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Case No: AC-2025-LON-003806

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 14/05/2026

Before :

MR JUSTICE CHAMBERLAIN

- -

Between :

THE KING **on the application of** **RUPERT LOWE MP**	**Claimant**
- and -	
INDEPENDENT COMPLAINTS AND GRIEVANCE SCHEME	**Defendant**
- and -	
MIC	**Interested Party**

- -

Christopher Newman (Direct Access) for the **Claimant**

Sarah Hannett KC and **Katy Sheridan** (instructed by the **Office of Speaker's Counsel**) for the **Defendant**

Hearing date: 17 March 2026

- -

Approved Judgment

This judgment was handed down remotely at 10am on 15 May 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

Mr Justice Chamberlain:

Introduction

1. The Independent Complaints and Grievance Scheme ("ICGS") was established by resolutions of the House of Commons to perform functions including the enforcement of standards applicable to Members of Parliament and staff concerning bullying, harassment and sexual misconduct.

2. On 23 July 2025, the ICGS decided to proceed with a full investigation into a complaint by an individual referred to in these proceedings as "MIC" against Rupert Lowe MP.

3. By a judicial review claim filed on 23 October 2025, Mr Lowe challenges that decision on the grounds that it was perverse, unlawful and procedurally unfair. He contends that the complaint was made in bad faith and should be seen in the context of a heated dispute between him and members of his former party, Reform UK. Since leaving Reform, Mr Lowe has since started his own party, Restore Britain.

4. The ICGS is not a legal entity, but the claim has been defended by the Speaker of the House of Commons, who says that the activities of the ICGS fall within the exclusive cognisance of that House and the court is therefore precluded by Parliamentary privilege from entertaining the claim at all.

5. On 19 December 2025, I made an initial order on paper, granting anonymity to MIC (who is an interested party in these proceedings) and a restricted reporting order. That order remains in force. Accordingly, there must be there must be no publication of the identity of MIC or of any matter likely to lead to the identification of MIC in any report of, or otherwise in connection with, these proceedings.

6. In the same order, I directed that, before determining the application for permission to apply for judicial review, there was to be a hearing with a time estimate of one day to determine as a preliminary issue whether the claim is justiciable in the light of Article IX of the Bill of Rights and/or the wider principle of Parliamentary privilege.

7. Mr Lowe then applied for an interim order restraining the defendant from taking any further steps to investigate the complaint until the claim was determined or permission to apply for judicial review refused. There was a hearing on 17 February 2026, at which the Speaker invited me to refuse relief on the ground that Parliamentary privilege precluded it.

8. I was not in a position to say that the application of Parliamentary privilege was so clear that there was no serious question to be tried, but refused relief on the balance of convenience, for reasons given in a judgment handed down on 24 February 2026: [2026] EWHC 406 (Admin).

9. The point was more fully argued at a preliminary issue hearing on 17 March 2026. As at the interim relief hearing, Mr Christopher Newman appeared for Mr Lowe and Ms Sarah Hannett KC for the Speaker of the House of Commons. As before, I am grateful to both for their skilful written and oral submissions.

The system for investigating complaints against MPs

10. In 2019, the editors of Erskine May regarded it as orthodox that each House "asserts its right to control the behaviour of its Members in the discharge of their parliamentary and public duties as an aspect of exclusive cognizance". It followed that "the internal rules on conduct derive their authority from resolutions of the House, rather than from statute or the common law, and are therefore enforceable only by the House itself": *Treatise on the Law, Privileges, Proceedings and Usages of Parliament* (25th ed., 2019) §5.1.

11. Following public concern over allegations of impropriety during the early years of the Major Government, the Committee on Standards in Public Life, chaired by Lord Nolan, was established. In its first report, in 1994 (Cm 2850), it recommended the appointment of "a person of independent standing, who should have a degree of tenure and not be a career member of the House of Commons staff, as Parliamentary Commissioner for Standards". This office ("the Commissioner") was first created in 1995. The current Commissioner is Mr Daniel Greenberg CB. He assumed the office on 1 January 2023.

