

COMMONWEALTH PARLIAMENTARY ASSOCIATION

# HANDBOOK ON LAY MEMBERS FOR COMMONWEALTH PARLIAMENTS



## About the CPA

The Commonwealth Parliamentary Association (CPA) connects, develops, promotes and supports parliamentarians and their staff to identify benchmarks of good governance and the implementation of the enduring values of the Commonwealth. The CPA collaborates with parliaments and other organisations, including the intergovernmental community, to achieve its statement of purpose. It brings parliamentarians and parliamentary staff together to exchange ideas among themselves and with experts in various fields, to identify benchmarks of good practices and new policy options they can adopt or adapt in the governance of their societies.

## About the CPA Small Branches

The CPA Small Branches is a network made up of members from over 40 Commonwealth legislatures in jurisdictions with populations of up to 500,000 people. Members discuss political problems and the operation of democratic systems in some of the world's smallest jurisdictions. The CPA works closely with Small Branches in all regions of the Commonwealth to identify their particular needs and requirements in parliamentary strengthening, development and cooperation. [www.cpahq.org](http://www.cpahq.org).

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# Foreword by the CPA Small Branches Chairperson

Hon. Niki Rattle, CPA Small Branches Chairperson and Speaker of the Parliament of the Cook Islands

Smaller legislatures are often handicapped by not having sufficient numbers of parliamentarians to ensure all functions of parliament can be adequately delivered. Parliaments need Members to populate parliamentary committees, reach quorums in Chamber plenary, and sit on boards and commissions. These are crucial in order to effectively hold the executive to account whilst ensuring adequate representative democracy. The adoption of lay members can supplement the membership of parliaments in small legislatures in order for them to fulfil such functions without needing to redraw constituency boundaries, amend constitutions or adopt fully nominated or all-Island-wide Members. Branches that have taken the innovative step to incorporate such members have benefited in multiple ways in having valuable external insight and accountability mechanisms in place - furthering their institution and parliamentary democracy.



In accordance with the CPA Recommended Benchmarks for Democratic Legislatures, “*the Legislature’s rules, procedures and practice shall be reviewed regularly to enhance parliamentary effectiveness and relevance.*”<sup>1</sup> When undertaking such reviews, small legislatures should actively consider the use of lay members as a way of augmenting their numbers as well as increasing the diversity of its membership.

For forty years, the CPA Small Branches network has sought to find effective and practical approaches to help strengthen the capacity of parliaments within smaller jurisdictions and territories across the Commonwealth. This Handbook, a first of its kind to look at this issue, will be an invaluable asset to those legislatures that wish to learn more about the nature of lay members and how they can effectively be incorporated into parliamentary systems across the Commonwealth.

I would like to take this opportunity to thank you all for your continued support and I look forward to working with every member to achieve the network’s mission.

<sup>1</sup> [https://issuu.com/the-parliamentarian/docs/recommended\\_benchmarks\\_for\\_democrat](https://issuu.com/the-parliamentarian/docs/recommended_benchmarks_for_democrat) pg. 5





# How to use this Handbook

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This handbook serves as an information resource for Commonwealth parliaments, more notably, small states and territories supporting the adoption of lay members into a parliamentary system.

Although the toolkit is not exclusively for smaller states, the research presented in this handbook presents various motivations driving smaller states to adopt lay members into their parliamentary systems.

This handbook is structured to provide clarity into what a lay member is in the parliamentary context. It goes on to explore the various motivations behind the adoption of lay members into parliamentary systems and consideration of the benefits of having such members. It further explores the challenges that parliaments have faced during the process of deliberations when moving motions to include lay members onto committees and the possible concerns that parliaments seeking to emulate this approach may have. Following this, the handbook then explores the roles and responsibilities of lay members.

A number of case studies have been carefully selected for a comparative analysis to highlight the differing approaches adopted by parliaments across the Commonwealth. Although the handbook focuses primarily on small states and territories, many of the examples given and approaches taken can be applied to all Commonwealth jurisdictions that wish to further explore the adoption of lay members.



# What is a Lay Member?

A lay member commonly refers to someone who serves on the board or panel of an organisation in order to enhance its governance by acting as an advocate for public interest.

Lay members are a key component of professional regulatory bodies and the demand for such a component has in recent times surpassed the public sphere and crept into the realm of politics.

