

# **Upholding Standards in Public Life**

## **Final report of the Standards Matter 2 review**

**The Committee  
on Standards  
in Public Life**

Selflessness  
Integrity  
Objectivity  
Accountability  
Openness  
Honesty  
Leadership

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**Final report of the  
Standards Matter 2 review**

**Chair, Lord Evans of Weardale**

November 2021

# Foreword by Sir John Major

A quarter of a century ago I set up the Committee on Standards in Public Life to address current and future shortcomings in behaviour. Over that long period, the Committee – led by Lord Evans and his predecessors – has made a significant contribution to improve the quality of our public life.

This report continues that work. It makes many important recommendations that I hope will be approved by the Government – and, where necessary, Parliament – and then implemented.

The Committee will never be redundant. A minority will evade or misinterpret the rules of proper behaviour. The rules will always need regular updating to meet changing expectations in many areas: the funding of political parties may be yet one example.

We owe a debt to all Committee Members – past and present – and, on behalf of the public they serve, I offer them my profound thanks and appreciation.

**The Rt Hon Sir John Major KG CH**

# Chair's Foreword

Dear Prime Minister,

I am pleased to present the 23rd report of the Committee on Standards in Public Life.

Lord Nolan's first report, which set out the Seven Principles of Public Life, was published in 1995. Twenty-five years on, the Committee launched this review to examine the importance of high standards today, and the effectiveness of the regulators that uphold them.

We found that high standards continue to provide an important foundation to our democracy, our economic success, and our foreign policy. The Seven Principles of Public Life reflect the values the public expects holders of public office to embody, forming the basis of public confidence in our institutions. Businesses want to invest in a country where governance is stable, predictable and fair. The UK's success in countering corruption abroad depends on our reputation for high ethical standards at home.

Today, there is a more challenging environment for those committed to upholding ethical standards. The impact of social media, the coarsening of public debate and political polarisation have all contributed to increase the risk to public standards here and abroad, even before taking into account the pressures brought by EU exit and the coronavirus pandemic.

Standards arrangements require regular review and the Committee has assessed the effectiveness of our ethics regulators in these changing circumstances. We have found a particular need for reform in central government. Whereas Parliament has undergone significant reform in recent years, and local government was reviewed by this Committee in 2019, many of the arrangements in central government have not changed for over a decade.

Four areas require attention. The regulation of the Ministerial Code needs greater independence as it lags behind similar arrangements for MPs, peers, and civil servants. The scope of the Business Appointment Rules should be expanded and the rules should be enforced through legal arrangements. Reforms to the powers of the Commissioner for Public Appointments would provide a better guarantee of the independence of assessment panels. Transparency around lobbying is poor, and requires better co-ordination and more consistent publication by the Cabinet Office.

From the evidence we have taken during our review it has become clear that a system of standards regulation which relies on convention is no longer satisfactory. To address this, we recommend that ethics regulators and the codes they enforce should have a basis in primary legislation, and that government has a more thorough and rigorous compliance function.

The arrangements to uphold ethical standards in government have come under close scrutiny and significant criticism in recent months. Maintaining high standards requires vigilance and leadership. We believe our recommendations point to a necessary programme of reform to restore public confidence in the regulation of ethical standards in government.

**Lord Evans of Weardale**  
**Chair, Committee on Standards in Public Life**

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# Executive Summary

The Committee launched this review to assess the importance of high ethical standards, the continuing relevance of the Seven Principles of Public Life, and the effectiveness of the rules, regulators, policies and processes that underpin them. As the review progressed, the Committee concentrated its attention on arrangements in central government, which have not been reviewed substantively by the Committee for over 15 years.

In June 2021, the Committee published findings from this review on the areas we considered in most urgent need of reform: the Ministerial Code and the Independent Adviser on Ministers' Interests; the Business Appointment Rules and the Advisory Committee on Business Appointments; the regulation of public appointments; and transparency around lobbying. The content of those findings is included here and translated into recommendations to government, alongside several new recommendations published here for the first time.

## **The Importance of Ethical Standards**

The Seven Principles matter for our democracy, economy, and foreign policy. High ethical standards underpin public confidence in our governing institutions, attract overseas investment, and boost the UK's reputation on anti-corruption issues abroad.

However, a number of long and short term social and political trends have created a more difficult environment today for those seeking to uphold high ethical standards. Social media, intimidation, political polarisation and a more intense and immediate public debate on politicians' conduct has led to increasing risks to public standards, exacerbated by the pressures of the coronavirus pandemic and EU exit. Upholding high ethical standards in this changing context is a political and leadership challenge.

Over the past 25 years, an intricate web of commissioners and committees, rules and regulations, and policies and processes has developed to ensure that codes of conduct are upheld. These standards arrangements have to adapt to a changing world. The balance of evidence submitted to this review indicates to us that the existing standards framework is not functioning as well as it should.

Polling and focus group research carried out for this review shows that the public thinks MPs and ministers have poor ethical standards. In contrast, public perceptions of the ethical standards of those delivering public services, such as doctors, teachers, judges, and local government officials, are high. Analysis of these results found notable changes in the effect of gender and education on perceptions of standards compared to past surveys carried out by the Committee. Today, women and those with a higher level of educational attainment are more likely to think that the ethical standards of ministers and MPs are low.

This review examined whether the current articulation of the Seven Principles lays out the right ethical expectations for all those in public life. Contributors voiced strong support for Lord Nolan's original seven, citing their longevity, timelessness and widespread integration into British public life. Following the #MeToo movement and the uncovering of unacceptable levels of bullying and harassment in Parliament, the Committee has decided it will amend the descriptor for leadership to have a greater emphasis on treating others with respect.

### **Leadership (new descriptor):**

Holders of public office should exhibit these principles in their own behaviour and treat others with respect. They should actively promote and robustly support the principles and challenge poor behaviour wherever it occurs.

## **The Regulation of Ethical Standards**

The past 25 years have seen the introduction and development of a number of codes of conduct and scrutiny mechanisms, meaning there is now a broad and wide-ranging framework covering standards in public life. However, we were told that too often there are inconsistencies in the application of codes, that the quality of advice varies, and that insufficient priority is given to ethical issues. In line with the recommendation of the Boardman report, the government should take a more thorough and professional approach to ethics rules and develop a compliance function across government.

Contributors to this review also emphasised the extent to which the upholding of codes of conduct for ministers, civil servants and special advisers depends on adherence to conventions. Though conventions offer the benefit of flexibility, the processes and procedures designed to uphold high standards are too easily ignored or disregarded. The Committee's recommendations are designed to codify the most important conventions and norms around standards in government into more formal processes and rules.

The Committee assessed the independence of standards regulators in government and Parliament. It is clear to the Committee that the degree of independence in the regulation of the Ministerial Code, public appointments, business appointments, and appointments to the House of Lords falls below what is necessary to ensure effective regulation and maintain public credibility. The Committee recommends that the government gives a statutory basis to the Independent Adviser on Ministers' Interests, the Public Appointments Commissioner, and the Advisory Committee on Business Appointments, as well as to the codes they regulate, through new primary legislation. The Committee believes a statutory House of Lords Appointments Commission should be considered as part of a broader House of Lords reform agenda, which is beyond the remit of this Committee.

Though the Committee recognises that the standards landscape is complex, we do not believe that the existing ethics regulators should be consolidated into a single ethics commission.



## **The Ministerial Code and the Independent Adviser on Ministers' Interests**

The Committee believes that further reform is necessary to the Ministerial Code and the role of the Independent Adviser. First, the code's provisions on ethics and standards should be separated from those detailing the processes of cabinet governance. The Ministerial Code should be a code of conduct of ethical standards for ministers, akin to MPs' and peers' codes of conduct, based on the Seven Principles of Public Life.

Second, though the code must be owned and issued by the Prime Minister, rather than Parliament, an obligation in primary legislation for the Prime Minister to publish the Ministerial Code would grant the code a more appropriate constitutional status. The Independent Adviser should be consulted in any process of revising and reissuing the code, as has occurred in the past.

Third, now that the code is explicitly subject to a system of graduated sanctions, it should detail the range of sanctions that the Prime Minister may issue in response to a breach. We recommend that those sanctions include apologies, fines, and asking for a minister's resignation.

Fourth, the appointments process, powers, and remit of the Independent Adviser should be strengthened. The Adviser should be appointed through an enhanced version of the current process for significant public appointments, where there is a majority of independent panel members. The Adviser should be able to initiate their own investigations and have the authority to determine breaches of the code. The Adviser's findings should also be published no more than eight weeks after a report has been submitted to the Prime Minister. Meaningful independence is the benchmark for any effective form of standards regulation and current arrangements for the Adviser still fall below this bar.

## **The Business Appointment Rules and ACOBA**

Currently, there is widespread discontent around the operation of the Business Appointment Rules, reflecting a need for significant reform.

We recommend that the scope of the rules be expanded. The rules are framed to focus on any direct regulatory, policy, or commercial relationship, but an official may initiate policy or regulation sympathetic to a range of companies providing a particular service or product, with an eye to future employment, without having a direct relationship with any specific company.

ACOBA and government departments should be able to issue a lobbying ban of up to five years in cases where an official had a particularly senior role, or where contacts made or privileged information received will remain relevant after two years (the current maximum ban). The rules should be clarified to make clear that any work for lobbying firms will be treated as lobbying for the purpose of the ban.

The lack of any meaningful sanctions for a breach of the rules is no longer sustainable. Transparency alone, or proposals for the integration of the rules into the process for honours or appointments to the House of Lords, fall short of introducing a formal and credible

sanctions regime. Instead, the rules should be enforced via the relevant employment contracts for civil servants and special advisers, and by parallel legal arrangements for ministers. The government should set out what the consequences for any breach of contract will be. Possible options for sanctions may include seeking an injunction prohibiting the uptake of a certain business appointment, or the recouping of a proportion of an office holder's pension or severance payment.

Under reformed arrangements, ACOBA should take on a formal regulatory function. The Committee's decisions should be directly binding on applicants, rather than a recommendation to the relevant minister, Prime Minister, or permanent secretary. The Committee should also be able to undertake investigations into potential breaches of its decisions, or into failures to seek a ruling from it when one was required. On the finding of a breach of the rules, the Committee should submit a report to the Cabinet Office. As a breach of the rules would constitute the breaking of a contract with the government, the Cabinet Office should then decide on sanctions or remedial action, as well as any possible appeals process.

This Committee shares concerns raised by the ACOBA chair, Lord Pickles, over the lack of transparency and consistency over how the rules are applied below ACOBA level in government departments. Data on applications under the rules should be published regularly and the government should work with ACOBA to share best practice across government departments.

## **The Regulation of Public Appointments**

Lord Nolan outlined the principles that guide public appointments to this day: that ministers should have the ultimate responsibility for public appointments, but that appointments should also be made on merit. These principles manifest themselves today in a process by which assessment panels produce a list of candidates who are deemed appointable, with the final decision left to ministers. The process is defined in the government's Governance Code for Public Appointments.

Though the public appointments system has generally worked well in recent years, it is highly dependent on informal mechanisms, including the willingness of ministers to act with restraint and the preparedness of the Commissioner to speak out against breaches of the letter or the spirit of the code. It is unlikely that a system so dependent on personal responsibility will be sustainable in the long term. Of particular concern is the current provision within the Governance Code for ministers to be able to appoint candidates not deemed appointable by assessment panels. We believe such appointments should not be made, and if they are, that ministers should justify their decision in front of the relevant select committee.

Senior Independent Panel Members (SIPMs) currently provide a guarantee of independence to the defined number of significant appointments. We agree with the recommendation of the former Commissioner, Peter Riddell, that SIPMs should have a "specific duty of reporting" on the conduct of their competitions, as many already do informally. In light of the increasing risk of packed panels, we also agree with Peter Riddell's suggestion that the Commissioner be consulted on the composition of all members of assessment panels for significant appointments, to ensure a proper balance between independent and non-independent members.

There should also be a stronger guarantee of independence in the appointments process for standards regulators, whose job is to scrutinise government rather than implement government policy. Lead regulators should be appointed through a process where the assessment panel has a majority of independent members, and the chairs of standards committees should chair panels for the appointment of their independent members.

A number of direct ministerial appointments are unregulated entirely. Though it may be appropriate in some circumstances for appointments to be unregulated - for example for the heads of short-term policy reviews or some tsars or envoys - there is a lack of transparency on the number and nature of unregulated appointees, which should be rectified by departments publishing a list of all regulated and unregulated appointments. One such category of unregulated appointments are Non-Executive Directors (NEDs) of government departments. Given their role and significance, NEDs should be appointed through a regulated appointments process.

The powers of the Commissioner are currently defined in an Order in Council. The Commissioner does, therefore, have a statutory basis, but it is one that can be amended by ministers with little process or debate. A stronger statutory basis for the Commissioner is of particular importance given that much of the Commissioner's role now depends on formal or informal advice, rather than enforceable regulatory power.

## **Transparency around Lobbying**

Lobbying is an important and legitimate aspect of public life in a liberal democracy. Public trust is only undermined when lobbying is associated with money, undue influence, and secrecy. Such perceptions are preventable if all those in public life on the receiving end of lobbying - including ministers, civil servants and special advisers - act in the spirit of the Nolan Principles and uphold transparency around lobbying.