12. In 2017-18, in response to reports of sexual harassment and bullying in Parliament, a cross-party working group was convened. It reported in February 2018, recommending the establishment of the ICGS. On 28 February 2018, the House of Commons endorsed the recommendation. In parallel, the external members of the House of Commons Commission commissioned Dame Laura Cox QC to inquire into allegations of bullying and harassment of House of Commons staff. She reported in October 2018, recommending as follows:

> "Steps should be taken, in consultation with the Parliamentary Commissioner for Standards and others, to consider the most effective way to ensure that the process for determining complaints of bullying, harassment or sexual harassment brought by House staff against Members of Parliament will be an entirely independent process, in which Members of Parliament will play no part."

13. Proposals were formulated by the House of Commons Commission and, on 23 June 2020, the House of Commons resolved as follows:

> "That this House reaffirms its commitment to the Independent Complaints and Grievance Scheme (ICGS) and to tackling bullying, harassment and sexual misconduct on the part of anyone who is or was a member of the parliamentary community; accepts the recommendation in the report by Dame Laura Cox QC on The Bullying and Harassment of House of Commons Staff that complaints against Members should be determined by an independent body; agrees with the proposal brought forward by the House of Commons Commission to implement this recommendation; accordingly agrees to the establishment of an independent panel of experts which shall operate in accordance with the principles of fairness, transparency and natural justice; and expects all Members of this House to cooperate with the Panel's work and comply with its decisions."

14. The procedure agreed upon by the House of Commons is reflected in its Standing Orders ("SOs"), which were amended to make provision for the ICGS and a new Independent

Expert Panel ("IEP"). The IEP has eight members. Its current Chair is Sir Adrian Fulford, the former Vice-President of the Court of Appeal, Criminal Division.

15. SO No. 149(1), which establishes the Committee on Standards, now imposes on that Committee the duty:

> "(a) to oversee the work of the Parliamentary Commissioner for Standards except in relation to the conduct of individual cases under the Independent Complaints and Grievance Scheme… and
>
> (b) to consider any matter relating to the conduct of Members, including specific complaints in relation to alleged breaches in any code of conduct to which the House has agreed and which have been drawn to the committee's attention by the Commissioner…"

16. SO No. 150(1) provides for the role of the Commissioner as an Officer of the House. Paragraph (2) provides that his principal duties now include:

> "(e) to investigate, if he thinks fit, specific matters which have come to his attention relating to the conduct of Members and to report to the Committee on Standards or to an appropriate sub-committee thereof, unless the provisions of paragraph (4) apply; and
>
> (f) to oversee investigations and make findings in cases against Members under the Independent Complaints and Grievance Scheme; to refer such cases to the Independent Panel of Experts where a sanction beyond her powers is contemplated; and to assist the Panel and its sub-panels in its work."

17. SO No. 150A, which establishes the IEP, provides in paragraph (3) that its functions are:

> "(a) to determine the appropriate sanction in ICGS cases referred to it by the Parliamentary Commissioner on Standards;
>
> (b) to hear appeals against the decisions of the Parliamentary Commissioner for Standards in respect of ICGS cases involving Members of this House;
>
> (c) to hear appeals against a sanction imposed under paragraph (a);
>
> (d) to report from time to time, through the Clerk of the House, on the operation of the ICGS as it relates to Members of this House.
>
> …"

18. SO No. 150B provides for cases referred to the IEP to be considered by sub-panels consisting of three members, which are to sit in private. The sub-panel makes a report of its findings to the Chair of the IEP. Where there is an appeal against a finding or determination of the sub-panel, a new sub-panel is established to hear it.

19. SO No. 150C provides for the appointment of IEP members. Members may not be or have been an MP or a Member of the House of Lords.

20. SO No. 150D provides for a motion to be moved by a member of the House of Commons Commission to implement a sanction in respect of an individual ICGS case determined by a sub-panel of the IEP.