The adoption of lay members in various parliamentary systems is a phenomenon that is very complex by nature. The rationale for the inclusion of lay members into parliamentary systems may vary depending on the needs of the respective parliament, and in turn, the responsibilities attributed to lay members at the discretion of the parliament, too, vary. Therefore, in essence, there is no single concrete definition ascribed to a lay member in the broader parliamentary context.

However, in agreement with the definition applicable to the wider society and in accordance with the analysis of a select few parliamentary case studies (referenced throughout this handbook);

**“A lay member in the parliamentary context can be described as a member of the public (not considered a Member of Parliament), invited to sit on a committee, board, commission or other unit within the parliamentary system in order to bring an independent and external perspective to deliberations.”**



## Non-Elected Members and Representatives

The concept of having a non-elected representative serving within a parliament dates as far back as the 19th century with the presence of ex-officio persons in the chambers of colonial governments. The term *ex-officio* is a Latin word, which directly translates to “from the office,” meaning a member who is a part of a body by virtue of another office or position they hold. In many UK Overseas Territories and small jurisdictions, it was proclaimed in their constitutions that ex-officio members must exist

within the parliamentary system. In the 1976 Constitution of the Anguilla House of Assembly, for example, twenty three percent of the House was declared ex-officio. The Executive Council was fifty percent non-elected. In this case, one notable motivation for the adoption of these

members was to ensure technical expertise was available to advise government on matters relating to law and finance in the House. Although there are far fewer ex-officio members in the Anguillan House of Assembly today, (succeeding the 2019 Constitutional Amendment which made provisions for the House to consist of a Speaker, 2 ex-officio members (the Attorney General and the Deputy Governor), and 10 elected members, for a total of 13 persons<sup>2</sup>), they still exist and have done so for many years. In Anguilla, these members, Attorney General and the Deputy Governor, are appointed at the will and discretion of the Governor, although they do not have a mandate from the people, they have the same influence in their ability to vote.

In many Commonwealth jurisdictions there is also a precedent that the Speaker is often appointed and is not a formal elected Member of the House. In the Cook Islands for example, in accordance with the Constitution<sup>3</sup> and Standing Orders,<sup>4</sup> the Speaker is to be elected by the House at the start of the parliamentary term and does not have to be a Member of Parliament, but must merely be able to qualify for election as one.

In the instance of St Lucia, in October 2020, the Governor General appointed three new temporary senators to ensure that an emergency COVID-19 bill<sup>5</sup> could be deliberated on.



<sup>2</sup> <http://www.gov.ai/images/clipart/Phyllis%20presentation.pdf> pg. 3

<sup>3</sup> [http://www.mfem.gov.ck/images/documents/CEO\\_docs/Legislations/Constitution-of-the-Cook-Islands/Constitution%20of%20the%20Cook%20Islands%20as%20at%2017%20July%201997%20with%20amendments%20incorporated.pdf](http://www.mfem.gov.ck/images/documents/CEO_docs/Legislations/Constitution-of-the-Cook-Islands/Constitution%20of%20the%20Cook%20Islands%20as%20at%2017%20July%201997%20with%20amendments%20incorporated.pdf)

<sup>4</sup> <https://parliament.gov.ck/mandates/standing-orders/>

<sup>5</sup> <https://www.caribbeannewsglobal.com/wp-content/uploads/2020/09/COVID-19-Prevention-and-Control-Bill.pdf>





# Motivations for the Adoption of Lay Members

There may be countless contextual reasons that determine why each individual parliament seeks to adopt lay members as key players within their parliamentary system.

However, the need for an independent and external perspective that can also supplement the numbers available to scrutinise is the underlying factor that underpins this demand.

## Combating Parliamentary Limitations and Building Public Confidence

A dilemma that can exist in a parliamentary democracy is “who polices the policemen.” In other words, who scrutinises and ensures oversight of parliament and the conduct and behaviour of its Members? Some would argue that this is the role of the citizenry at elections, the courts through the interpretation of constitution, or even the media to scrutinise what parliament does or does not do well. However, parliament can seek to internalise its own checks and balances through the use of lay members. By bringing into parliament independent external experts to sit on or chair commissions, committees of conduct and standards or administrative boards, parliaments can strengthen internal auditing and scrutiny, and thus by extension, increase the public’s confidence in parliament’s ability to govern itself responsibly.