Yet the current system of transparency around lobbying is not fit for purpose. It is too difficult to find out who is lobbying government; information is often released too late; descriptions of the content of government meetings are ambiguous and lack necessary detail; transparency data is scattered, disparate, and not easily cross-referenced; and information in the public interest is often excluded from data releases completely.

Reforms are needed to the accessibility, quality, and timeliness of government data. Releases are currently published across different departmental web pages, as well as the Register of Consultant Lobbyists, meaning that any attempt to obtain a clear picture of one company or organisation's attempts to influence government is difficult and time-consuming. We believe a better approach would be for the Cabinet Office to collate all departmental transparency releases and publish them in an accessible, centrally managed and searchable database. The government should also ensure that a sufficient level of detail is provided on the subject matter of all lobbying meetings, and the Cabinet Office should publish collated releases monthly, rather than quarterly.

The scope of transparency requirements should be expanded too. Departmental transparency releases do not consistently cover senior civil servants below permanent secretary level, meaning that the lobbying of directors general and directors is not always disclosed. Transparency releases for special advisers only include details of meetings held with senior media figures. Given the influence that senior civil servants and special advisers now have, they too should be subject to the same transparency requirements for meetings as ministers and permanent secretaries.

Contributors highlighted concerns about the transparency of informal lobbying, and lobbying via alternative forms of communications, such as that via WhatsApp or Zoom. Any such lobbying should always be reported back to officials. However, such lobbying is rarely published by government as it is not classified as a meeting for the purpose of transparency releases. The categories of published information should be revised to close this loophole: either the 'meetings' category should be broadened or a fifth category should be added to include representations made to government by alternative means. Any such representations should be disclosed when the lobbying attempt is serious, premeditated, and credible, or is given substantive consideration by ministers, special advisers or senior civil servants.

Some contributors suggested reforming transparency around lobbying through an expanded lobbying register, where in-house lobbyists, including charities, campaigning groups, think tanks, trade unions, businesses, and others, would have to register. However, it remains the case that an expanded lobbying register would duplicate, and therefore potentially replace, departments' quarterly releases. Whilst the Committee recognises frustrations over the poor quality of government transparency releases, we believe the right solution is for the Cabinet Office and government departments to improve radically the quality of their transparency data. It is worth reiterating, however, that should adherence to the government's own transparency obligations continue to remain poor, the case for an expanded lobbying register would strengthen.

A number of improvements can also be made to the Register of Consultant Lobbyists in its current form. Consultant lobbyists who contact special advisers and senior civil servants below permanent secretary level (specifically directors general and directors) should be required to register. Additionally, those on the register should have to declare the date, recipient, and subject matter of their lobbying, in order to make it easier to cross-reference the Register with departmental releases.

# List of Recommendations

## **Recommendation 1**

The Civil Service should review its approach to enforcing ethical standards across government, with a view to creating a more rigorous and consistent compliance system, in line with the recommendation of the Boardman report.

## **Recommendation 2**

The government should pass primary legislation to place the Independent Adviser on Ministers' Interests, the Public Appointments Commissioner, and the Advisory Committee on Business Appointments on a statutory basis.

## **Recommendation 3**

The Ministerial Code should be reconstituted solely as a code of conduct on ethical standards.

## **Recommendation 4**

A requirement for the Prime Minister to issue the Ministerial Code should be enshrined in primary legislation.

## **Recommendation 5**

The Independent Adviser should be consulted in any process of revision to the Ministerial Code.

## **Recommendation 6**

The Ministerial Code should detail a range of sanctions the Prime Minister may issue, including, but not limited to, apologies, fines, and asking for a minister's resignation.

## **Recommendation 7**

The Independent Adviser should be appointed through an enhanced version of the current process for significant public appointments.

**Recommendation 8**

The Independent Adviser should be able to initiate investigations into breaches of the Ministerial Code.

**Recommendation 9**

The Independent Adviser should have the authority to determine breaches of the Ministerial Code.

**Recommendation 10**

The Independent Adviser's findings should be published no more than eight weeks after a report has been submitted to the Prime Minister.

**Recommendation 11**

The Business Appointment Rules should be amended to prohibit for two years appointments where the applicant has had significant and direct responsibility for policy, regulation, or the awarding of contracts relevant to the hiring company.

**Recommendation 12**

The Business Appointment Rules should be amended to allow ACOBA and government departments to issue a ban on lobbying of up to five years.

**Recommendation 13**

The lobbying ban should include a ban on any work for lobbying firms within the set time limit.

**Recommendation 14**

The government should make adherence to the Business Appointment Rules an enforceable legal requirement for ministers, civil servants, and special advisers, and set out what the consequences for a breach of contract may be.

**Recommendation 15**

ACOBA rulings should be directly binding on applicants.

**Recommendation 16**

ACOBA should have the power to undertake investigations into potential breaches of the Business Appointment Rules, and be granted additional resources as necessary. The Cabinet Office should decide on sanctions or remedial action in the case of a breach.

**Recommendation 17**

Government departments should publish anonymised and aggregated data on how many applications under the Business Appointment Rules are submitted, approved, or rejected each year.

**Recommendation 18**

The Cabinet Office should ensure the Business Appointment Rules are applied consistently across all government departments, and work with ACOBA to promote best practice and awareness of the rules.

**Recommendation 19**

The Governance Code for Public Appointments should be amended to make clear that ministers should not appoint a candidate who is deemed unappointable by an assessment panel, but if they do so, the minister must appear in front of the relevant select committee to justify their decision.

**Recommendation 20**

The Governance Code should be amended so that ministers must consult with the Commissioner for Public Appointments on the composition of all panel members for competitions for significant appointments.

**Recommendation 21**

Senior Independent Panel Members should have a specific duty to report to the Commissioner on the conduct of significant competitions.

**Recommendation 22**

The chairs of ACOBA and HOLAC, the Registrar of Consultant Lobbyists, the Commissioner for Public Appointments and the Independent Adviser on Ministers' Interests should all be appointed through the process for significant public appointments, and the assessment panel for each should have a majority of independent members.

**Recommendation 23**

Chairs of standards committees should chair assessment panels for the appointment of their independent members.

**Recommendation 24**

Government departments should publish a list of all unregulated and regulated public appointments.

**Recommendation 25**

The appointments process for Non-Executive Directors of government departments should be regulated under the Governance Code for Public Appointments.

**Recommendation 26**

The Cabinet Office should collate all departmental transparency releases and publish them in an accessible, centrally managed and searchable database.

**Recommendation 27**

The Cabinet Office should provide stricter guidelines on minimum standards for the descriptions of meetings and ensure compliance by government departments.

**Recommendation 28**

The government should publish transparency returns monthly, rather than quarterly, in line with the MPs' and peers' registers of interests.

**Recommendation 29**

The government should include meetings held between external organisations, directors general, and directors in transparency releases.

**Recommendation 30**

The government should include meetings held between external organisations and special advisers in transparency releases.



**Recommendation 31**

The government should update guidance to make clear that informal lobbying, and lobbying via alternative forms of communication such as WhatsApp or Zoom, should be reported to officials.

**Recommendation 32**

The government should revise the categories of published information to close the loophole by which informal lobbying is not disclosed in departmental releases.

**Recommendation 33**

Consultant lobbyists should also have to register on the basis of any communications with special advisers, directors general, and directors.

**Recommendation 34**

Consultant lobbyists should have to declare the date, recipient, and subject matter of their lobbying.

# Introduction

1. The Seven Principles of Public Life – selflessness, integrity, objectivity, accountability, openness, honesty and leadership – define the public service ethos of the United Kingdom. These ethical standards provide a common framework for the conduct of all those in public office, as well as those in the private sector providing public services.
2. The Seven Principles were first articulated by this Committee in 1995 under the chairmanship of Lord Nolan. Tasked by the then Prime Minister, Sir John Major, to advise on the arrangements in place to uphold standards in public life, the Nolan Committee established a three-part framework through which the Seven Principles should be upheld – codes of conduct, independent scrutiny, and education.
3. The development of the UK’s standards architecture has since followed Lord Nolan’s blueprint. Ministers, MPs, peers, civil servants, special advisers, councillors, board members of public bodies, and a range of public service professionals are now covered by codes of conduct based on the Seven Principles. Those codes are scrutinised and enforced by a range of independent regulators, advisers, and commissioners, with differing powers and remits.
4. Reflecting on 25 years since Lord Nolan’s seminal report, the Committee decided to launch this review, Standards Matter 2, in September 2020 to examine the strength and effectiveness of that regulatory framework today. Unlike most other Committee reports, which focus on one specific area of standards arrangements, the Committee believed that the time was right to assess how Nolan’s ideas have taken root across the public sector. The Committee considered the changing context around ethical standards today, and assessed what improvements need to be made to our system of ethics regulation to ensure the highest standards of conduct in public life.
5. The Committee received evidence on standards arrangements in both Houses of Parliament, central government, and local government. The Committee has no remit for standards arrangements in the devolved administrations.<sup>1</sup>
6. As the review progressed, the Committee concentrated its attention on central government. Standards arrangements in central government have not been reviewed substantively by the Committee since its ninth and tenth reports over 15 years ago. Recent Committee reports have instead examined standards arrangements for elections, local government, Parliament, regulators, and public service delivery. The Committee therefore decided that now was the right time to take a

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<sup>1</sup> The Committee can, however, report on arrangements in the devolved administrations if asked to do so by a devolved body.

closer look at some of the most prominent and longstanding standards issues in central government.

7. In June 2021, the Committee published findings from this review on the areas we considered in most urgent need of reform: the Ministerial Code and the Independent Adviser on Ministers' Interests; the Business Appointment Rules and the Advisory Committee on Business Appointments; the public appointments process; and transparency around lobbying. The content of those findings is included here and translated into recommendations to government, alongside several new recommendations published here for the first time.
8. This review spanned a period of heightened focus on ethical standards, which was reflected in an increase in complaints from members of the public and political figures, who wrote to the Committee asking it to investigate individual cases.
9. The Committee has no remit to do so, and has a longstanding policy of not commenting on individual cases. The Committee is not a regulator and does not conduct investigations. That is the role of the relevant standards body, be it the Independent Adviser, Parliamentary Commissioner for Standards, the Electoral Commission, or others. The Committee's role is to advise the Prime Minister on whether those bodies have the right powers and remit to do their jobs effectively. That is the purpose, and focus, of this report.
10. A summary of recent Committee reports relevant to this review is at Appendix 2. Further information about the Committee can be found at Appendix 3. The methodology of this review, and a list of all stakeholders who gave evidence to the Committee, is at Appendix 4. The Committee is grateful to all stakeholders and members of the public who contributed to this review.

# Chapter 1

## The Importance of High Ethical Standards

- 1.1 The Seven Principles of Public Life were set out by Lord Nolan to reflect the values deemed inherent in public service. Though formal rules and regulations have applied those principles to particular political and professional settings, the expectation has long existed that all those in public office should act in the spirit of those principles as much as the letter of any code.
- 1.2 The importance of upholding high ethical standards, as articulated in those principles, is clear. Over the course of this review, business leaders, heads of standards bodies, former senior civil servants, academics, anti-corruption experts, and members of the public made the case that high ethical standards matter for our democracy, economy and foreign policy.
- 1.3 Ethical standards reflect the values the public expects the government to embody, setting the boundaries for the legitimate use of power in public life. A democratic mandate alone is insufficient to guarantee the confidence and consent of the governed. Adherence to the Seven Principles helps ensure that elected representatives make controversial and difficult policy decisions in the public interest and that they are accepted by the majority of citizens. Confidence in democratic governance depends on citizens being reassured that the political process is legitimate, especially where they disagree with policy outcomes.
- 1.4 High ethical standards facilitate proportionate and appropriate accountability. When elected representatives embrace high ethical standards, the public can see how decisions are made, as well as who or what influenced the decision-making process. Better accountability makes for a more responsive and resilient democratic system.