21. By resolution of 21 April 2021, the Commissioner was given power "to instigate informal discussions with a Member to indicate concern about the Member's reported attitude, behaviour or conduct; to require a Member to attend a formal meeting at which the Commissioner may indicate concern about or give words of advice on the Member's reported attitude, behaviour or conduct; and require an apology in writing, or on the floor of the House by means of a point of order or a personal statement".

22. By the same resolution, the IEP was given power to impose the following sanctions on MPs on its own authority:

> "(a) requiring a Member to attend training or enter into a behaviour agreement;
>
> (b) withdrawal of services and facilities from a Member, and imposing other personal restrictions including on travel, where this will not affect the core functions of a Member".

23. It was also given the power to determine the following sanctions for decision by the House:

> "(d) withdrawal of services and facilities from a Member, and imposing other personal restrictions including on travel, where this will affect the core functions of a Member, and where the sanction reflects the nature of the offence;
>
> (e) dismissal from a select committee;
>
> (f) suspension from the service of the House for a specified period (during which time the Member receives no salary and must withdraw from the precincts of the House);
>
> (g) withholding of a Member's salary or allowances even if he or she has not been suspended;
>
> (h) in the most serious cases, expulsion from the House."

24. In 2021, the ICGS published a document entitled *Bullying and Harassment Procedure for UK Parliament*. That edition applied to the complaint in issue in these proceedings. It explains how to make a complaint and how complaints are managed. It provides (at para. 4.7) that, where a complaint is made against an MP, the Commissioner will be notified as soon as the complaint is passed to an investigator and (at para. 7.2) that, when the investigator makes his or her initial report, the Commissioner carries out a review to

check whether it is flawed. If so, the case is generally reassessed by a different investigator.

25. In 2022, the ICGS published a document entitled *Bullying and Harassment Policy for UK Parliament*. That edition applied to the complaint in issue in these proceedings. It makes clear (at para. 1.3) that, once the initial assessment is complete, "the investigation will be overseen by the Commissioner in accordance with the Standing Orders of the House of Commons and with any agreement made between [the Commissioner] and the ICGS team".

26. In 2025, the House created an ICGS Assurance Board, consisting of House of Commons and House of Lords clerks, the Commissioner, the Chair of the IEP, a lay member of the House of Lords Conduct Committee, an MP representing the House of Commons Commission, a member of the House of Lords representing the House of Lords Commission and senior human resources professionals from the staff of the two Houses. The Board's function is to "conduct assurance of the Independent Complaints and Grievance Scheme on behalf of the parliamentary community".

The investigation in this case

27. On 28 January 2025, a complaint was made to the ICGS about Mr Lowe. On 28 April 2025, further allegations about Mr Lowe were made to the ICGS. On 23 July 2025, an official working for the ICGS emailed Mr Lowe to inform him that an investigator had been working to determine whether the complaint falls within the scope of the ICGS. The email continued: "They have now determined that an allegation can go forward to investigation, and so I would like to speak to you about next steps". On the next day, the ICGS sent Mr Lowe the "initial assessment report" dated 30 June 2025 which had been sent to the Commissioner. This makes clear that only one of the allegations made to the ICGS is to be investigated.

28. Ms Sarah Hannett KC for the Speaker of the House of Commons confirmed that the initial assessment report was reviewed by the Commissioner, who determined that it was not flawed. The investigation is accordingly proceeding under the oversight of the Commissioner.

29. On 8 October 2025, Mr Lowe approached Mr Alberto Costa MP, Chair of the Standards Committee, attaching a copy of the letter before action sent prior to the filing of these proceedings. On 16 October 2025, the Clerk to the Committee replied as follows:

> "The Standing Orders agreed by the House (specifically 149(1)(a)) prevent the Committee from oversight of the Parliamentary Commissioner for Standards in his work on ICGS cases. The Committee also has no formal role in relation to the ICGS, which is overseen by an ICGS Assurance Board appointed by the House earlier this year and whose appellate body is the Independent Expert Panel, headed by Sir Adrian Fulford, a former Lord Justice of Appeal."