Many parliaments across the Commonwealth enjoy parliamentary privilege, particularly those whose constitutions are based on the ‘Westminster System’. The nature of privilege will depend on the constitution of the jurisdiction concerned. The reason for parliamentary privilege is that legal immunity enables parliamentarians to be able to speak freely in proceedings without fear nor favour. In jurisdictions which have adopted

a ‘Westminster System’ it is normal for the courts to rule on the boundaries of privilege.

The notion of *‘exclusive cognisance’*<sup>6</sup> essentially refers to parliament being able to control its own affairs, free from any interference by the courts, which means that any matter that falls under parliamentary privilege is regulated by parliament. To put it simply, where a matter is privileged, it is for the parliament to regulate: in the Canadian context privilege rights have been described as including the following: *“Power to discipline; Regulation of the House’s internal affairs; Management of Employees; Authority to maintain the attendance and service of Members; Right to institute inquiries and to call witnesses and demand papers; Right to administer oaths to witnesses; Right to publish papers containing defamatory material and legal immunities for lack of fear or favour.”*<sup>7</sup>

Failure to meet the appropriate standards of internal regulatory affairs and breaches of conduct can enable the public to lose confidence in parliament and its ability to deliver on its function of ensuring accountability. Loss of confidence and trust in the political system can result in political disengagement - consequently threatening democracy. One way to overcome any such threat, is by bringing lay members onto standards committees in order to help such committees maintain an objective view, particularly in the face of potential breaches of conduct. In appointing lay members, it is important to consider whether parliament has the ability to appoint lay members without losing privilege.

<sup>6</sup> <https://erskinemay.parliament.uk/section/4543/control-of-proceedings/>

<sup>7</sup> Bosc Marc and Gagnon André, Chapter 3 Privileges and Immunities, House of Commons Procedure and Practice, Third Edition 2017 [https://www.ourcommons.ca/about/procedureandpractice3rdedition/ch\\_03\\_7-e.html](https://www.ourcommons.ca/about/procedureandpractice3rdedition/ch_03_7-e.html)

## UK CASE STUDY

In November 1995, the House of Commons in the United Kingdom established the Committee on Standards and Privileges (since 2013 the Committee has been split into two separate committees; Committee of Standards and Committee of Privileges). The Committee on Standards in Public Life recommended reforming this system by allowing lay members to serve on the Select Committee. On 2 December 2010, in moving the Motion for the adoption of Lay Members, the Chair of the Committee on Standards and Privileges stated: “...that the workings of the House are as transparent as is humanly possible, so that people outside have more confidence in us than they have had in the recent past.”<sup>8</sup>

The adoption of lay members into a committee system that regulates standards, allows for a neutral and external voice to be brought to the deliberations in an effort to combat possible breaches. It is also a good way of ensuring that power to control its internal matters is kept within the House, thus still adhering to the principle of exclusive cognisance.

### Scrutiny, Accountability and Small States and Territories

The adoption of lay members can speed up decision-making processes and strengthen transparency, accountability and scrutiny.

The chief purpose of many, indeed most, parliamentary committees is to scrutinise and carry out investigative works that hold the executive to account. Some smaller legislatures have found appointing outside experts as lay members can significantly strengthen this process. The CPA Recommended Benchmark for Democratic Legislatures recommends that “*committees shall have the right and sufficient resources to consult and/or employ experts,*”<sup>9</sup> and although this recommendation references consulting experts (as is done by larger legislatures) and does not assure sufficient

resourcing, it does emphasise the benefit of having an expert voice present in committee deliberations for apt scrutiny, which for smaller legislatures can be in the form of appointing lay members.

*“Committees shall have the right and sufficient resources to consult and/or employ experts.”*