**“Without trust, then you see a decline in public consent.”**

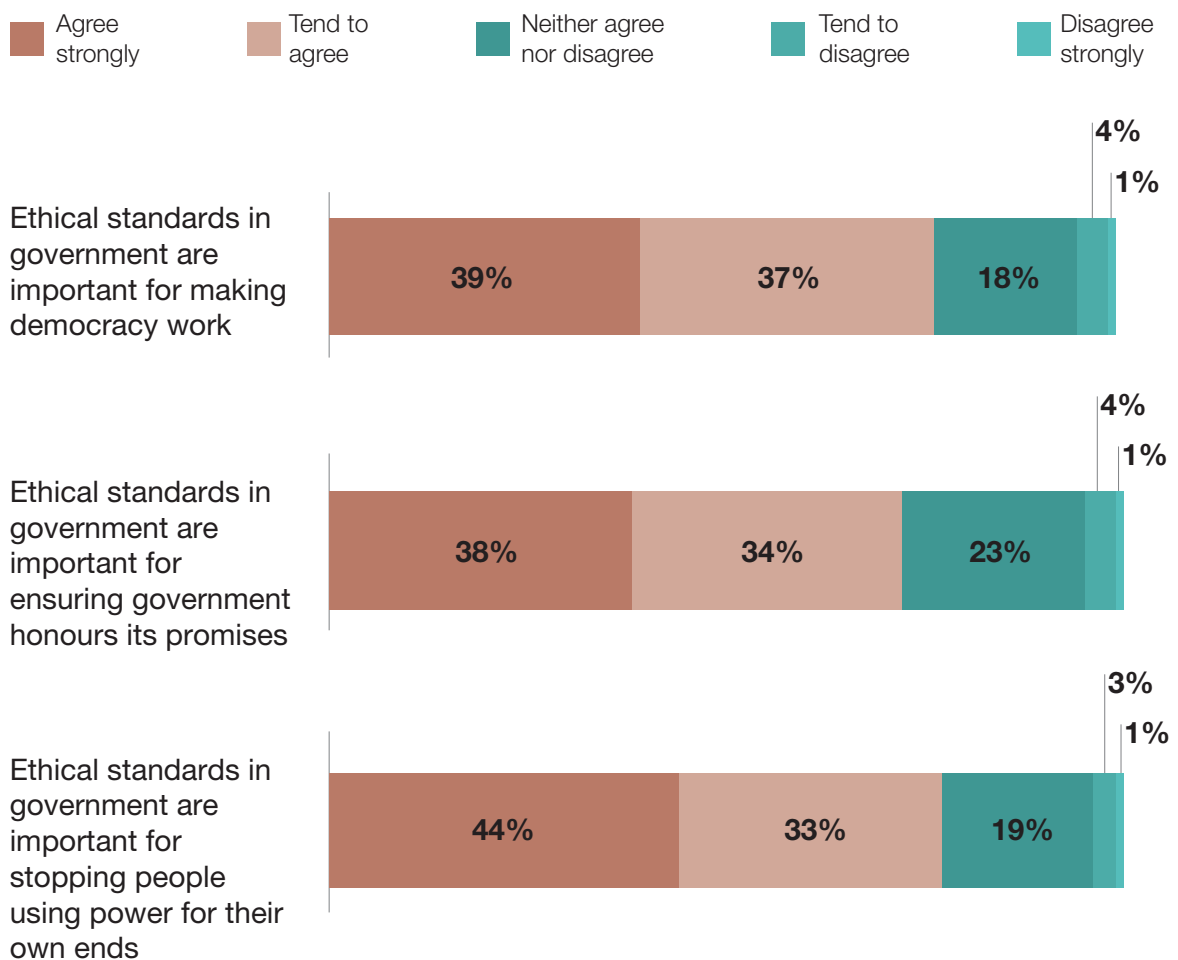
**Professor Heather Marquette, academics’ roundtable, April 2021**

**“We know that trust in government is hugely important... trust matters a lot... [trust is] about telling the truth and people believing what ministers say is actually true.”**

**Lord O’Donnell, former Cabinet Secretary, online evidence session, March 2021**

- 1.5 By significant majorities, our quantitative research shows that the public links high ethical standards to the functioning of democracy. In polling undertaken for this review, 76% of the British public agreed that ethical standards in government are important for making democracy work, and 77% agreed that ethical standards in government are important for preventing people using power for their own ends.<sup>2</sup>
- 1.6 Historic surveys of public attitudes undertaken by this Committee consistently showed that the public values high ethical standards, and that they do not believe that the upholding of high standards is in conflict with the delivery of policy objectives. These findings were replicated in polling undertaken for this review, where 75% of the public agreed that ethical standards are important for effective government, and 72% agreed that ethical standards are important for ensuring government honours its promises.<sup>3</sup>

### Public views on the importance of ethical standards



Deltapoll survey of 1590 GB adults, 23-26 July 2021

<sup>2</sup> Deltapoll survey of 1590 GB adults for the Committee on Standards in Public Life, 23-26 July 2021. Data available at <https://www.gov.uk/government/collections/standards-matter-2>

<sup>3</sup> Deltapoll survey of 1590 GB adults, 23-26 July 2021

- 1.7 High ethical standards deliver a clear economic benefit to the United Kingdom too. Low levels of corruption, predictable executive decision-making, stable governance, and objective, unbiased enforcement of regulation all contribute to the UK's high ease of business rating and attracts overseas investment.

**“I was fortunate enough to visit many countries as a representative of British business and I got a pretty frank assessment of the UK environment from the outside in. I lost count of the number of times the UK was cited as an attractive place to invest because of the rule of law, its predictability, and its high public standards.”**

**Dame Carolyn Fairbairn, former Director-General of the CBI, online evidence session, March 2021**

- 1.8 Business leaders, financial services and credit rating agencies monitor British politics closely. The Committee was concerned to see that the downgrading of the UK's credit rating by Moody's in October 2020 cited “the weakening in the UK's institutions and governance”, noting that “while still high, the quality of the UK's legislative and executive institutions has diminished in recent years”.<sup>4</sup> Non-adherence to the rules and norms that have guided British governance for decades undermines the political stability that the UK's economic prosperity is built on.

**“Part of our economic strength is that overseas investors, overseas business, exporters etc. can be confident that by coming to the UK it is not only a good place to do business, but a safe place to do business... part [of that] is about predictability in our political and governance system and knowing that in the end, the rules will apply equally to everyone... it is critically important that governance is seen as part of our comparative economic advantage.”**

**Lord Sedwill, former Cabinet Secretary, online evidence session, March 2021**

- 1.9 High ethical standards at home also support the UK's advocacy against corruption abroad. The UK's reputation on domestic integrity underpins its ability to push for improvements in ethical standards overseas. Though the UK remains very highly regarded internationally on issues of ethics and corruption, this position should not be taken for granted. Should international perceptions of corruption in the UK decline, the UK's moral authority to speak against corruption abroad will suffer.

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<sup>4</sup> The Financial Times, UK credit rating downgraded by Moody's (October 2020). Accessed online August 2021: <https://www.ft.com/content/117349e4-dc95-4509-969b-26dcdede1773>

“We need to be in a position to deploy that [foreign anti-corruption strategy] from a position of authority, and if the direction of travel on our own domestic integrity and standards is the wrong one, that’s going to be incredibly difficult.”

**Daniel Bruce, Chief Executive, Transparency International UK, online evidence session, March 2021**

## The challenge to standards today

- 1.10 A number of long and short-term social and political trends have created a more challenging environment today for those seeking to uphold high ethical standards. The UK is not alone in facing a difficult and combative political environment, along with other exacerbating factors. Multiple western countries have faced similar issues and this has led to increasing risks to public standards internationally as well as domestically.
- 1.11 **Transparency:** Radical improvements in government transparency over the past 25 years have led to greater exposure of politicians’ conduct. Cases which once may not have attracted much media attention are now often debated in real time before regulatory authorities have had the chance to investigate or publish their findings. Public office holders today operate in a political climate where even inadvertent or technical breaches of codes can lead to significant media coverage and public criticism. There is today a more immediate and intense public debate on the ethical standards of public office holders than ever before.
- 1.12 **Social media:** Many stakeholders, particularly those involved in standards regulation in local government and Parliament, emphasised the difficulties resulting from increased use of social media. Social media has rapidly increased the pace of public life, leading to the expectation of an instant response to any new allegation of poor ethical standards, which regulators cannot always provide. Additionally, members of the public regularly make complaints to standards bodies regarding the conduct of elected officials online, but such matters will often be judged out of scope. The Committee recommended in its 2019 report on local government that there should be a rebuttable presumption that all public behaviour, including comments made on publicly accessible social media, should be considered as made in an official capacity. We consider that the same principle should apply to MPs and peers.
- 1.13 **Intimidation:** Social media has also contributed to the coarsening of public debate. The tone of public life has deteriorated, leading to a harsher and more vituperative debate on ethical standards. The scope and scale of political abuse led the then Prime Minister, Rt Hon Theresa May, to ask this Committee in 2017 to conduct an inquiry into intimidation in public life. We found that “a significant proportion of candidates at the 2017 general election experienced harassment, abuse and intimidation”, and that the intimidation experienced by Parliamentary candidates, and others in public life, has become a threat to the diversity, integrity, and vibrancy

of representative democracy in the UK. A clear finding of our review was that intimidation is disproportionately likely to be directed towards women, those from ethnic and religious minorities, and LGBT candidates.<sup>5</sup>

- 1.14 **Polarisation:** Political polarisation has made public debate on standards increasingly partisan and consensus harder to find. Though ethical standards have always been part of the cut and thrust of political debate, the upholding of ethical standards has always depended on a willingness to approach allegations of poor ethical standards through the merits of each case rather than party political considerations. Polarisation makes this harder to achieve.

“The political polarisation of recent years – particularly but not exclusively around the UK’s exit from the EU – has led to some leaders in public life seemingly prioritising the achievement of their political goals with less regard to expected standards. As the debate becomes more polarised, public figures are incentivised to take actions that please their side in a particular debate, rather than adhering to a common set of standards.”

**The Institute for Government, written evidence, January 2021**

- 1.15 **The coronavirus pandemic:** The impact of the coronavirus pandemic on all aspects of society has placed the government under stresses and strains not known since the Second World War. In responding to the pandemic, the government has had to act with speed and urgency, which resulted in the temporary bypassing of some regulatory restraints and the introduction of processes and practices not common to normal day-to-day governance.
- 1.16 **Brexit:** In delivering the UK’s exit from the EU, the refashioning of British politics and governance has led many to test and challenge the expectations, norms and conventions that have underpinned the British political system. Established practice on ethics and propriety has not been immune to these shifting attitudes and challenges.
- 1.17 Upholding high ethical standards in this changing context is a political and leadership challenge. Senior political and official leaders set parameters and establish the boundaries of acceptable behaviour with their own actions and words. Many contributors emphasised that when the ‘tone from the top’ fails to uphold the importance of ethical standards, either implicitly or explicitly, the rest of an organisation will often follow.
- 1.18 High standards must be regularly championed and enforced. Though the majority of those working in the public sector share a strong sense of public service, new situations and scenarios will regularly throw up ethical challenges, and reliance on

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5 The Committee on Standards in Public Life, *Intimidation in Public Life: A Review by the Committee on Standards in Public Life* (2017). Accessed online August 2021: <https://www.gov.uk/government/publications/intimidation-in-public-life-a-review-by-the-committee-on-standards-in-public-life>



rules alone is not enough when circumstances fall between the lines of even the most tightly-written codes. A culture of high standards, where all public officials are encouraged to consider, discuss, and apply the Seven Principles of Public Life to their everyday work, will help ensure such situations do not lead to oversight, negligence, or errors of judgement.

**“The hope now must be that leaders will begin to accept that it is possible and indeed necessary to inculcate the right values, and consequently the right attitudes and behaviour (the best ‘culture’) into an organisation... through the sharing of ideas and experiences and through guided personal and collective reflection. The difficulty is when some attempt to do this without fully understanding that this will only be successful if the leaders are exemplifying those values themselves.”**

**Sir Bernard Jenkin MP, written evidence, March 2021**

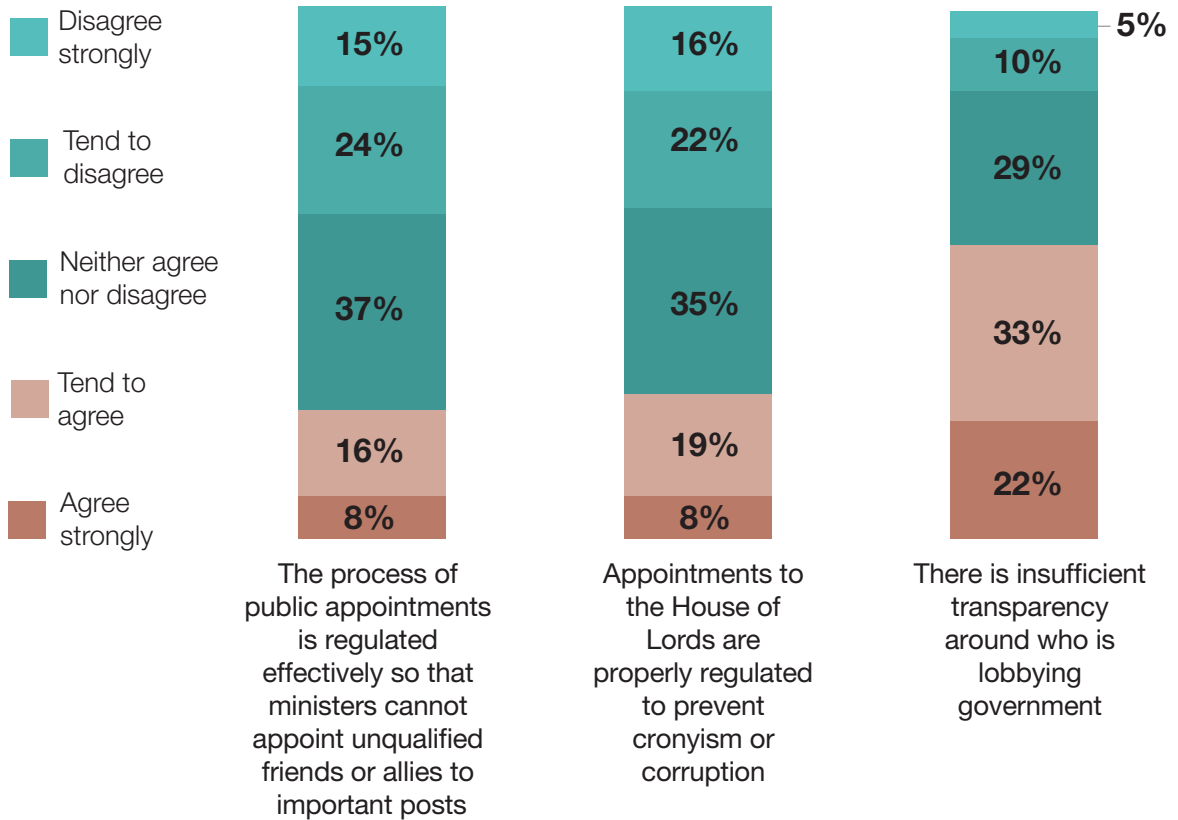
## The effectiveness of standards arrangements

- 1.19 Over the past 25 years, an intricate web of commissioners and committees, rules and regulations, and policies and processes has developed to ensure that codes of conduct are upheld. The purpose of these standards arrangements is to provide public assurance that government and Parliament operate according to the high ethical standards they expect of all elected and appointed officials. The Committee’s role is to assess how effectively these arrangements operate.
- 1.20 Standards arrangements have to adapt to a changing world and contributors voiced concerns to us that the existing framework is not robust enough under new and increasing pressures. Polling and focus group research conducted for this review shows that the public thinks that important regulatory mechanisms are not working effectively, and that there is little accountability for poor ethical standards. Overall, the balance of evidence submitted to this review indicates to us that standards arrangements are not functioning as well as they should.