30. In a second email sent on 17 October 2025, the Clerk set out the text of SO No. 149(1)(a) and explained:

> "…the House has given [the Committee on Standards] oversight of what the PCS does on Code of Conduct cases (and more generally) but has not allowed them any oversight on ICGS cases."

Mr Lowe's grounds of challenge

31. Mr Lowe's challenge to the ICGS's decision of 23 July 2025 to proceed with an investigation is advanced on three grounds:

    (a) the decision was so unreasonable that no public authority acting fairly could have taken it;

    (b) the complaint was made vexatiously as part of a campaign of harassment against Mr Lowe; and the ICGS's decision to investigate it was taken in breach of the ICGS's legal duty to avoid facilitating such complaints;

    (c) the decision was vitiated by apparent bias on the part of the ICGS in favour of MIC and against Mr Lowe.

Case law on Parliamentary privilege

32. Much of the authority on Parliamentary privilege is concerned with the scope and effect of Article 9 of the Bill of Rights, which provides that the freedom of speech and debates or proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament. This line of authority was considered by the Divisional Court in *R (ALR) v Chancellor of the Exchequer* [2025] EWHC 1467 (Admin), [2026] 1 WLR 10, at Annex B.

33. However, as Lord Browne-Wilkinson noted in *Prebble v Television New Zealand* [1995] 1 AC 321, 332D:

> "there is a long line of authority which supports a wider principle, of which article 9 is merely one manifestation, viz. that the courts and Parliament are both astute to recognise their respective constitutional roles. So far as the courts are concerned they will not allow any challenge to be made to what is said or done within the walls of Parliament in performance of its legislative functions and protection of its established privileges."

    See, to similar effect, *R (SC) v Secretary of State for Work and Pensions* [2021] UKSC 26, [2022] AC 223, [165] (Lord Reed).

34. In this case, the Speaker does not now rely on Article 9 of the Bill of Rights. He relies, rather, on the common law principle that matters which fall within the exclusive cognisance of the House of Commons are not justiciable. He contends that decisions of the ICGS, at least when they have been reviewed by the Commissioner and given rise to an investigation under his oversight, fall into that category.

35. In *Bradlaugh v Gossett* (1884) 12 QBD 271, Lord Coleridge CJ (with whom Mathew and Stephen JJ agreed) held that "the jurisdiction of the Houses over their own members, their right to impose discipline within their walls, is absolute and exclusive".

36. In *R v Parliamentary Commissioner for Standards ex p. Al Fayed* [1998] 1 WLR 669, the Court of Appeal (Lord Woolf MR, Millett and Mummery LJJ) held that the same went for decisions of the Commissioner for Standards. The Commissioner was required to consider the propriety of the workings and activities of those engaged within Parliament. The Commissioner was "one of the means by which the select committee set up by the House carries out its functions, which are accepted to be part of the proceedings of the House": see at p. 673. Accordingly, the responsibility for supervising the Commissioner lay with the Committee of Standards and Privileges, not the courts.

37. In *R v Chaytor* [2010] UKSC 52, [2011] 1 AC 684, Lord Philips explained as follows at [63]:

> "[Exclusive cognisance] describes areas where the courts have ruled that any issues should be left to be resolved by Parliament rather than determined judicially. Exclusive cognisance refers not simply to Parliament, but to the exclusive right of each House to manage its own affairs without interference from the other or from outside Parliament. The boundaries of exclusive cognisance result from accord between the two Houses and the courts as to what falls within the exclusive province of the former. Unlike the absolute privilege imposed by article 9, exclusive cognisance can be waived or relinquished by Parliament."

38. At [64], Lord Phillips noted that the principle of excusive cognisance was originally based on the premise, attributed to Blackstone, that the High Court of Parliament had its own peculiar law which was not known to the courts.