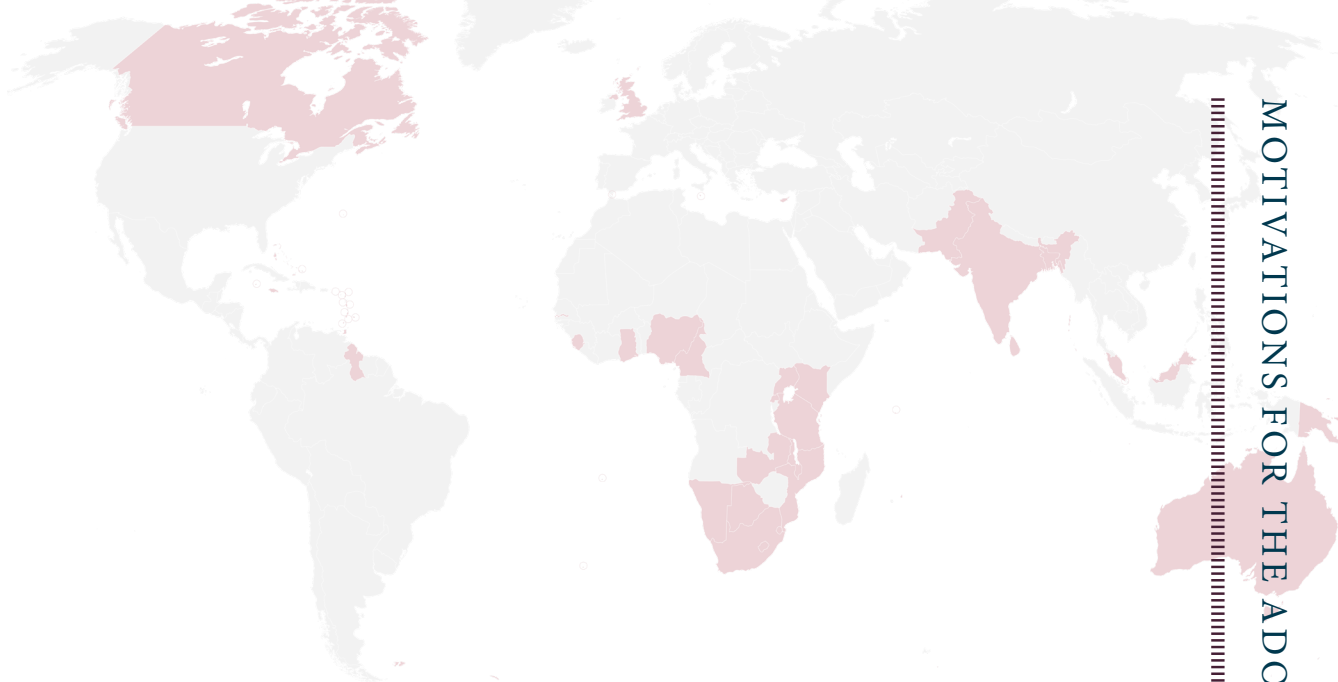
Small states and territories generally have more scope for scrutiny due to the size of their populace, as this allows for more direct or personal participation of large portions of the citizenry in the political process. Although smaller states and territories do have respectively smaller legislatures, the closeness of the communities (in social proximity and otherwise) affords a natural transparency; the awareness of bigger issues and the details of how they are being dealt with are more extensive. There is also far less bureaucracy as there are far fewer chains of intermediary communications so citizens do have a higher chance of having their views heeded. For this reason, there is arguably far more pressure from the public on committees to scrutinise effectively.

<sup>8</sup> <https://hansard.parliament.uk/commons/2010-12-02/debates/10120235000001/PublicationOfInformationAboutComplaintsAgainstMembers>

<sup>9</sup> [https://issuu.com/theparliamentarian/docs/recommended\\_benchmarks\\_for\\_democrat](https://issuu.com/theparliamentarian/docs/recommended_benchmarks_for_democrat) pg. 8







### FALKLAND ISLANDS CASE STUDY

The experience of the Falkland Islands demonstrates the importance of inclusion of personal participation in the political process for greater accountability. In the twenty committees, there are at least two elected Members and a mix of civil servants and lay members. The Public Accounts Committee (PAC) is established under the Constitution and stipulates that three out of five of the members of the PAC are lay members. The motivation behind this arrangement seeks to encourage scrutiny of the government's financial decision-making through the aid of external members who are neutral actors and are neither politically motivated nor under the heel of the executive.

## Independent and Expert Voice

As highlighted above in the context of Anguilla, much of the justification for having the Deputy Governor and the Attorney General as members of the House is to ensure that there is expert input into parliamentary deliberations. These individuals can offer advice on matters related to the law and the public service. This can provide a cost-effective approach to the legislature without the need to employ costly researchers, technical specialists or the need to summon such individuals to committees or debates.

Having such expertise at the disposal of the legislature via lay members is not solely for the benefit of smaller legislatures though. Many larger parliaments also take such an approach.