**“We are concerned that the UK’s framework for regulating ethical standards for people with top executive functions in central government is not fit for purpose. The regulatory framework developed as a patchwork in response to scandals rather than as a co-ordinated, coherent system for identifying and managing risks. Successive governments have not adequately reformed the system and serious public integrity issues are not being tackled.”**

**Spotlight on Corruption, written evidence, January 2021**

## Public views on the regulation of public appointments, appointments to the House of Lords, and transparency around lobbying



Deltapoll survey of 1590 GB adults, 23-26 July 2021

- 1.21 Four areas of standards regulation were repeatedly highlighted by contributors as requiring reform: the Ministerial Code and the Independent Adviser on Ministers’ Interests; business appointments and ACOBA; the regulation of public appointments; and transparency around lobbying. The recommendations of this report seek to make improvements in each area.
- 1.22 These are not the only issues cited by contributors as cause for concern. Multiple stakeholders criticised a perceived trend of dishonesty in politics. Such concerns suggest it is important for MPs and ministers to be able and willing to correct the record when they make errors or omissions. Correcting the record should be seen as a positive and proactive step to uphold high standards rather than an admission of failure or defeat. The Ministerial Code is clear that “ministers who knowingly mislead Parliament will be expected to offer their resignation to the Prime Minister”.<sup>6</sup>

<sup>6</sup> Cabinet Office, Ministerial Code (August 2019), paragraph 1.3c. Accessed online August 2021: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/826920/August-2019-MINISTERIAL-CODE-FINAL-FORMATTED-2.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/826920/August-2019-MINISTERIAL-CODE-FINAL-FORMATTED-2.pdf)

**“The frequent lack of correction of misleading remarks in the Chamber and elsewhere is getting worse. I’ve seen a degradation over the last five or six years and the Nolan principles need to be taken seriously. It’s a real harm for democracy and erodes public trust and confidence.”**

**Debbie Abrahams MP, oral evidence, May 2021**

- 1.23 Similarly, the Committee notes with concern the significant criticism from the media and transparency NGOs of government compliance with its Freedom of Information (FOI) Act obligations. Openness is one of the Seven Principles of Public Life and improvements in government transparency since the introduction of the FOI Act must not be lost. It is important that both the letter and the spirit of the law are followed.
- 1.24 Over the past two years, the Committee has taken a close interest in measures taken to combat bullying and harassment in the Houses of Parliament. The views of stakeholders were reflected in the Committee’s submission to the 18-month review of the Independent Complaints and Grievance Scheme. The Committee noted that the ICGS “is a significant improvement on past processes, but the scheme remains a work in progress, and is yet to gain the full confidence of all stakeholders. We are, however, pleased that there appears to be significant political support behind the scheme and the leadership of both Houses seems committed to ensuring its success”.<sup>7</sup>
- 1.25 Public disquiet on the propriety of appointments to the House of Lords remains a regular feature of our politics, as it has been for many decades. Part of the remit of the independent House of Lords Appointments Commission is to vet for propriety nominations for peerages. The Commission is right that “the making of a donation or loan to a political party cannot of itself be a reason for a peerage”, but that equally, “nominees should not be prevented from receiving a peerage just because they have made donations or loans”. The Commission’s approach of assessing “whether or not the individual could have been a credible nominee if he or she had made no financial contribution” is the right one.<sup>8</sup> It is critical to the credibility of appointments to the House of Lords that the Commission’s advice is followed.
- 1.26 This review covered a period which saw a number of high-profile stories on public procurement of personal protective equipment during the coronavirus pandemic, particularly via the ‘high-priority lane’ for contacts of ministers, MPs, Lords, and health officials. The Committee noted that the National Audit Office (NAO) found “specific examples where there is insufficient documentation on key decisions, or how risks such as perceived or actual conflicts of interest have been identified or managed”, and that “the lack of adequate documentation means we cannot give assurance that government has adequately mitigated the increased risks arising

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7 Committee on Standards in Public Life, CSPL submission to the ICGS 18-month review (December 2020). Available online: <https://www.gov.uk/government/publications/cspl-submission-to-the-icgs-18-month-review>

8 The House of Lords Appointments Commission, Vetting. Accessed online August 2021: <https://lordsappointments.independent.gov.uk/vetting>

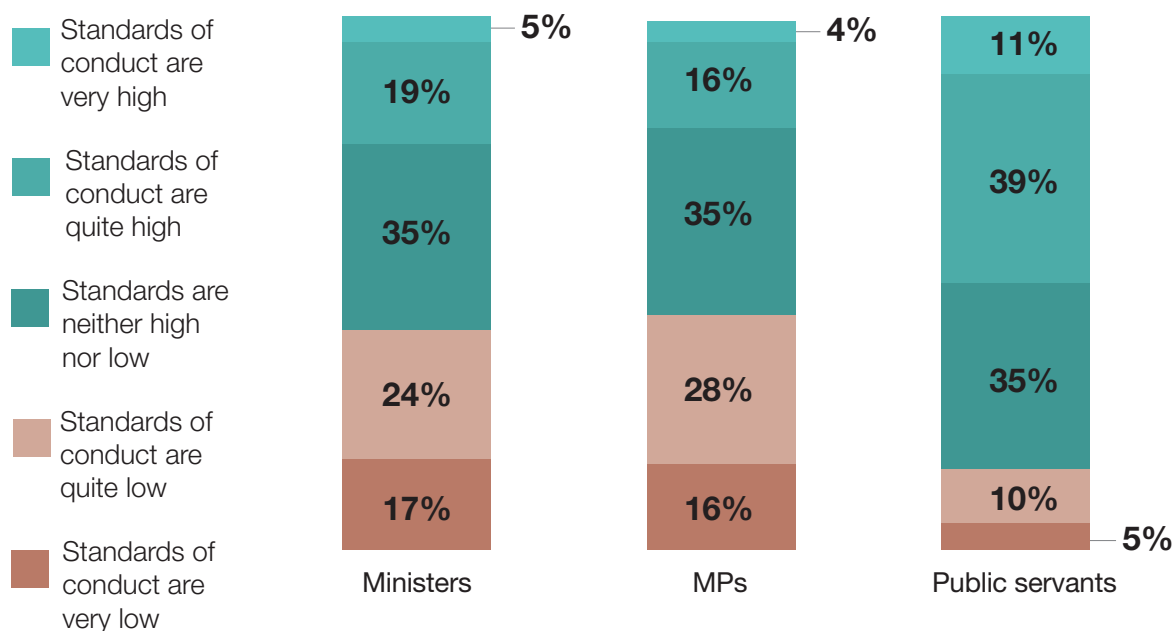
from emergency procurement”.<sup>9</sup> The Committee’s contribution to the government’s consultation on transforming public procurement stated that the Committee is “increasingly concerned about the lack of transparency around buying decisions”, and that “notwithstanding what might have been considered necessary during the current crisis, it cannot become the new normal for standards not to be upheld or proper process not to be followed”.<sup>10</sup>

## Perceptions of ethical standards

1.27 Our polling results show public perceptions of elected politicians are often very negative. 41% rated the standards of conduct of ministers as quite low or very low, compared to 24% viewing standards as quite high or very high, a net score of -17. MPs ranked even lower, with 20% taking a positive view and 44% a negative view, a net score of -24.

1.28 In contrast, public perceptions of the ethical standards of those delivering public services, such as doctors, teachers, judges, and local government officials, is high. 50% of the public viewed standards here as very high or quite high, and only 15% as quite low or very low, a net score of +35.

### Public views of the standards of ministers, MPs and public servants



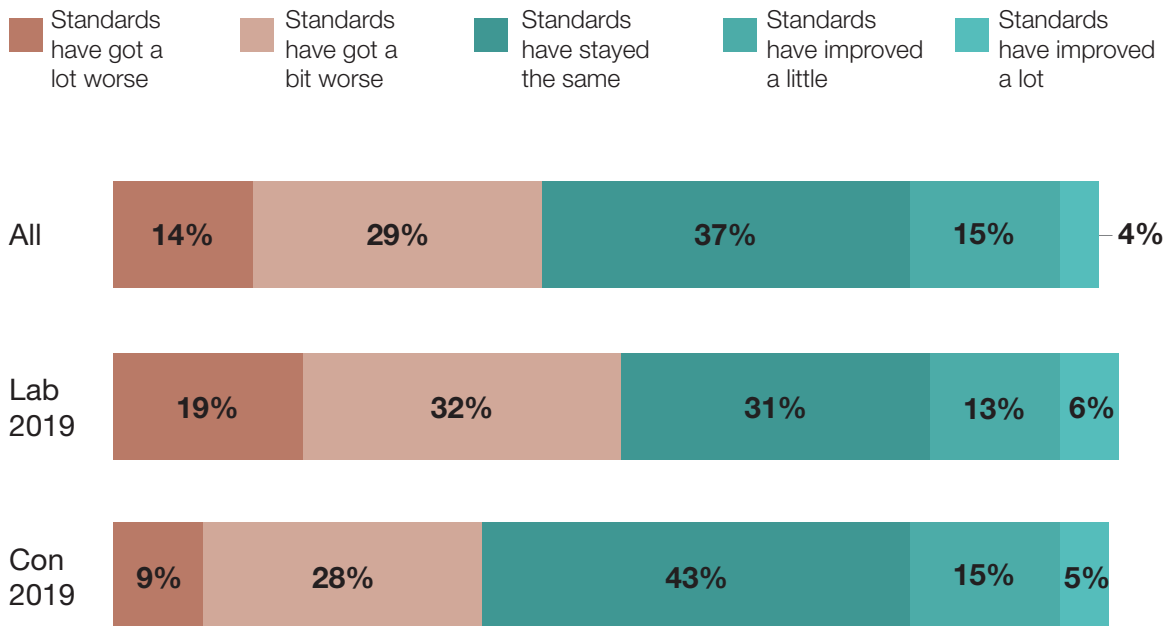
Deltapoll survey of 1590 GB adults, 23-26 July 2021

9 National Audit Office, Investigation into government procurement during the COVID-19 pandemic (November 2020). Accessed online August 2021: <https://www.nao.org.uk/wp-content/uploads/2020/11/Investigation-into-government-procurement-during-the-COVID-19-pandemic.pdf>

10 Committee on Standards in Public Life, CSPL Submission to Cabinet Office Consultation on Public Procurement (March 2021). Available online: <https://www.gov.uk/government/publications/cspl-submission-to-cabinet-office-consultation-on-public-procurement>

1.29 Overall, 43% of the public think standards of conduct today are worse than five to ten years ago, with 19% saying standards are higher and 37% saying standards are the same. Yet the public still believes, by a narrow margin, that ethical standards in the UK are higher than in other similar countries, such as France, Germany, or the USA.

**Public views on how standards have changed over time**



Deltapoll survey of 1590 GB adults, 23-26 July 2021

1.30 Biennial surveys held by the Committee from 2004 to 2012 found consistently lower scores as time progressed.<sup>11</sup> Research carried out for this report, however, found notable changes in the effect of gender on perceptions of standards compared to past surveys. A regression analysis found that although there is no gender effect on people’s assessment of how important standards are to them, women were more likely than men to think standards are low.<sup>12</sup> This finding chimes with recent academic literature on an increasing gender gap in political trust and engagement.<sup>13</sup> It also raises questions about how far the more intimidatory attitude to women in politics that the Committee described in its 2017 report is having serious effects in alienating many women from the political process.