39. The question in *Chaytor* was whether prosecutions of MPs for false accounting in respect of allegedly dishonest claims for expenses and allowances infringed Parliamentary privilege. At [73], Lord Phillips cited with approval an excerpt from the Report of the Joint Committee on Parliamentary Privilege of 1999 (HL Paper 43-I, HC 214-I), which included these passages:

> "247. The dividing line between privileged and non-privileged activities of each House is not easy to define. Perhaps the nearest approach to a definition is that the areas in which the courts ought not to intervene extend beyond proceedings in Parliament, but the privileged areas must be so closely and directly connected with proceedings in Parliament that intervention by the courts would be inconsistent with Parliament's sovereignty as a legislative and deliberative assembly. One example is the Speaker's decision on which facilities within the precincts of the House should be available to members who refuse to take the oath or affirmation of allegiance. Another example might be steps taken by the library of either House to keep members informed upon matters of significant political interest. Such steps, if authorised by the presiding officer of the House, would properly be within the scope of the principle and not amenable to orders of the court.
>
> 248. It follows that management functions relating to the provision of services in either House are only exceptionally subject to privilege. In particular, the activities of the House of Commons Commission, a statutory

> body appointed under the House of Commons (Administration) Act 1978, are not generally subject to privilege, nor are the management and administration of the House departments. The boundary is not tidy. Occasionally management in both Houses may deal with matters directly related to proceedings which come within the scope of article 9. For example, the members' pension fund of the House of Commons is regulated partly by resolutions of the House. So too are members' salaries and the appointment of additional members of the House of Commons Commission under section 1(2)(d) of the House of Commons (Administration) Act. These resolutions and orders are proceedings in Parliament, but their implementation is not."

40. At [74]-[75], Lord Phillips noted that the modern system of administration was rooted in the House of Commons (Administration) Act 1978, which established the House of Commons Commission and gave it corporate status. It followed that actions in contract and tort arising out of the internal administration of the House were unlikely to be precluded by Parliamentary privilege.

41. However, the position was different in relation to claims for judicial review in relation to the conduct by each House of its internal affairs. Here, "[t]he courts will respect the right of each House to reach its own decision in relation to the conduct of its affairs". Two examples where this approach had been applied were *In re McGuinness's Application* [1997] NI 359 (a challenge to the Speaker's decision to deny use of Parliamentary facilities to elected individuals who had not taken the oath of allegiance) and *Al Fayed* (where the challenge was to a decision of the Commissioner to publish a report relating to the conduct of an MP).

42. At [79], Lord Phillips said: "I have considered the encroachment by the laws of contract and tort on areas that previously fell within the exclusive cognisance of Parliament and pointed out the distinction that must be drawn between such claims and applications for judicial review." He then went on to consider the application of the criminal law to conduct taking place in Parliament.

43. At [89], Lord Phillips held that Parliament had by legislation and administrative changes relinquished any claim to exclusive cognisance of the administrative business of the two Houses. Where decisions in relation to administrative matters were taken by a parliamentary committee, those decisions were protected by privilege, but their implementation was not. Since the prosecutions related to an area of activity which is administrative, this distinction applied. The consequence was spelled out at [92]:

> "If an applicant sought to attack by judicial review the scheme under which allowances and expenses are paid the court would no doubt refuse the application on the ground that this was a matter for the House. Examination of the manner in which the scheme is being implemented is not, however, a matter exclusively for Parliament. It was not suggested that members have a contractual entitlement to allowances and expenses, but if they were to have such contractual rights, I see no reason why they should not sue for them. If a question were raised as to whether allowances and expenses were taxable, the court would be entitled to examine the circumstances in which they were paid. Equally there is no bar in principle to the Crown Court considering whether the claims made by the defendants were fraudulent. This is not to

> exclude the possibility that, in the course of a criminal prosecution, issues might arise involving areas of inquiry precluded by parliamentary privilege, although that seems unlikely having regard to the particulars of the charges in the cases before us."