In the 2020 CPA publication on *“The Model Law for Independent Parliaments,”* which is designed to support Commonwealth Legislatures in functioning effectively in a democratic setting, the Model Law identifies the inclusion of an external member as “best practice” in reference to the composition of a Parliamentary Services Commission. The argument for adopting a lay member in the Model Law is to assist in giving an independent and external voice to the Commission.<sup>10</sup> Unlike parliamentary committees covered by privilege, the House of Commons Commission in the United Kingdom, is a statutory body responsible for the administration and services of the House, (as well as maintenance of the Palace of Westminster and the parliamentary Estate) and provides the non-executive governance of the House. At present, the Commission has ten members in total – two are lay members in the sense of the Model Law, and two of whom are senior executives from the House of Commons administration.<sup>11</sup> The justification behind the adoption of these members in this Commission is in line with the Model Law in that it sought to invite outside knowledge through the careful selection of lay members with extensive strategic and governance expertise.

Some smaller legislatures also require a certain level expertise from lay candidates in their legislatures, particularly in Committees, as evident in the States of Jersey where applicants for the post of lay member of the Public Accounts Committee were required to have a successful *“track record in finance, legal, regulatory or similar environments and executive or director level experience in complex organisations and/or literacy in accounting.”*<sup>12</sup>

It is evident that there are many motivations for the adoption of lay members into a parliamentary system, but irrespective of these, the outcome is the same – public trust and confidence in parliamentary procedure and its competencies is deepened.

## Diversity and Inclusion

Although there is no clear precedent for lay members to be created or appointed for increasing diversity, there is the argument that lay members could be utilised by parliaments to ensure a range of views are heard in parliament. Many smaller parliaments struggle to ensure there is a balanced representation of genders, ages, religious beliefs, ethnicities, abilities, races, sexualities or other groups in the make-up of parliament. Lay members could be brought in to mitigate such gaps as temporary measures until more long-term institutional changes can be made, whether that be quotas or other practices.<sup>13</sup>

<sup>10</sup> [http://www.cpahq.org/cpahq/cpadocs/Model%20Law%20for%20Independent%20Parliaments\\_Final.pdf](http://www.cpahq.org/cpahq/cpadocs/Model%20Law%20for%20Independent%20Parliaments_Final.pdf) pg 12, 15.

<sup>11</sup> <https://committees.parliament.uk/committee/348/house-of-commons-commission/membership/>

<sup>12</sup> <https://statesassembly.gov.je/news/pages/pac-seeks-2-non-states-members.aspx>

<sup>13</sup> Commonwealth Parliamentary Association, A Study Group Report, Gender-Sensitising Commonwealth Parliaments, 2001, pg13, 27.



# Challenges of Adopting Lay Members

With respect to the various motivations that drive the demand for inclusion of lay members, there are challenges to consider when seeking to incorporate a new component into a longstanding parliamentary system.

## Parliamentary Privilege

In a parliamentary system protected by parliamentary privilege there is a risk that proceedings involving lay members are not covered by parliamentary privilege. This issue was raised in the UK House of Commons when lay members were added to the then Standards and Privileges Committee. In 1705, it had been agreed that *“neither House of Parliament hath power, by any Vote or Declaration, to create to themselves any new Privilege, that is not warranted by the known Laws and Customs of Parliament.”*<sup>14</sup> The concern was that the assertion of privilege in respect of a committee consisting of member and non-members could constitute a *“new privilege.”*

In the Procedure Committee’s Sixth Report of 2010-12 Session on *“Lay membership of the Committee on Standards and Privileges”* reported on 7 November 2011, the Committee recommended *“the Government bring forward legislation to put beyond reasonable doubt any question of whether parliamentary privilege applies to the Committee on Standards where it has an element of lay membership.”* The Government published its Green Paper on Parliamentary Privilege on 26 April 2012 which enclosed draft clauses that stipulate that committee proceedings would be protected by parliamentary privilege if voting rights were given to lay members, although this legislation was not introduced. Subsequently the House agreed to give lay members a vote, even without such legislation.

Each legislature will have to assess whether it considers that it is possible to incorporate lay members while retaining privilege within its particular legal system.

## Rights of Lay Members

The question of what rights should be given to a lay member can be challenging. For example, a lay member may demand that they are given identical rights to that of the elected members i.e. voting rights, so that the effects of their scrutiny is just as impactful as their counterparts on committees.