1.31 Similarly, while in the past a higher level of educational attainment has been a predictor of more positive attitudes, higher educational attainment now appears to be

11 Committee on Standards in Public Life, CSPL surveys of public attitudes (2004-2013). Accessed online August 2021: <https://www.gov.uk/government/collections/cspl-surveys-of-public-attitudes>  
 12 Martha Radford Kirby, CSPL - Demographic and Political Breakdown of Attitudes (August 2021). Available online: <https://www.gov.uk/government/collections/standards-matter-2>  
 13 John Smith Centre, The Gender Gap: Women and Trust (January 2020). Accessed online August 2021: <https://www.johnsmithcentre.com/research/the-gender-gap-women-and-trust/> and King’s College London, The four sides in the UK’s ‘culture wars’ (June 2021). Accessed online September 2021: <https://www.kcl.ac.uk/policy-institute/assets/the-four-sides-in-the-uks-culture-wars.pdf>

correlated with a perception that standards are lower.<sup>14</sup> This too must be a source of concern for a healthy democratic culture.

- 1.32 A breakdown of perceptions of ethical standards by topic revealed that the public sees MPs and ministers most negatively on issues of integrity, honesty, selflessness and openness. 66% of the British public agreed that MPs and ministers are too easily influenced by the rich and powerful, and 45% disagreed that MPs and ministers act in the public interest, though such figures are perhaps to be expected in the immediate aftermath of the Greensill Capital lobbying scandal.<sup>15</sup>

<b>MPs and ministers:</b>	<b>% Total negative sentiment</b>	<b>Net negative sentiment</b>
are too easily influenced by the rich and powerful	66% agree	-55
own up when they make mistakes	58% disagree	-37
tell the truth	49% disagree	-27
act in the public interest, rather than private interests	45% disagree	-20
are open and transparent about decision-making	44% disagree	-21

- 1.33 Perceptions of low ethical standards do not trigger immediate political crises, but such figures can be a sign of a long-term deterioration of confidence in British politics. Low figures on politicians owning up to mistakes, telling the truth, and being open about decision-making indicate a troubling disconnect between the standards the public expects of its elected leaders and the standards they perceive.
- 1.34 Focus group research undertaken for this review explored the reasons behind perceptions of low ethical standards. Participants expressed discontent at what they saw as widespread cronyism in government, citing the bypassing of procurement processes, controversial public appointments and large donations to political parties as evidence of poor standards. Such sentiment was aggravated by a view that politicians should exhibit higher ethical standards than the average person, but that currently, their behaviour fell below that expected of the general public sector employee.
- 1.35 Discussions demonstrated that the principles of accountability, honesty and openness have a strong emotional resonance, and the perception that these principles are not lived up to underpinned frustration with the way politics is conducted at Westminster. Multiple participants took the view that elected office holders were not held to account for poor ethical standards, and that regulatory oversight was weak or non-existent. Worryingly, such discussions also feature a degree of resignation. Low standards, though undesirable, were seen by some to be an inevitable part of everyday politics.

14 Martha Radford Kirby, CSPL - Demographic and Political Breakdown of Attitudes (August 2021).

15 Deltapoll survey of 1590 GB adults, 23-26 July 2021

- 1.36 Stakeholder opinion on the upholding of high standards covered a wider range of views. Anti-corruption academics and NGOs expressed concern at declining standards and instances of behaviour which they deemed a breach of the Nolan Principles, while noting difficulties in providing an objective measurement of adherence to standards nationwide. Some contributors felt that a consensus around ethics in public life no longer exists as it once did.
- 1.37 Others hesitated to voice certainty on long-term trends. Some stakeholders saw pressure on ethical standards as the product of highly charged political events, and therefore a short-term by-product of the EU referendum rather than a step-change in approaches to ethical standards in politics. Contributors spoke of adherence to ethical standards going in cycles, sometimes culminating in scandal, which prompts regulatory reform and a renewed commitment to better conduct.
- 1.38 Those contributors who took a longer-term view often reflected on improvements in standards over the past 25 years, largely driven by greater transparency and the introduction of new accountability mechanisms since Lord Nolan's first report. A more positive perspective was also shared by those who emphasised that ethical standards remain high across the breadth of public service.

#### Focus group participants' views on ethical standards, August 2021<sup>16</sup>

"I think they've got a duty, whether they deliver on a policy or not, to uphold ethical standards."

"If you don't have good ethical standards from your politicians then democracy itself is damaged, it's a myth."

"The head of a business giving themselves certain privileges... is entirely different to somebody who's been voted in. They're in a role that they've earned and we've voted them in because we believe they have a social and ethical conscience."

"In the last few months things have come out about cronyism, I think that is an ethical issue more than anything. It highlights the way it's jobs for their mates and family, which is just highly unethical, the way somebody is making millions off this Covid pandemic."

"I would love to have transparency, I would love trust, and I would love ethics... but we're talking about politics here."

"I think it's wrong but we do accept it to a certain extent. We expect this is how the government runs things. That it won't be fully truthful, it won't be fully transparent, and there will be backhanders."

16 Committee on Standards in Public Life, Transcripts of Focus Groups (August 2021). Available online: <https://www.gov.uk/government/collections/standards-matter-2>

## Stakeholders' views on ethical standards, October 2020 - July 2021

“UK standards in public life are in decline and at risk of declining further... there have been a number of instances at the highest levels of UK public life in recent years which appear to be unethical, or in direct contravention of the Nolan principles.”

**The Centre for the Study of Corruption (University of Sussex), written evidence, January 2021**

“[1994 was] the beginning of almost 20 years of tightening up of standards... it was consensus that we had to increase accountability... the question now though is are we at a different point, and I think we are... We never envisaged a period when the conventions that underpin public life in Britain were going to prove so fragile, and we never thought we would see people just saying that these conventions really don't matter.”

**Professor Tony Wright, online evidence session, March 2021**

“Quantifying the level of non-compliance with these standards is not a straightforward task... Generally, elite opinion considers corruption in the UK public sector less prevalent than other parts of the world... However, that does not mean conduct that falls below the standards set in the principles does not exist... There have been concerning developments in custom and practice in recent years that are undermining the integrity of our political system”

**Transparency International UK, written evidence, January 2021**

“I think the long-term trend is upwards and I think that's been helped by transparency and accountability but there are definitely cycles around that trend.”

**Lord O'Donnell, former Cabinet Secretary, online evidence session, March 2021**

“These standards continue to be broadly upheld, from our observations and conversations, most individuals in politics, the Civil Service and wider public life are committed to maintaining ethical standards. But at the same time, there are signs that some of the ethical norms that were reflected in, and reinforced by, the principles are losing their purchase.”

**The Institute for Government, written evidence, January 2021**

“I am not at all sure that we know what the long-term trends are... I lean to thinking things haven't changed that much but there are problems in relation to the political revolution we've gone through. I'm not sure a political crisis is the same as a standards crisis.”

**Lord Bew, Chair, House of Lords Appointments Commission, oral evidence, February 2021**



## The Seven Principles of Public Life

- 1.39 This review examined whether the current articulation of the Seven Principles lays out the right ethical expectations for all those in public life. Contributors voiced strong support for Nolan's original seven, citing their longevity, timelessness and widespread integration into British public life.

**“Every time I look at the Nolan Principles and read them out in various fora, I reflect on how they still feel like the right principles.”**

**Simon Case, Cabinet Secretary, oral evidence, April 2021**

**“The Seven Principles are iconic. They have played a magnificent role in public life.”**

**Robert Behrens, Parliamentary and Health Services Ombudsman, oral evidence, April 2021**

**“The Seven Principles of Public Life have stood the test of time in that they have been endorsed by successive governments and are generally seen as remaining relevant today.”**

**Peter Riddell, former Commissioner for Public Appointments, written evidence, February 2021**

- 1.40 The relevance of the Seven Principles to the British public was confirmed in quantitative and qualitative testing from 2002 to 2012, which found that the principles reflected the public's expectations of elected and appointed office holders.<sup>17</sup> Revisions to the principles' descriptors were implemented by the Committee in 2012, to reflect the public's intuitive understanding of the principles of honesty and integrity. Research undertaken in 2019 on the relevance of the principles to a younger cohort found strong support for the current seven amongst the sixth formers surveyed.<sup>18</sup>
- 1.41 Today, the Seven Principles have been adopted widely across public life in the UK. At the highest levels of government, the Seven Principles can be found in the Ministerial Code and in both the House of Commons and the House of Lords codes of conduct. For local government and non-departmental public bodies, the Seven Principles can be found in guidance and codes of conduct for local councils, national research bodies, regulators, NHS trusts, universities, school governors and advisory bodies. The Committee's 2014 report *Ethics in Practice* noted that the Seven Principles “have been accepted by the public and those active in public life as appropriate determinants of behaviours, and now underpin much of the UK's public sector ethical infrastructure.”<sup>19</sup>

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17 The Committee on Standards in Public Life, CSPL surveys of public attitudes (2004-2013).

18 The Committee on Standards in Public Life, Summary of Standards and Principles Workshops (July 2020). Accessed online August 2021: <https://www.gov.uk/government/publications/summary-of-standards-and-principles-workshops>

19 The Committee on Standards in Public Life, *Ethics in Practice: Promoting Ethical standards in Public Life* (2014), 9.

- 1.42 Some contributors to this review spoke of the need for ‘respect’ to be reflected in the values and principles that guide behaviour in public life, following the #MeToo movement and the uncovering of unacceptable levels of bullying and harassment in Parliament. Discussions on conduct in public life increasingly focus on how those in positions of authority interact with each other and the public, with a greater emphasis on the need to treat others with dignity and civility. The joint statement on the conduct of political party members, produced by this Committee and The Jo Cox Foundation to combat intimidation in public life, commits signatories to “promote and defend the dignity of others, including political opponents, treating all people with courtesy and respect”.<sup>20</sup>
- 1.43 Codes of conduct in government, Parliament, and the devolved administrations have all included a greater emphasis on the idea of respect in recent years. The Ministerial Code was amended to include provisions prohibiting bullying and harassment in 2018, and Parliament adopted a new Behaviour Code, as part of the Independent Complaints and Grievance Scheme, which requires all those working on the parliamentary estate to “Respect and value everyone”.<sup>21</sup> The Senedd Standards of Conduct Committee recently proposed adding a principle of respect to the Senedd Code of Conduct; Scotland has had respect as an additional principle since 2000.
- 1.44 The Committee agrees, and thinks that the descriptor to the leadership principle should be amended to state the importance of treating individuals with respect. We think that treating others with respect is intrinsic to the idea of leadership. Though treating others with courtesy and respect has always been an implicit part of the leadership principle, it is important in today’s political climate to make the link explicit. It should also be clear that all those in public life must challenge poor behaviour, such as bullying and harassment, wherever it occurs, and so we have amended the final sentence of the descriptor to clarify this.
- 1.45 The Committee has decided it will amend the descriptor for leadership as follows:

### **Leadership**

Old descriptor:

Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.

New descriptor:

Holders of public office should exhibit these principles in their own behaviour and treat others with respect. They should actively promote and robustly support the principles and challenge poor behaviour wherever it occurs.

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20 The Committee on Standards in Public Life, Intimidation in Public Life: joint statement on conduct of political party members (December 2020). Accessed online August 2021: <https://www.gov.uk/government/publications/intimidation-in-public-life-joint-statement-on-conduct-of-political-party-members>

21 UK Parliament, Behaviour Code. Accessed online August 2021: <https://www.parliament.uk/globalassets/documents/conduct-in-parliament/ukparliamentbehaviourcode.pdf>

# Chapter 2

## The Regulation of Ethical Standards

- 2.1 In line with the framework established by Lord Nolan, today ethical standards are regulated through the independent scrutiny of compliance with various codes of conduct.
- 2.2 The past 25 years have seen the introduction and development of a number of codes and scrutiny mechanisms. Some codes cover specific public offices, while others cover particular processes. The tables below outline the codes and scrutiny mechanisms in place in central government and Parliament.
- 2.3 It is important to note the progress made since Lord Nolan's first report. There is now a broad and wide-ranging framework covering standards in public life. Few roles and processes that are vulnerable to conflicts of interest remain unregulated. Many codes and regulators which were viewed with scepticism when first introduced are now accepted as an everyday part of our governing processes. For the most severe cases, MPs can be recalled by their constituents, rendering the seat vacant and triggering a by-election.<sup>22</sup>
- 2.4 In government, this regulatory system mirrors the particular circumstances of political office. Elected representatives cannot be regulated like other professions, where a license to practice is granted on the condition of adherence to a code of conduct, and those who break ethics rules can be struck off. Ethics regulation in government must be balanced with the democratic mandate granted to elected representatives, and so any system of investigation and sanction must be balanced and proportionate. The Prime Minister, ultimately, is accountable to Parliament for ethical standards in government.