Submissions for Mr Lowe

44. Mr Newman for Mr Lowe submitted that a party seeking to rely on Parliamentary privilege bears the burden of establishing that the continuation of the privilege is necessary for the functioning of the legislative body: see the decision of the Supreme Court of Canada in *Canada (House of Commons) v Vaid* [2005] 1 SCR 667, [29]. In this case, there was no assertion of Parliamentary privilege in the response to the letter before action. Once the point was raised, reliance was originally placed on Article 9 of the Bill of Rights. That has since been abandoned.

45. *Al-Fayed* shows that, before the current system was introduced, decisions of the Commissioner in relation to investigations into MPs would have fallen within the exclusive cognisance of the House of Commons. Applying the test in *Chaytor*, judicial review of decisions of the Commissioner under that system would be interfering with the work of a Committee.

46. By its Resolution of 23 June 2020, however, the House of Commons decided to accept Dame Laura Cox's recommendation that investigations into complaints that MPs have engaged in bullying or harassment should be undertaken by persons who are not themselves MPs. This was deliberate. It was done to avoid the perception of MPs marking their own homework in this area. The parameters of the scheme are set by the Standing Orders and Resolutions of the House of Commons. Applying *Chaytor*, the court could not entertain any challenge to those. But, as *Chaytor* shows, the implementation of the scheme is a different matter; and there is no reason why decisions taken by officials under the scheme should not be subject to review by the courts.

47. If it were necessary to consider the issue from first principles, decisions taken under the new arrangements do not fall within the exclusive cognisance of the House. Such decisions cannot be said to assist the work of a Committee of the House: they have been deliberately removed from the purview of the Committee on Standards. That being so, there is no feature of the Commissioner's role which suggests that his decisions should lie wholly outside the jurisdiction of the courts: see by analogy *R v Parliamentary Commissioner for Administration ex p. Dyer* [1994] 1 WLR 621.

48. The existence of the IEP does not change the position. That could be relevant, if at all, to an argument that the court should decline to exercise its jurisdiction because of an alternative remedy, but that is not within the scope of the preliminary issue. In any event, the fact that a decision has been taken by a body with a judicial chair does not immunise it from judicial review: see e.g. *R (A) v Lord Saville of Newdigate* [2001] EWCA Civ 2048 [2002] 1 WLR 1249. Where a breach of natural justice is alleged, judicial review is the appropriate remedy: see *R v Hereford Magistrates Court ex p. Rowlands* [1998] QB 110.

49. If the Speaker's case on exclusive cognisance were correct, an MP would be entirely without remedy if, for example, a future Chair of the IEP conducted a case without

disclosing a relevant interest; and an IEP member or ICGS investigator would be unable to sue for their agreed remuneration. This would be undesirable and unprincipled.

Submissions for the Speaker of the House of Commons

50. The distinction in *Chaytor* between the architecture of a scheme and its implementation applies only to administrative matters (of which expenses are an example). It does not apply to matters, such as the discipline of MPs, which have long been recognised as falling within the exclusive cognisance of the House, even though certain functions have from time to time been delegated to organs of the House and/or to officers or staff acting on the House's behalf. So, the question is whether the Resolution of 23 June 2020 waived or relinquished the House's exclusive cognisance in this respect.

51. The Resolution of 23 June 2020 does not expressly or by necessary implication waive or relinquish this House's exclusive cognisance in respect of discipline in bullying and harassment cases. It merely removes the Standards Committee's function of supervising the ICGS in this category of cases and creates the IEP. This was a delegation of the House's exclusive cognisance, not a waiver of it.

52. The functions of overseeing investigations by the ICGS into the conduct of MPs and hearing appeals from the Commissioner are vested, respectively, in the Commissioner, who is an officer of the House, and the IEP, which is accountable to the House through its Chair. In serious cases, the IEP lays a report before the House. Such a report would enjoy the protection of Article 9 of the Bill of Rights.

53. The decision challenged in this case was made after the investigation came under the oversight of the Commissioner and was therefore undoubtedly privileged. Even before that, the better view is that decisions of the ICGS would have been privileged.

