office staff, using House-provided paper, would that have made any difference in this matter?*

5 This is a difficult case, because the rules do not apply to it clearly. In my view, the answer to that question depends on first, how the rules are interpreted and second, on who decided to send the letter.

The fundamental principles for the use of resources include the following questions among those Members can use in deciding whether use is appropriate:

- *Is this resource supporting me in carrying out my parliamentary duties?*

10 *Defining parliamentary duties is difficult but Members may wish to consider (i) the generally accepted parliamentary functions: the legislative role; the oversight and accountability role; and the representative role, including dealing with constituents' problems and (ii) obligations they may have, for example as a small employer.*

- 15 • *Anything which is done for personal benefit or for electioneering or for the direct support of a political party will not be part of a Member's parliamentary duties.*

20 The rules recognise that the House of Commons is based on party politics. The general principles prohibit things which are for the direct support of a political party, or electioneering. Complaining about allegedly defamatory content is not electioneering, nor is it direct support for a political party.

25 In this case, as I have said before, the words complained of were about the MP as MP, and the Member and the Chief of Staff complained the increase in workload affected the office's ability to assist with the representative role. The fact the letter was signed by the Chief of Staff who was also an election agent unhelpfully blurred the distinction between the political and the parliamentary.

Even so, whether or not it would have made a difference if someone else had signed the letter would, in my view, depend on the circumstances in which the letter was sent.

There are two questions to be resolved:

- 30 a) Is an election agent sufficiently close to a political party to make a letter sent on their suggestion something done at the behest of a political party; and
- b) if it is, was the letter in fact initiated at the suggestion of the Chief of Staff, who was an election agent, or done on the instructions of the Member concerned.

Issue a)

5 The rule directly related to stationery and the one that I was asked about was the prohibition on using stationery at the behest of a political party. The letter of the rule implies some party machinery should be involved, such as the central or the Parliamentary party, but I think it can be interpreted more broadly, and it would be reasonable to suggest that something done at the suggestion of the election agent was done at the behest of a party.

Issue b)

10 If so, the issue is who initiated the writing of the letter, as well as who signed it. I personally could not be sure of this. If it was the Chief of Staff's initiative, then I think the inference this was sent at the behest, if not of the party, of someone closely involved in party work, is inescapable. If the Parliamentary Agent had directed another member of staff to sign and send the letter, on his own initiative, then the rule would have been breached, no matter who signed it.

15 If the Member himself had directed the letter should be sent, rather than acquiesced in its sending, it would not have been done at the behest of a political party. Even so the Member and his team were extremely ill advised to allow the confusion of roles between the party and the Parliamentary functions of the Chief of Staff. In this case, it would have been better if someone else had signed it.

20 *3. The complainant felt this was a threat that carried the weight of parliamentary authority. Therefore, do you think this potentially proves the point, set out in paragraph 9, that this letter can be seen to carry the authority of the House?*

25 I do not think it does. The statement on the use of the Crowned Portcullis is about the use of the emblem itself, not of parliamentary stationery. The Crowned Portcullis is a royal emblem, licensed to the House by Her Majesty, and the rules on its use do not just apply to Members. Those rules say in terms that the Portcullis "may be used by Members on their stationery provided by the House". It is permissible for Members to use it, as individual Members, in other ways as well.

30 The phrase about "the authority of the House" in the rules is designed to stop use of the emblem in a way which implies that a communication has the backing of the House as a corporate or collective body. The most notable example is the fact that APPGS are only allowed to use the special version of the Crowned Portcullis designed for such groups, as otherwise it might appear they were official bodies or  
35 that their reports were issued by official committees. A letter on CP paper, with no indication of the sender, requiring someone to cease doing something would be a misuse. But it is perfectly permissible for it to be used by an MP as an MP, in much the same way as a professional might use their office headed paper. MPs are also allowed to use the Crowned Portcullis on wider range of material – for example, its  
40 use on a certificate of appreciation they give to e.g., local businesses is permitted as

long as it is clear the certificate is presented from the Member concerned. It would be impermissible to produce a certificate which purported to be awarded by the House of Commons as a whole.

5 The use of the letterhead on a letter clearly identifying an individual MP, which could have been sent without impropriety on non-headed paper, does not bear the authority of the House as a whole. The threat of use of parliamentary privilege, or bringing pressure to bear on the judiciary, are wrong in themselves, whatever the letterhead used.

[Additional details redacted as they are not relevant to the inquiry]

10 *26 July 2021*

### **11. Letter from the Commissioner to Mr Brendan Clarke-Smith MP, 29 July 2021**

15 In my letter of 29 June 2021, I explained I would be seeking advice from the Clerk of the Journals about the use of stationery, and the crowned portcullis. I received the Clerk's advice earlier this month, and, having received clarification on some of the points raised, I am now in a position to share with you a copy of the Clerk's letters, dated 1 July 2021 and 26 July 2021, for your information. Please note that any content not relevant to this investigation has been redacted.

20 I would ask that you provide any comments on the Clerk's advice by 12 August 2021 and when responding, please confirm whether, when sending the Cease-and-Desist letter to [name redacted], there may have been some confusion regarding the two roles of [name redacted], as an election agent and as your Chief of Staff?

25 Additionally, during the course of my inquiries, an article dated 19 July 2021 by Lincolnshire Live, *Bassetlaw MP faces Parliamentary inquiry over election letter*<sup>6</sup>, was brought to my attention. It appears from the content of the article that confidential information was shared with a third party. I would like to take this opportunity to reassure you that the only information my office has disclosed in this matter is that which is published on my webpage following a decision taken at the House on 21 April 2021. I am, however currently undertaking enquiries with [the complainant]  
30 regarding this matter.

That said, I would like to take this opportunity to remind you that our correspondence remains protected by parliamentary privilege, and I must ask that you continue to maintain the strict confidentiality of the inquiry.

*29 July 2021*

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<sup>6</sup> <https://www.lincolnshirelive.co.uk/news/local-news/bassetlaw-mp-faces-parliamentary-inquiry-5670104>

## 12. Letter from Mr Brendan Clarke-Smith MP to the Commissioner, August 2021

5 I am pleased that the House authorities have confirmed that the use of stationery is appropriate in cases where a Member has sent a 'cease and desist' letter to challenge comments relating to their work and its relation to the complaint made over Paragraph 16 of the Code of Conduct.

I also gratefully take on board the points they have made relating to future use and where it may be most appropriate, as well as being seen to be appropriate.

10 I would once again confirm that the letter was sent at my own request, relating only to the points on the literature making false accusations of my voting record and meetings held with Ministers. The points on the letter were also detailed by myself and I also gave final approval for it being sent. Correspondence will usually be sent from my office by the most appropriate person, allowing for workload and availability.

15 I have also been pursuing a separate case over false accusations made against both my office and I, which relate to a separate piece of literature which was used by a by-election candidate and used the same agent in question.

20 I am of the belief that the Standards investigation was leaked to the local media the week before this by-election for electoral gain. This placed me in a difficult position not being able to comment, but I fully respect the process and procedures of the committee and therefore made no comment on the private and confidential investigation as requested.

25 This leak also led to my Chief of Staff, [name redacted] being publicly named by the media and him subjected to online attacks and abuse, from Labour activists. My staff should never have been named in this way and I would strongly urge the commission review its process of publicly announcing its investigations prior to concluding its investigation.

I would like to thank your team for their professionalism during this investigation and their support offered.

30 *11 August 2021*