**“The UK ethics system takes a principles-based approach to upholding public integrity. This approach, and the range of checks and balances which the ethics system incorporates, enables the UK to uphold and ensure government in the public interest for public good in the way most befitting our constitution and system of government.”**

**Government submission to this review, written evidence, April 2021**

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22 The Electoral Commission, Introduction to the Recall of MPs Act 2015. Accessed online August 2021: <https://www.electoralcommission.org.uk/sites/default/files/2021-05/Recall%20Act%20-%20initial%20factsheet%20-%20amended%20April%202021.pdf>

## Codes of conduct and scrutiny covering roles in central government and Parliament

Office Holder	Code of Conduct	Scrutiny
Ministers	Ministerial Code	The Prime Minister Independent Adviser on Ministers' Interests
MPs	House of Commons Code of Conduct Parliamentary Behaviour Code	Parliamentary Commissioner for Standards Independent Expert Panel
Peers	House of Lords Code of Conduct Parliamentary Behaviour Code	Lords Commissioners for Standards
Civil servants	Civil Service Code	Government departments Civil Service Commission (on appeal)
Special advisers	Code of Conduct for Special Advisers	The Prime Minister and the hiring minister Government departments

## Codes of conduct and scrutiny covering processes in central government and Parliament

Process	Affected office holder	Governance Code (or equivalent)	Scrutiny
Parliamentary salaries, allowances and expenses	MPs	The Scheme of MPs' Staffing and Business Costs	Independent Parliamentary Standards Authority (IPSA)
Public appointments	Ministers	The Governance Code for Public Appointments	Commissioner for Public Appointments
Appointments to the House of Lords	The Prime Minister	Vetting for propriety <sup>23</sup>	House of Lords Appointments Commission (HOLAC)

23 The House of Lords Appointments Commission defines propriety as i) the individual should be in good standing in the community in general and with the public regulatory authorities in particular; and ii) the past conduct of the nominee would not reasonably be regarded as bringing the House of Lords into disrepute. See The House of Lords Appointments Commission, Vetting. Available online: <https://lordsappointments.independent.gov.uk/vetting>

Process	Affected office holder	Governance Code (or equivalent)	Scrutiny
Business appointments	Ministers, special advisers, and civil servants	The Business Appointment Rules	Government departments The Advisory Committee on Business Appointments (ACOBA)
Recruitment to the Civil Service	Civil servants	Civil Service Recruitment Principles	Civil Service Commission
Lobbying	Consultant Lobbyists	Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014	The Registrar of Consultant Lobbyists
Outsourced public service delivery	Private providers of public services	Supplier Code of Conduct	Central Commercial Teams and Government Chief Commercial Officer, Cabinet Office
Elections and political donations	Political parties and candidates	Electoral law	The Electoral Commission

- 2.5 During our assessment of the effectiveness of standards regulation in government, contributors to this review emphasised four characteristics of our regulatory system in particular. First, it rests to a significant degree on the basis of conventions and norms, rather than formal rules. Second, regulators often have limited or constrained independence from those they are regulating. Third, few regulators have a basis in primary legislation, and so exist only as creations of the executive. Fourth, the regulatory system is complex, and often confusing to the public. We discuss each issue below.
- 2.6 Contributors also emphasised the importance of day-to-day practice around ethics rules in government, regardless of regulatory reform. This is of particular importance as government departments have responsibility for implementing codes of conduct for ministers, civil servants, and special advisers in the first instance. The overwhelming majority of issues or cases never reach the regulators covered in this report, who largely deal only with either the most serious cases, cases for the most senior office-holders, or cases brought on appeal.
- 2.7 The government's performance here was often cited as an area requiring improvement. We were told that too often there are inconsistencies in the application of codes, that the quality of advice varies, and that insufficient priority is given to ethical issues. The Civil Service still operates on a system too close to self-regulation, where observing codes of conduct is treated as a matter of advice and best practice, rather than one of compliance and regulation.

“The Civil Service has tended, in governance and compliance developments, to lag behind other institutions that are subject to greater external pressures, and has remained self-regulatory where other organisations have moved towards a more structured regulatory framework. The ‘patchwork’ approach to the ethics system... needs to be streamlined and stronger, with more consistent enforcement applied.”

**Nigel Boardman, Report into the Development and Use of Supply Chain Finance: Recommendations and Suggestions, August 2021<sup>24</sup>**

- 2.8 The government should take a more thorough and professional approach to ethics rules. A more rigorous compliance function across government, as recommended in the Boardman report, would represent a significant improvement in departmental processes for upholding codes of conduct. The government’s processes for overseeing compliance with ethics rules now lags behind best practice in the private sector, where compliance is often taken more seriously, better resourced, and subject to greater scrutiny by senior leadership.
- 2.9 We agree with the Boardman report that today there are “increased expectations from the public regarding how [ethics] issues ought to be managed”, and that “in order to retain the trust of the public the government machine ought to be applying a similarly structured and rigorous approach” to that found in the best large private sector organisations.<sup>25</sup> An advisory and light-touch approach to the enforcement of codes of conduct in government may no longer be sustainable; a more formal compliance regime across government would provide greater protection against ethical misconduct.

### **Recommendation 1**

The Civil Service should review its approach to enforcing ethical standards across government, with a view to creating a more rigorous and consistent compliance system, in line with the recommendation of the Boardman report.

## The role of conventions

- 2.10 Despite the breadth of the regulatory regime in government, contributors to this review emphasised the extent to which the upholding of codes of conduct for ministers, civil servants and special advisers depends on adherence to conventions.

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24 Nigel Boardman, A report by Nigel Boardman into the Development and Use of Supply Chain Finance (and associated schemes) related to Greensill Capital in Government: Recommendations and Suggestions (July 2021), 4. Accessed online September 2021: <https://www.gov.uk/government/publications/findings-of-a-review-into-the-development-and-use-of-supply-chain-finance-in-government>

25 Nigel Boardman, A report by Nigel Boardman into the Development and Use of Supply Chain Finance (and associated schemes) related to Greensill Capital in Government: Recommendations and Suggestions (July 2021), 8-9.

- 2.11 These conventions have arisen in place of formal processes and procedures around each code. For example, there is no set evidentiary threshold that determines whether or not an allegation of a breach of the Ministerial Code triggers an investigation by the Independent Adviser. Rather, the convention is that a serious, credible allegation of a breach would lead the Prime Minister to ask the Independent Adviser to launch an investigation. Yet, as has occurred on multiple occasions since the introduction of the Adviser in 2006, Prime Ministers have been reluctant to trigger investigations which have the potential to cause political damage, even where the reported facts appear to merit investigation.
- 2.12 Effective enforcement of codes is often dependent on established conventions and norms on acceptable conduct. The Business Appointment Rules apply to all ministers, special advisers, and civil servants, and in the most senior cases the Advisory Committee on Business Appointments (ACOBA) provides advice on potential employment, including restrictions. Yet ACOBA has no formal enforcement mechanisms and no sanctions, and recent high-profile cases have shown instances where ACOBA's advice has either not been sought or ignored. The business appointments scheme is dependent on a shared assumption that ACOBA's advice should be followed, with negative publicity the only deterrent to noncompliance.
- 2.13 The preeminent role of conventions means that attitudes towards ethics rules within government departments often determine compliance more than the powers or remits of the relevant regulator. For example, the Ministerial Code sets out ministers' transparency obligations to publish the details of gifts, hospitality, and meetings. But there is little consistency between departments and no Independent Adviser has launched an investigation into poor quality transparency releases. Timely, high quality transparency releases should be a departmental priority, but if they are not there is effectively no regulatory scrutiny to ensure that the transparency obligations set out in the Ministerial Code are upheld.
- 2.14 Advocates of the role of conventions and norms in upholding ethical standards emphasise the benefits of flexibility and a proportionate approach. A formal investigation of every minor or technical breach of a code of conduct would be disproportionate. A conventions-based system allows political and Civil Service leadership to examine each case on its merits, and use a range of informal remedial tools, such as training and mentoring, to ensure ethical standards are upheld.

**“I’m a believer in conventions, because they are a more agile and flexible way of reflecting the underlying principles that are most important.”**

**Lord Sedwill, former Cabinet Secretary, online evidence session, March 2021**

- 2.15 Conventions also ensure that personal responsibility remains a dominant feature of ethics decision-making. A strict, rules-based approach that leaves little room for interpretation can reduce adherence to ethical standards to a procedural, tick-box

exercise, rather than a process which requires individuals to assess the meaning and value in upholding the Nolan Principles.

- 2.16 However, a regulatory system so dependent on conventions and norms provides little protection against individuals who intentionally undermine or ignore codes of conduct and the principles they are designed to uphold. Conventions, once undermined, are often difficult to restore, and once the vulnerability of the regulatory system is exposed it is harder to convince rulebreakers that there are long-lasting consequences for noncompliance.

**“As many standards, particularly in political life, are enforced by informal structures and norms, the reduced power of these norms means that the standards themselves are under threat. Relying on goodwill and acceptance of unwritten rules only works when people in public life are willing to accept implicit limits on what they can do. If informal norms are not recognised, there is little that can be done to respond.”**

**The Institute for Government, written evidence, January 2021**

- 2.17 A dependence on conventions – and a series of controversial decisions when past practice has not been followed – has also resulted in an increasing tendency for standards matters to end up in the courts. Third parties and interest groups who saw particular conventions and processes as a guarantee of high ethical standards are pursuing judicial review as a means of last resort when those conventions are not followed. These cases reflect the fragility of a regulatory scheme that is heavily dependent on conventions, especially in periods of crisis and acute political conflict.
- 2.18 While we acknowledge the benefits that conventions can provide, it is clear that our current system of standards regulation suffers from an overdependence on convention. When ethical standards are under pressure, the processes and procedures designed to uphold high standards are too easily ignored or disregarded. The Committee’s recommendations are designed to codify the most important conventions and norms around standards in government into more formal processes and rules.

## The independence of standards regulators

- 2.19 Independence is critical for effective standards regulation. The regulation of ethical standards is often a contentious matter, and a fair and impartial investigation requires a regulator to have no vested interest in any particular outcome. Those responsible for investigating misconduct must be free from institutional and political pressure to produce outcomes favourable to those they scrutinise.
- 2.20 Independence is the product of multiple institutional features, including:
1. **Legal basis:** Are the regulator’s powers and remit defined in primary legislation? Or can the regulator be weakened or abolished with minimal process?



2. **Ownership of the relevant code of conduct:** Who has the ability to amend the relevant code of conduct? Is the regulator's agreement needed to amend the code? Does the regulator own the code themselves? Are elements of the code set by, or protected by, Parliament?
3. **Appointments process:** How is the lead regulator appointed? Does the appointments process include a significant independent element, to ensure the chosen candidate views those they are due to regulate without fear or favour?
4. **Term of office:** Is the regulator appointed for a non-renewable term, to ensure their actions in office are not determined by the potential for reappointment?
5. **Ability to initiate investigations:** Can the regulator launch their own investigations under their own initiative? Do they have access to all the necessary evidence?
6. **Ability to determine breaches:** Can the regulator make a definitive finding of a breach of a code?
7. **Ability to publish findings:** Can the regulator publish their findings under their own initiative?
8. **Ability to issue sanctions or remedial actions:** Does the regulator have the ability to issue sanctions or remedial action?

2.21 Independence also requires sufficient levels of resources. Regulators responsible for overseeing government are dependent on funds from it, and enforced budgetary constraints may limit the ability of regulators to hold government to account effectively.

2.22 Full independence against all of these criteria may not always be possible or desirable. For example, multiple contributors emphasised that the benefits of government ownership of codes will, in some circumstances, outweigh the consequent lack of independence. The Ministerial Code is one such code that draws its power from being owned and issued by the Prime Minister. Similarly, the Business Appointment Rules outline the terms of an employer/employee relationship. In both cases, full independence in the form of parliamentary ownership of each code would not be appropriate.

2.23 The table below shows the independence of standards regulators in Parliament and central government against these criteria. Green denotes a strong degree of independence, yellow a partial or limited degree of independence (which may be appropriate in certain circumstances), while red marks little or no independence.

2.24 Standards regulators fall into three groups. Standards regulators in Parliament now have a strong degree of independence, following significant improvements in recent years. Non-statutory regulators in government - namely the Independent Adviser, Commissioner for Public Appointments, ACOBA, and House of Lords Appointments Commission - have a limited or low degree of independence. The two

statutory regulators in government, the Civil Service Commission and the Registrar of Consultant Lobbyists, have a strong degree of independence.