Discussion

54. As Lord Phillips noted in *Chaytor* at [64], the origins of the principle of Parliamentary privilege can be seen in Blackstone's broad formulation that "whatever matter arises concerning either House of Parliament, ought to be examined, discussed, and adjudged in that House to which it relates and not elsewhere": *Commentaries on the Laws of England,* Book 1, Chapter 2 (University of Chicago Press, 1979), pp. 158-9. Parliament was understood as itself a court (the High Court of Parliament), applying its own system of law (the *lex et conseutudo parliamenti*), distinct from the common law and unknown to the courts.

55. This justification requires some updating in light of the development of the theory of the separation of powers, but there are echoes of it in the 1999 report of the Joint Committee on Parliamentary Privilege that there are some areas "so closely and directly connected with proceedings in Parliament that intervention by the courts would be inconsistent with Parliament's sovereignty as a legislative and deliberative assembly". Ms Hannett for the Speaker urged caution in attributing the views of the Joint Committee to Parliament itself, since it was never endorsed by any resolution of the House. The Committee's report has, however, been widely relied upon in the case law on Parliamentary privilege: see e.g. *Chaytor,* [54]-[55] and [71]-[73]; *SC,* [16]; *ALR,* [38].

56. A test of close and direct connection with proceedings in Parliament derives some support from the decisions of the Supreme Court of Canada. In *Vaid*, it was said at [46] that, to fall within the scope of Parliamentary privilege, a matter must be "so closely and directly connected with the fulfilment by the assembly or its members of their functions as a legislative body… that outside interference would undermine the level of autonomy required to enable the assembly and its members to do their work with dignity and efficiency". In *Chagnon v Syndicat de la function publique et parapublique du Québec* [2018] 2 SCR 687, at [30], it was said that the necessity test articulated in *Vaid* meant that "the sphere of activity over which parliamentary privilege is claimed be more than merely connected to the legislative assembly's functions. The immunity that is sought from the application of the ordinary law must also be necessary to the assembly's constitutional role".

57. It may be noted that this latter formulation focuses not on the particular decision under challenge, but on the "sphere of activity over which parliamentary privilege is claimed". This is consistent with the analysis in *Chaytor,* which makes clear that Article 9 of the Bill of Rights reflects and codifies part, but not all, of the territory occupied by the wider common law principle of Parliamentary privilege; and that there are broadly defined functions performed by one or other House of Parliament which fall within the exclusive cognisance of that House, but which do not attract the protection of Article 9.

58. The conclusion in *Chaytor* that the criminal courts could entertain claims in respect of fraudulent claims for expenses and allowance depends critically on two distinctions. The first is between functions which are "essentially a matter of administration" (which would not attract privilege) and other functions (which might). The submission and consideration of claims for expenses and allowance fell into the first category not only because the function was performed by officials, rather than by a committee or by the House itself, but also because the function is not closely connected with the House's legislative or deliberative role.

59. The second distinction is between the application of the ordinary criminal and civil law to conduct occurring in or relating to Parliament and the application of judicial review in respect of "the conduct by each House of its internal affairs". The application of the criminal law to crimes committed on the Parliamentary estate is unlikely to affect the House's role as a legislative and deliberative body, because, as Lord Phillips explained at [61], Parliament has no criminal jurisdiction. Even its historic jurisdiction to imprison or fine for contempt has not been used in recent times.

60. Similarly, Parliament has no equivalent to the courts' and tribunals' mechanisms for enforcing the ordinary law of contract and tort; and, as explained at [74]-[75], the establishment of the House of Commons Commission by statute, together with other express statutory provisions, indicate a clear intention that the ordinary business of maintaining the Parliamentary estate, employing staff etc. should be subject to those mechanisms.