In the case that a parliament decides that lay members will not be given identical rights (i.e. the right to vote etc.) to that of elected members, it is important to maintain public confidence in the ability of lay members to be taken seriously. It may be worth establishing a distinct set of rights that can only be exerted by lay members that allows them to maximise their ability to scrutinise in a different way. For example, in the Committee on Standards in the United Kingdom, lay members were given the right to append a ‘rider’ or ‘minority report’ to publications. This was arguably just as powerful as being given the right to vote as it meant the public were able to read the contributions made by lay members during the committee proceedings and cross reference these with the outcomes of the proceedings in order to

<sup>14</sup> UK Parliament, Privilege Committee Contents, The Powers of the House of Lords in respect of its Members, 26 January 2009 <https://publications.parliament.uk/pa/ld200809/ldselect/ldprivi/87/8703.htm>

determine whether or not lay members were being listened to. In the United Kingdom, these lay members have now been granted full voting rights since the House took the decision on 7 January 2019 to approve the Committee's Fifth Report; the House clearly agreeing with the Committee that *"the advantages to the House of conferring voting rights immediately on lay members outweigh what we believe is the relatively small risk of a successful challenge in the courts to the Committee's standing as a properly constituted select committee."*<sup>15</sup>

### Confidentiality, Behaviour, Code and Ethics

It may be a concern of the parliament that a lay member, as an external person, may find it difficult to maintain complete confidentiality pertaining to the private deliberations of a committee. An innate concern with involving any external party is that they may have interest in currying favour or cultivating the support from the public at the expense of the private conversations that take place. It is important that not all conversations and committee deliberations are to be made known to the general public as this could damage their capacity to function.

In this regard, it is important to note and communicate that lay members are not expected to be tribunes or representatives of the people, but are invited to serve as individuals. In the case that premature or unauthorised disclosure of committee proceedings is considered contempt of parliament, this should be communicated prior to the appointment of a lay member. In order to prevent a breach of confidentiality, it is recommended that a confidentiality agreement is put into place. This can be enforced in many different ways, in the form of an oath, a confidentiality clause, incorporated into the terms of employment or within the parliamentary codes of conduct that they could be required to abide by .

### Incentives and Engagement

In adopting lay members into parliaments one notable challenge that smaller states may meet is attracting individuals to take up the role. Public enthusiasm and engagement with parliaments' work, for example that of PACs in general are scarce, and this problem can be magnified in states and territories comprising of a smaller population.

In the final report of the CPA UK Falkland Islands PAC Workshop that took place in 2019, one of the challenges recognised by the Falkland Islands PAC was the lack of awareness of the committee which in turn led to a difficulty in attracting volunteers with the appropriate technical skills for the role of a lay member. Although the role of a lay member in the Falkland Islands is a voluntary position, the report gives consideration to possibly exploring remunerations as a means of incentivising the role.

Introducing remuneration may serve as a financial incentive for taking on the position of a lay member, however, if this is something that the parliament is reluctant to do, it may be worth incentivising the position by appealing to the various reasons that foster interest. Speaking with lay members to examine personal and professional reasons as to why they sought to get involved and promoting the position and the work of the committee through this lens may be valuable.

### JERSEY CASE STUDY

The Jersey States Assembly have established a code of conduct that sets out the standards expected from those appointed unelected members, otherwise known as lay members, of the Public Accounts Committee. The code of conduct complements the required approach to operational matters of the PAC as set out in the Scrutiny and Public Accounts Committee Proceedings: Code of Practice. The code clearly states that any breaches will be viewed as a significant indiscretion. In establishing this code, lay members are made aware of what is expected of them, and in the case that a parliament should be concerned about confidentiality, establishing a Code of Conduct for lay members as the States of Jersey have done, may serve as a good solution to this problem.

<sup>15</sup> [https://publications.parliament.uk/pa/cm201719/cmselect/cmstandards/1726/172606.htm#\\_idTextAnchor013](https://publications.parliament.uk/pa/cm201719/cmselect/cmstandards/1726/172606.htm#_idTextAnchor013)





# Roles and Responsibilities

The various roles and responsibilities allotted to lay members are entirely at the discretion of the respective legislature.

However, in order to maximise their ability to effectively scrutinise, lay members typically play an equal role to that of Members of Parliament in regard to committee work. For example; handling various specific cases, dealing with inquiries, questioning witnesses that appear before the committee, issuing recommendations and undertaking all other broader responsibilities. As lay members are not constrained by the same pressures as a parliamentarian, this can potentially enable them to have full investigatory autonomy, which in turn provides a strong basis for effective scrutiny and accountability.