- 2.25 It is clear to the Committee that the degree of independence in the regulation of the Ministerial Code, public appointments, business appointments, and appointments to the House of Lords falls below what is necessary to ensure effective regulation and maintain public credibility. Independence matters not only as a safeguard against political interference; it is also a matter of trust. Self-regulation, or matters resolved by regulators who are not perceived as independent, offers little assurance to the public that ethical standards are being upheld. The public rightly casts a sceptical eye over regulators perceived to be too close to those they are regulating. In its 2013 report, *Standards Matter*, the Committee noted that “history shows self-regulation often to be ineffective without some form of external involvement. It is essential that someone is able to hold up a mirror to those in public office to remind them of the standards to which they should aspire.”<sup>26</sup>

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26 The Committee on Standards in Public Life, *Standards Matter: A review of best practice in promoting good behaviour in public life* (2013), 7. Accessed online August 2021: <https://www.gov.uk/government/publications/standards-matter-a-review-of-best-practice-in-promoting-good-behavior-in-public-life>

Table comparing the independence of ethics regulators in Parliament and central government

Regulator	Legal basis	Ownership of the code	Appointments process for lead regulator	Term of office	Ability to initiate investigations/casework	Ability to determine breaches of the relevant code	Ability to publish findings	Ability to issue sanctions/remedial action
Parliamentary Commissioner for Standards	Resolution of the House ■	House of Commons Standards Committee ▲	Appointed by resolution of the House of Commons, on the recommendation of the House of Commons Commission ■	Single five-year non-renewable term ■	Yes ■	Yes ■	Yes ■	Can agree remedial action or recommend sanction to the Standards Committee, some sanctions proposed by Independent Expert Panel ■
Independent Parliamentary Standards Authority (IPSA)	Primary legislation ■	Scheme set by IPSA ■	Appointed by Speaker's Committee of the House of Commons ■	Five-year fixed term, renewable once for a further three years ▲	Yes ■	Yes ■	Yes ■	Yes ■
Lords Commissioner for Standards	Resolution of the House ■	House of Lords Conduct Committee ▲	Appointed by resolution of the House of Lords, proposed by the Chair of the Conduct Committee ■	Single five-year non-renewable term ■	Yes ■	Yes ■	Yes ■	Can agree remedial action or recommend sanctions to the Conduct Committee ▲
Independent Adviser on Ministers' Interests	None ●	Owned and amended by Cabinet Office ●	Direct, unregulated appointment by the Prime Minister ●	Single five-year non-renewable term ■	No ●	No ●	No ●	Can privately advise the Prime Minister on the appropriate sanction ▲
Commissioner for Public Appointments	Order in Council ▲	Owned by Cabinet Office, amended by Order in Council ▲	Direct, unregulated appointment by the Minister for the Cabinet Office*, with pre-appointment scrutiny by PACAC ▲	Single five-year non-renewable term ■	Yes ■	Yes ■	Yes ■	Can advise government departments and NDPBs on remedial action ▲

Regulator	Legal basis	Ownership of the code	Appointments process for lead regulator	Term of office	Ability to initiate investigations/casework	Ability to determine breaches of the relevant code	Ability to publish findings	Ability to issue sanctions/remedial action
Advisory Committee on Business Appointments	None ●	Owned and amended by Cabinet Office ●	Regulated as a significant public appointment, with pre-appointment scrutiny by PACAC ■	Single five-year non-renewable term ■	Yes ■	Yes ■	Yes ■	No formal sanctions to administer (can refer some breaches to government under the Ministerial Code) ●
House of Lords Appointments Commission	None ●	Determines its own vetting criteria ■	Regulated as a significant public appointment, with pre-appointment scrutiny by PACAC ■	Single five-year non-renewable term ■	Yes ■	Yes ■	Yes ■	Can recommend to the Prime Minister that a candidate not be appointed ▲
Civil Service Commission	Primary legislation ■	Code's principles are defined in primary legislation** ■	Appointment process established in primary legislation*, with pre-appointment scrutiny by PACAC ■	Single five-year non-renewable term ■	Yes ■	Yes ■	Yes ■	May "make recommendations about how the matter should be resolved"*** ▲
Registrar of Consultant Lobbyists	Primary legislation ■	Lobbying transparency rules set in primary legislation*** ■	Regulated as a significant public appointment, with pre-appointment scrutiny by PACAC ■	Four-year term, renewable for two further three year terms ▲	Yes ■	Yes ■	Yes ■	Yes ■

**Key:** green/square - strong degree of independence; yellow/triangle - partial or limited independence; red/circle - little or no independence

\* Though the Commissioner's role is not a public appointment, the government states the process for appointing the Commissioner is "run in line with the principles of the Governance Code"<sup>27</sup>

\*\* The Constitutional Reform and Governance Act 2010

\*\*\* The Transparency of Lobbying, Non-party Campaigning and Trade Union Administration Act 2014

27 Cabinet Office, Commissioner for Public Appointments: Candidate Information Pack (2020), 5. Accessed online August 2021: <https://publicappointments.cabinetoffice.gov.uk/wp-content/uploads/2020/11/Commissioner-for-Public-Appointments-Candidate-Pack.pdf>

## A statutory basis for ethics regulation in government

- 2.26 Perhaps the most important element of a regulator's independence is its statutory basis. Those regulators which exist solely as the creation of the executive are potentially liable to be abolished or compromised with ease. While abolition of an ethics body would be a controversial move for any administration, the fact that a regulator's powers can be removed by those they are regulating tempers their independence and may diminish the appetite of regulators to speak out.

**“You should never need to look back at your statutory base, but when you are under pressure or in a more controversial situation that is what you do.**

**If I looked then at the Civil Service legislation, that gave me absolute clarity of my powers, and I knew that those powers and the Commission's powers could not be changed, except by going back to Parliament.**

**In contrast, my powers as Public Appointments Commissioner were in an Order in Council which I knew could be changed by a stroke of the pen and a nod of the Privy Council. And that did mean I suddenly felt very vulnerable to an argument with government about the principles because I knew it was perfectly within the government's power, with very little public debate and accountability to Parliament, to change the rules.”**

**Sir David Normington, former First Civil Service Commissioner and Commissioner for Public Appointments, online evidence session, March 2021**

- 2.27 The basis on which a regulator derives its powers matters all the more due to the convention-heavy nature of ethical standards in government. A breach of convention will often not be clearly against the letter of a code of conduct but it may well be against its spirit. Regulators with a firmer basis in statute will be more empowered to speak out against the undermining of norms and conventions that break the spirit of their codes, if not the letter.
- 2.28 The Committee believes that the regulatory system would benefit from codes of conduct having some basis in statute too. Though codes themselves are not intended to be legally binding, a legal obligation on the government to produce each code would better reflect the constitutional importance such codes have in regulating ethical standards. While defining the specific content of each code in law would be unnecessary (and inhibit the regular process of amendment codes often require), enshrining the guiding principles and purpose of each code in legislation would ensure that codes stay true to their original purpose.
- 2.29 The UK already has a successful model of statutory ethics regulation through the Constitutional Reform and Governance Act 2010 (CRAG). The Act established the Civil Service Commission on a permanent basis, details provisions for the appointment and dismissal of commissioners, and places in statute the principles on

which the Civil Service Code must be based. The Act was cited by many contributors to this review as a model of proportionate and balanced statutory ethics regulation, granting the Commission the right degree of independence to act effectively while not being overly prescriptive on the content of the Civil Service Code or how civil service recruitment should be carried out in practice.

**“The legal underpinning [to the Civil Service Commission] helps enormously.”**

**Ian Watmore, former First Civil Service Commissioner, oral evidence, February 2021**

- 2.30 New primary legislation would also allow the powers and remits of the relevant standards bodies to be strengthened and standardised, creating a clearer, simpler and more independent model of ethics regulation across government.

**“We should consider a clearer and more explicit definition of the role of codes laying out standards in public life and setting out the powers of regulators who enforce them. Ideally, this should be via statute. The present position means that the powers of ethical regulators are less than they often appear and are assumed to be.”**

**Peter Riddell, former Commissioner for Public Appointments, written evidence, February 2021**

- 2.31 The Committee recognises fears that a statutory underpinning of standards regulation could lead to a greater incidence of judicial review. However, we heard that recent cases of judicial review on decisions relating to ethical standards have occurred in areas where standards processes remain uncodified, where interest groups have taken the government to court to reverse breaches of convention. Legislation that properly defines the relevant responsibilities of the government and each regulator may, therefore, help prevent such cases. A lack of legislation, rather than new legislation, may be the greater catalyst of judicial involvement in standards processes.
- 2.32 The Committee believes the time is right for new legislation on standards regulation in government to place three regulators on a statutory basis: the Independent Adviser on Ministers’ Interests, the Commissioner for Public Appointments, and the Advisory Committee on Business Appointments (ACOBA).
- 2.33 Accordingly, the Act should oblige the government to produce and publish the Ministerial Code, the Governance Code for Public Appointments, and the Business Appointment Rules, and to consult with the relevant regulator in any process of amendment to each code (a legal guarantee of consultation ensuring that amendments to each code are proportionate and enforceable). The reasons for continued government ownership of each code are discussed in subsequent chapters.

- 2.34 This new law should therefore establish the following aspects of the regulatory framework for each body:
1. **Create an obligation on the government to produce each code of conduct.** The Ministerial Code and the Business Appointment Rules currently only exist by executive action, and the Governance Code for Public Appointments by Order in Council.
  2. **Outline each code's guiding principles and/or purpose.** The law should stipulate that the Ministerial Code be based on the Seven Principles of Public Life, the Governance Code on the Principles of Public Appointments, and the Business Appointment Rules on the need to manage potential conflicts of interest for former office holders.
  3. **Define the process for amending each code.** While it should be the government's obligation to produce each code, any future amendment of the code should require consultation with the relevant regulator.
  4. **Define the appointments process for each regulator.** The Committee is recommending a strengthened element of independence in the appointments process for standards regulators, as outlined in chapter 5 of this report.
  5. **Define the length of term for each regulator.** Each appointee should serve one non-renewable five-year term (as is currently the case).
  6. **Outline the role and responsibilities of each regulator to enforce each code.** These responsibilities will vary across each regulator and are discussed in further detail in chapters 3-6 of this report.
- 2.35 In a time where many share concerns about ethical standards in government, and public confidence in standards in government remains low, we believe the passing of such legislation would improve the regulation of ethical standards and signal the government's commitment to the highest ethical standards in public life.

### **Recommendation 2**

The government should pass primary legislation to place the Independent Adviser on Ministers' Interests, the Public Appointments Commissioner, and the Advisory Committee on Business Appointments on a statutory basis.

- 2.36 The Committee noted that many contributors called for the House of Lords Appointments Commission to be placed on a statutory footing. The perception that peerages are offered as a reward for donations to political parties undermines the credibility of the House of Lords, and so the Committee recognises arguments that a statutory commission may be required.
- 2.37 The Committee believes a statutory HOLAC should be considered as part of a broader House of Lords reform agenda, as outlined in the 2017 report of the Lord

Speaker's Committee on Size of the House (the Burns Report). A statutory basis for HOLAC cannot be considered in isolation and such wider matters are beyond the remit of this Committee.

- 2.38 As the Committee took evidence on the independence of standards regulators for this review, many made the case that this Committee should also have the same degree of statutory independence as regulators themselves. We recognise the appeal of this argument, while noting that the Committee's function as a standing committee is distinct to that of a regulatory body.

## Complexity and consolidation

- 2.39 The standards landscape today is complex and confusing to most. The patchwork of codes and regulators reflects the historical development of ethics regulation in the UK, where scandal may prompt institutional innovation in one particular area, while others are reformed only incrementally over decades.
- 2.40 As a result, the powers, roles, and remits of each scrutiny body vary. Some have the ability to initiate investigations and sanction breaches against the relevant code. Others are solely advisory. Some have a statutory basis in primary legislation, while others are independent bodies sponsored by the Cabinet Office.
- 2.41 Overlapping remits and confusing complaints processes create additional barriers to understanding. Individual office holders are subject to multiple separate regulatory schemes at once, and complaints are often passed from regulator to regulator, and the authority of each to make a definitive ruling is unclear. For example, a complaint about a minister's potential conflict of interest may, depending on the circumstances, be investigated by the Independent Adviser, the Parliamentary Commissioner for Standards, the Lords Commissioner for Standards, or the Electoral Commission – or none.
- 2.42 To the public, this regulatory patchwork can be bewildering, and it contributes to a perception that there are no clear lines of accountability for breaches of ethical standards. Complexity also undermines compliance. Ministers, MPs and civil servants who wish to comply with the rules will often find it difficult to do so. The credibility of the regulatory scheme suffers, and such incidents cause frustration amongst the affected parties.

**“The landscape is muddled and it cannot be clear to most outsiders who is responsible for what and who is accountable to whom.”**

**Lord Pickles, Chair, ACOBA, written evidence, March 2021**

- 2.43 The introduction of the Independent Complaints and Grievance Scheme (ICGS) in Parliament has created a new layer of codes, processes, and regulation for MPs and peers. The greater degree of independence introduced by the ICGS is welcome,



and the scheme represents a significant improvement on prior processes. However, as the Committee noted in its contribution to Alison Stanley's 18-month review, the scheme consists of "a complex web of overlapping bureaucratic structures which have not yet settled into their final form, and ongoing work is needed to refine the finer points of its operation".<sup>28</sup> Any future reforms should focus on simplifying arrangements in both Houses, where possible.

- 2.44 In part to resolve the issue of complexity in government standards regulation, some contributors to this review voiced support for the establishment of a single ethics commission to regulate ethical standards in government. Though exact details on how such a commission would operate are unclear, it would likely consist of the amalgamation of the six ethics bodies currently charged with overseeing standards in central government: the Independent Adviser on Ministers' Interests, ACOBA, the Commissioner for Public Appointments, the Civil Service Commission, the House of Lords Appointments Commission, and the Registrar of Consultant Lobbyists.

**"Our preference would be for the Advisory Committee on Business Appointments (ACOBA) and the Independent Adviser on Ministers' Interests – and potentially other institutions... to be replaced with an independent Ethics Commission; and for this Commission to oversee and enforce enhanced, statutory codes of conduct for ministers and special advisers, and post-employment rules for senior civil servants."**

**Spotlight on Corruption, written evidence, January 2021**

- 2.45 Advocates for a single commission told us that it would provide a clear authority on ethical standards, instead of the current array of advisers, commissioners, and committees currently in place. Such an arrangement should make compliance with ethics rules easier, ensuring ministers, special advisers and civil servants need only navigate one regulatory authority rather than multiple.