61. Judicial review in relation to the conduct by each House of its internal affairs, however, raises "[d]ifferent considerations": see *Chaytor,* at [76]. Of the two examples given at [76] and [77], *Al Fayed* is the closest to the present case. It is true that the reasoning there, endorsed by Lord Phillips, relies to some extent on the fact that the Commissioner's functions were, at that time, subject to supervision by the Committee on Standards. But

a broader justification can be discerned: that "the focus of the Parliamentary Commissioner for Standards is on the propriety of the workings and the activities of those engaged within Parliament". Decisions in this sphere of activity are liable to affect Parliament's legislative and deliberative role because decisions about the propriety of an MP's conduct can affect that MP's standing with his or her colleagues and in some cases may have more direct effects, temporary or permanent, on the MP's ability to participate in the legislative or deliberative business of the House or its committees.

62. With these distinctions in mind, there are five key features of the functions of ICGS in investigating complaints of bullying and harassment which, in my judgment, indicate that its functions continue to fall within the exclusive cognisance of the House of Commons, notwithstanding the Resolution of 23 June 2020.

63. First, in investigating complaints of bullying or harassment against MPs, the ICGS is performing a disciplinary function focussed on the propriety of the activities of MPs. Discipline of MPs is not in the nature of an administrative function (such as the submission and consideration of expense claims) and has historically been recognised as falling within the exclusive cognisance of the House of Commons: see *Bradlaugh v Gossett* and *Al Fayed*.

64. Secondly, the House of Commons has, through resolutions and standing orders, established a detailed internal framework of rules, substantive and procedural, governing the discipline of MPs. This framework now includes the ICGS, the Commissioner and the IEP. The establishment of the IEP, chaired by a former senior judge, suggests that the framework was intended to be comprehensive. This is not because a former or serving judge is per se immune from judicial review. It is because the existence of a process providing the kind of remedy that in other circumstances would be available from a court suggests an intention that challenges to disciplinary decisions were intended to be determined within the confines of that internal framework.

65. Thirdly, the ultimate outputs of this framework include determinations that an MP should suffer a withdrawal of particular services and facilities, be dismissed from a select committee or suspended or expelled from the House. These sanctions clearly affect the MP's core functions and for that reason must be confirmed by the House (see the Resolution of 21 April 2021). It is common ground that any interference by the court with such decisions would be contrary to Article 9 of the Bill of Rights. But sanctions less severe than that, and even the fact of an investigation itself, are also capable of having an impact on an MP's reputation and standing and thereby affect an MP's ability to perform his or her core political functions.

66. Fourthly, and in any event, it would be incoherent for some, but not other, decisions taken under the internal disciplinary framework to be subject to review by the courts. All parties accept that it would infringe Parliamentary privilege (and indeed Article 9 of the Bill of Rights) to interfere with the IEP's recommendation to the House to impose one of the more serious sanctions. But the ICGS investigation is part and parcel of an investigative process which may lead to such a report. An order quashing or staying an ICGS decision to investigate—both of which forms of relief are sought here—would have the effect of preventing the House from imposing one of these more serious sanctions. This too would interfere, albeit at an earlier stage, with Parliament's disciplinary function.

67. Fifthly, it is important not to lose sight of the facts that complaints may be brought for political reasons or may have a strongly political context. Mr Lowe's own case (about which I have reached no conclusion) is that that is so in the present instance. If this court were to entertain Mr Lowe's claim, it would have to determine whether, as he says, the complaint to the ICGS was politically motivated and made in bad faith. There are sound reasons, rooted in the constitutional separation of powers, for Parliament to reserve the determinations of complaints of this kind to its own carefully calibrated internal framework. There are equally sound reasons for the courts to respect that reservation.

68. In my judgment, these considerations point to the conclusion that the whole disciplinary framework—including those parts of it entrusted to the ICGS, the Commissioner and the IEP—fall within the exclusive cognisance of the House of Commons.

Conclusion

69. For these reasons, the present claim is barred by Parliamentary privilege. It is accordingly not justiciable. I shall invite written submissions on the terms of the order necessary to give effect to this judgment and on any ancillary matters. To the extent that permission is needed for this judgment to be cited, I give that permission.