In giving lay members an equal role in committee work to that of parliamentarians, the expectations to deliver are also matched. All those serving on a committee, including lay members,

are expected to have a working understanding of how the parliament functions and the role required of, and undertaken by, parliamentarians so that they have an equal opportunity at thriving in the post and holding the key players to account.

In light of this, it is important to consider and communicate that lay members may spend a larger volume of time trying to understand the workings of the parliamentary system beyond what they already know to be true practice in theory. Alongside this, the extent of the responsibilities and expectations that succeed these should also be clearly communicated to lay members, as they, unlike Members, generally have no prior experience in parliamentary committee work.





# Appointment

In the case that a legislature is seeking to appoint a lay member, it is important that there is, in the first instance, some form of consultation with parliamentarians in relation to the process and conditions of appointment. The CPA Recommended Benchmark for Democratic Legislatures highlights that “*changes to the Legislature’s rules of procedure shall be adopted with near unanimity,*”<sup>16</sup> and this can only be done, through consultation. Consulting with existing elected Members prior to the appointment of lay members will provide a better insight into the purpose, expectation and outcomes of this decision and will hopefully relieve any apprehensions Members may have in order to encourage a more cohesive working environment.

**The legislature should then identify (provided the below details have not been already agreed by the House):**

## ***What constitutes as a “lay member”***

There are a few things to consider here, for example; understanding the ideal qualifications, quality, skillset, experience and calibre of the ideal candidate just as you would for any other post. In addition to this, there may be supplementary criteria that dictate what constitutes the ideal candidate, for example, have they previously held the post of a parliamentarian, must they be able to command public confidence, contest the ingrained suspicion of the media, etc. Consider also whether the lay member should have any political affiliations. Although it is recommended that the member is apolitical in order that they act as an independent neutral actor for more apt scrutiny, it is important to note that good candidates who may be vocal on their political views should not be overlooked in favour of absolute neutrality.

## ***Remuneration***

Consider if this position will be a paid position, if so, consider the details of the salary. Also consider other employment benefits, such as whether they are allocated an office, staff, or access to parliamentary resources.

<sup>16</sup> [https://issuu.com/theparliamentarian/docs/recommended\\_benchmarks\\_for\\_democrat](https://issuu.com/theparliamentarian/docs/recommended_benchmarks_for_democrat) pg. 5



### **Who appoints them?**

It is important to consider who and how they will be appointed. Is it through a Parliamentary Service Commission or by vote of the whole legislature? They could be appointed by a Head of State, or a specially created appointments committee. Whichever way this is undertaken, it is important that it is seen and is in actuality done transparently and with the authority and consent of parliament unanimously.

### **Quorum**

It may be worth considering the minimum number of lay members required to be present for a meeting at any given time. Also the number of lay members in relation to the number of parliamentarians. Consideration should be given for the total number of lay members altogether with careful thought toward the terms of appointment, lengths of cycles of periodic replacement (if this exists), and the duration of appointment to encourage continuity for the committee/board.

### **Details of the recruitment process**

Consider who will oversee the recruitment process in the first instance, details of the stages of advertisement, long-listing, short-listing and interviews and establishing the relevant person/s responsible for in the later stages of appointments based on merit in an open and fair competition.

### **Other practical considerations**

The roles, responsibilities and rights of the lay member, the structure of committees/boards and the scope of their involvement should be clearly established.

## CASE STUDY

The process in which a lay member is appointed varies from parliament to parliament, for example, in the States of Jersey, lay members on the Public Accounts Committee are recruited volunteers, in the Falkland Islands, they are volunteers from the community who are appointed by the Governor in accordance with the Constitution and in the United Kingdom there is a paid position through recruitment process by application.

In the case that the decision is made to appoint through application, there are a number of things that should be considered to ensure that this process is made fair.

It may be useful that the recruitment process considers whether the requirements for qualification are the same or similar to that of candidates running for election as Members.

Also consider the following when selecting the candidates:

- Diversity in regard to ethnic representation; a good gender balance and equal opportunities in regards to disabilities, age, identity etc; (as is considered best practice for elected representatives in accordance with the CPA Recommended Benchmarks for Democratic Legislatures).
- Nationality requirement of the candidate that will qualify;
- Diversity regarding the field of external regulatory experience.

As advocates for public interest, lay members generally have some experience working with, or will be a part of, the community affected by the committee/board that they sit on. For example, in the United Kingdom, lay members appointed to serve on the Committee on Standards are required to have “external regulatory experience (having been involved, for instance, in regulating the conduct of the medical profession) as well as other relevant knowledge (e.g. working to prevent sexual harm).<sup>17</sup>” Small legislatures, with fewer members rely on lay members for the expert knowledge and experience in the respective departments. Therefore, it is even more crucial that lay members are able to bring this to the deliberations. However, as previously cited, experience is not always a necessity, as in the case of the Falkland Islands whereby the three lay members selected for the PAC posts did not necessarily have any political or financial experience. At the very core, however, the contributions of lay members are expected to be somewhat reflective of the interests of the public, but they are not expected to act as representatives of any particular group.

There are a number of ways that parliaments can embed the adoption of a lay member into parliamentary practice and procedure – and although this is entirely at the discretion of the parliament, it is important to consider amending and updating Standing Orders in order to include the role, responsibilities, powers and appointments of lay members.

## Communication and Training

In introducing lay members to parliament, transparency is key. In the first instance, it may be useful to have a clear agreed and communicated position on the reason, process and purpose of their appointment. It may be worth communicating the relevant information in written format and circulating this document internally for ease of access for parliamentarians who serve on a committee and are expected to be working closely with them.

Consolidate the relevant information into one document for ease of reference and in order for the public to be made fully aware of why lay members have been included in the parliamentary process in order to alleviate any concerns or suspicions that they may have. This also agrees with the CPA Recommended Benchmark that reads, “the Legislature’s rules, procedures and practice shall be accessible to Members and to the public.”<sup>18</sup>

Providing a sufficient amount of support for the facilitation of the non-member in their new role, consider formulating a comprehensive induction for lay members with the relevant parties that they will be working closely with, for example, the Speaker, Commissioners, Registrars, media representatives etc. Inductions enable lay members, as external representatives, to familiarise themselves with the unique internal environment and workings of parliament.

Efforts can also be made to demonstrate to lay members, the different ways that parliament is accessible to the public in order for them to improve their understanding of parliament. Opportunities to attend parliamentary meetings and committee hearings can be presented in order to familiarise lay members with how parliament is made accessible to the public.

Inductions, if carried out correctly, will be mutually beneficial for both parliament and the lay member.

<sup>17</sup> <https://committees.parliament.uk/committee/290/committee-on-standards/content/116434/lay-members-committee-on-standards/>

<sup>18</sup> [https://issuu.com/theparliamentarian/docs/recommended\\_benchmarks\\_for\\_democrat](https://issuu.com/theparliamentarian/docs/recommended_benchmarks_for_democrat) pg.8.





# Conclusion

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*The adoption of lay members in a parliamentary system may not be a straightforward process, particularly as any changes to the inherent structure of the system or parliamentary feature is a process in and of itself. However, it is important to consider the various reasons why a parliament would choose to consider introducing lay members to a system that “works.” The adoption of lay members seeks to build on the existing scrutiny and accountability functions exerted by a parliament and in understanding the motivations behind the adoption of lay members, it is hoped that there is a greater understanding of the benefits that this change brings.*

# Recommendations

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Parliaments should: -

- 1. Consider the adoption of lay members into their parliamentary system.**
- 2. Establish clear distinctions between the rights of the lay members and parliamentarians; consider legislation or, where possible, a court decision to determine the scope of parliamentary privilege in relation to lay members.**
- 3. Consider implementing a confidentiality agreement or a code of conduct for lay members.**
- 4. Consider incentivising the role of lay members through remuneration or other benefits.**
- 5. Enable lay members to have full investigatory autonomy for appropriate scrutiny.**
- 6. Consult with existing elected Members on the roles, responsibilities, the appointment process for a lay member, prior to its commencement.**
- 7. In appointing a lay member, ensure that there is diversity in regards to; ethnic representation; a good gender balance and equal opportunities in regards to disabilities, age, identity etc; and diversity in regards to the field of external regulatory experience.**
- 8. Where necessary, update the Standing Orders and any other relevant documentation to include lay members in the parliamentary system, outlining their responsibilities, what constitutes a lay member and what the terms that dictate that they cease office.**
- 9. Deliver a comprehensive induction for the lay members.**
- 10. Create and publish a publicly accessible document on the purpose for the adoption of lay members as well as their roles and responsibilities.**



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