**"In line with international trends among advanced economies and mature democracies, the UK should consider alternative institutional structures such as an Integrity Commission, Anti-Corruption Agency or Independent Commissioner, to incorporate and where necessary replace the patchwork of arrangements."**

**The Centre for the Study of Corruption (University of Sussex), written evidence, January 2021**

- 2.46 The establishment of a single commission could, however, come with considerable disadvantages. A single commission would amass significant unelected power over the workings of government. If created as a merger of existing standards regulators,

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<sup>28</sup> Committee on Standards in Public Life, CSPL submission to the ICGS 18-month review (December 2020). Available online: <https://www.gov.uk/government/publications/cspl-submission-to-the-icgs-18-month-review>

such a body would have the ability to oversee the work of ministers, civil servants, and special advisers, as well as the processes of public appointments, business appointments, appointments to the House of Lords, and lobbying. The concentration of such power to a body without an elected mandate, and without the checks, balances and accountabilities of elected politicians, seems disproportionate and does not sit well in our democratic system.

- 2.47 A single consolidated commission would not necessarily solve the issue of complexity either. Each code of conduct exists for a specific purpose, serving a role or process where potential conflicts of interest pose a significant risk. These codes are specific to their context and cannot be easily merged or amalgamated, so a single commission would still have to operate multiple codes, potentially creating as much confusion as it may solve.
- 2.48 The dispersal of regulatory powers across different bodies carries advantages too. Currently, should one regulator take either an overly sympathetic or hostile approach, others remain unaffected. One regulator may fall foul to scandal without others suffering by association. The consolidation of standards regulators would mean all rise and fall together, increasing the vulnerability of the regulatory scheme as a whole. There is less risk in a pluralist approach to ethics regulation, and a consolidated commission is more likely to be targeted by politically motivated criticism.

**“The best sports games are the ones where you don’t notice the referee. If standards bodies are the referees, the best situation is where people don’t really know we exist, as [effective regulation] just happens.”**

**Ian Watmore, former First Civil Service Commissioner, oral evidence, February 2021**

- 2.49 Consequently, the Committee does not believe a single ethics commission provides the right answer to the current challenges facing standards regulation in government. Instead, regulators should be clear about their remits, and seek wherever possible to explain and educate all concerned, including the public, on the boundaries of their responsibilities. The issue of complexity is, to some degree, unavoidable, reflecting the complexity of public administration.

# Chapter 3

## The Ministerial Code and the Independent Adviser on Ministers' Interests

- 3.1 The Ministerial Code, issued by the Prime Minister, sets out the ethical standards and governance processes that ministers must follow. In order to be effective, the code must make clear to ministers the expectations of them, the rules they must follow, and the consequences for a breach of the code.
- 3.2 The Committee's interest in the Ministerial Code is longstanding. Lord Nolan's first report recommended changes to what was then called Questions of Procedure for Ministers (QPM), to draw out more clearly its provisions on ethics and propriety.<sup>29</sup> As QPM became the Ministerial Code, the Committee's 6th, 9th, and 14th reports called for further reforms and clarification, including recommending the creation of the post of the Independent Adviser in 2003.<sup>30</sup>
- 3.3 Since the publication of QPM in 1992, successive Prime Ministers and Committees have sought to transform what was then general guidance on cabinet governance into a modern code of conduct, based on the Seven Principles of Public Life and subject to independent advice and scrutiny. The code has subsequently taken on a higher profile in public discourse, setting expectations for ministerial standards and acting as a benchmark against which the conduct of ministers is judged.
- 3.4 A number of contributors questioned the effectiveness of the code and the independence of the Adviser's role during the course of this review. A number of developments have contributed to this perception:

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29 The Committee on Standards in Public Life, *Standards in Public Life: First Report of the Committee on Standards in Public Life* (1995), 49. Accessed online May 2021: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/336919/1stInquiryReport.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/336919/1stInquiryReport.pdf)

30 The Committee on Standards in Public Life, *Reinforcing Standards: Sixth Report of the Committee on Standards in Public Life* (2000), 54. Accessed online May 2021: <https://webarchive.nationalarchives.gov.uk/20131205110306/http://www.archive.official-documents.co.uk/document/cm45/4557/4557-00.htm>  
The Committee on Standards in Public Life, *Defining the Boundaries with the Executive: Ministers, Special Advisers and the permanent Civil Service* (2003), 27. Accessed online May 2021: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/336889/9th\\_report.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/336889/9th_report.pdf)  
The Committee on Standards in Public Life, *Standards Matter: A review of best practice in promoting good behaviour in public life* (2013), 57. Accessed online May 2021: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/348304/Standards\\_Matter.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/348304/Standards_Matter.pdf)

- The overruling and subsequent resignation of the former Independent Adviser, Sir Alex Allan.
- Significant criticism that credible and high-profile allegations of breaches of the Ministerial Code have not been investigated, often with little public explanation.
- The inability of the Independent Adviser to initiate their own investigations continues to draw public criticism.
- Recent controversies over lobbying have caused public confusion over the provisions of the code in relation to ministers' private communications.
- Significant advances in independence in standards regulation in Parliament have highlighted the Independent Adviser's comparative lack of independence.

3.5 The Committee made a number of recommendations to the Prime Minister in April 2021, in advance of the appointment of a new Independent Adviser. The Committee was pleased to see that Lord Geidt was appointed for a single non-renewable five-year term and that he will be supported by civil servants who report directly to him.

3.6 The Committee believes that further reform is still necessary. Four elements of the code and its operation require updating and clarifying: the content of the code; the ownership and constitutional status of the code; sanctions for breaches of the code; and the role and remit of the Independent Adviser. This chapter includes and expands upon the Committee's findings on the code published in June 2021.

3.7 The evolution of the Ministerial Code has been a slow-moving process, and past reports of this Committee, as well as the Public Administration and Constitutional Affairs Committee, have assessed many of these issues before. The difference today is that the code is under heightened public scrutiny and there is a clear need to rebuild trust in the regulation of ministerial standards.

## The content of the Ministerial Code

3.8 Since 1997, the content of the Ministerial Code has evolved gradually, as each new Prime Minister has amended the content and functioning of the code in response to the political challenges of the day. Recent changes have added provisions on bullying and harassment and meeting foreign officials abroad.

3.9 Much of the code, however, still reflects its origins as Questions of Procedure for Ministers. QPM covered both processes for everyday cabinet governance as well as provisions on ethics and propriety. Today's Ministerial Code does the same, including clauses on the security of government business, allocation of ministerial functions, and maternity leave, alongside rules on conflicts of interest and transparency.

“The document currently contains 129 subsections. Of those, 35 deal with standards of behaviour, such as a requirement for ministers to be professional when dealing with civil servants, and 94 set out processes of government, such as when policy discussions should be taken to a cabinet committee for a decision.”

**The Institute for Government, Updating the Ministerial Code, July 2021<sup>31</sup>**

- 3.10 This combination of procedure and propriety confuses more than it enlightens. It blends important political and constitutional principles with equally important, but distinct, ethics principles. A breach of collective ministerial responsibility, or a failure to consult with the Law Officer, are not necessarily the same as a breach of the Seven Principles of Public Life. Though the Independent Adviser has not, historically, launched investigations into breaches of process or constitutional principle, neither the code nor the Adviser’s terms of reference make this clear.
- 3.11 This also undermines compliance. The hybrid nature of the code confuses important ethics obligations with everyday cabinet processes, making it harder to understand and follow the code. To those outside government, a relatively minor breach of process can be misunderstood as a serious breach of ethical standards.
- 3.12 The code’s provisions on ethics and standards should be separated from those detailing the processes of cabinet governance. The Ministerial Code should be a code of conduct for ministers akin to MPs’ and peers’ codes of conduct, based on the Seven Principles of Public Life.

“It is a hybrid document at the moment, and certainly the guidance on conducting cabinet government is important, it should be somewhere in a document that’s published. Personally, I think quite a lot of it belongs in what was the Cabinet Manual.”

**Sir Alex Allan, former Independent Adviser on Ministers’ Interests, online evidence session, March 2021**

- 3.13 The code’s provisions on the various processes of government are best placed elsewhere. Elements of the code that concern important governing processes, such as cabinet committees and ministerial management of the Civil Service, should be placed in the Cabinet Manual, where much of the relevant material is already duplicated. The Committee notes the July 2021 recommendation of the House of Lords Constitution Committee that a draft update of the manual “should be produced as soon as possible, and not later than 12 months from the date of this report.”<sup>32</sup>

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31 The Institute for Government, Updating the Ministerial Code (July 2021), 18. Accessed online August 2021: <https://www.instituteforgovernment.org.uk/sites/default/files/publications/updating-ministerial-code.pdf>

32 House of Lords Select Committee on the Constitution, Revision of the Cabinet Manual (July 2021), 9. Accessed online August 2021: <https://committees.parliament.uk/publications/6598/documents/71481/default/>

- 3.14 Earlier this year, the Cabinet Secretary told the Chair of PACAC that “no update is currently being planned” of the Cabinet Manual.<sup>33</sup> Should no revision of the manual be forthcoming in the Constitution Committee’s timeline, elements relating to practice and procedure should be placed in separate ministerial guidance.

### **Recommendation 3**

The Ministerial Code should be reconstituted solely as a code of conduct on ethical standards.

## The ownership and constitutional status of the Ministerial Code

- 3.15 The Ministerial Code exists as a matter of convention. Unlike the Civil Service Code or the Special Advisers’ Code, there is no legal obligation on the Prime Minister to publish a code of conduct for ministers, and there is no role for Parliament to play in its drafting. Nonetheless, the status and eminence of the code ensures its continued existence.

“I thought John Major put it very well in an appearance before the Public Administration Select Committee back in the 2000s, when he said that while it is constitutionally correct to say an incoming government can tear it up and begin again, I think that’s unlikely to the point of being dismissed.”

**Sir Alex Allan, former Independent Adviser on Ministers’ Interests, online evidence session, March 2021**

- 3.16 In order to strengthen parliamentary oversight of the code, there have been calls for the House of Commons to play a formal role in the issuing of the Ministerial Code. Options for greater oversight include a requirement that the code must be laid before the House, that the code be subject to a parliamentary vote, or that the Public Administration and Constitutional Affairs Committee be consulted on the drafting of the code.
- 3.17 Yet greater parliamentary oversight may contravene an important constitutional principle: that the Prime Minister has the sole authority to advise the Sovereign on the composition of the government. The issuing of the Ministerial Code is an integral part of this constitutional role. It outlines the Prime Minister’s expectations of ministers and the terms under which they serve, defines how ministers can meet their individual and collective responsibilities, and lays out for the public the standards against which ministers and the government should be held to account.

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<sup>33</sup> Letter from Simon Case, Cabinet Secretary, to William Wragg MP, Chair of PACAC (March 2021). Available online at <https://committees.parliament.uk/publications/5001/documents/49916/default/>

- 3.18 Former Cabinet Secretaries and former Independent Advisers contributing to this review made clear that the code draws its power from the Prime Minister’s authorship. Greater parliamentary oversight may therefore have the unintended consequence of weakening the authority of the code, rather than enhancing it. The Committee’s findings on the Ministerial Code from its 6th report still ring true: “It is the Prime Minister’s document: he authorises and guides the drafting and contributes a personal foreword to it. In the foreword, he makes it clear that the code constitutes his guidance on how he expects ministers to behave.”<sup>34</sup>

**“I think it has to be owned by the Prime Minister, and each Prime Minister should look at it and decide. And that’s the power of it really, this is the prime minister saying how ministers should behave.”**

**Lord O’Donnell, former Cabinet Secretary, online evidence session, March 2021**

**“The strength of the code lies in the fact that every Prime Minister is expected to produce one, and having produced it, own it.”**

**Sir Philip Mawer, former Independent Adviser on Ministers’ Interests, online evidence session, March 2021**

- 3.19 It is on this basis that the Committee does not support calls for the code to be drafted or approved by Parliament. The Prime Minister should issue the code and is accountable to Parliament for any decisions he or she makes relating to the code and its implementation.
- 3.20 The code itself has no basis in statute, and consequently the standards arrangements for ministers are less formalised than those for civil servants and special advisers, which are enshrined in the Constitutional Reform and Governance Act 2010 (CRAG).
- 3.21 Creating an obligation in primary legislation for the Prime Minister to issue the Ministerial Code would grant the code a more appropriate constitutional status. Such legislation need only specify that a code be produced and that it should be based on the Seven Principles of Public Life.
- 3.22 It is customary for every new administration to issue an updated Ministerial Code, though new iterations may occur at any time in response to specific issues that arise. The Independent Adviser should be consulted in any process of revising and reissuing the code (as has occurred in the past), and be able to suggest improvements to the code on an ad hoc basis.

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34 The Committee on Standards in Public Life, *Reinforcing Standards: Sixth Report of the Committee on Standards in Public Life* (2000), 51.

#### **Recommendation 4**

A requirement for the Prime Minister to issue the Ministerial Code should be enshrined in primary legislation.

#### **Recommendation 5**

The Independent Adviser should be consulted in any process of revision to the Ministerial Code.

## Sanctions for breaches of the Ministerial Code

- 3.23 The Committee recommended to the Prime Minister in April 2021 that the Ministerial Code should be subject to graduated sanctions, as the prior expectation that any breach of the code should always lead to a resignation was disproportionate.<sup>35</sup>
- 3.24 No other area of public life has such a binary system of sanctions, and in both Parliament and the Civil Service there are a range of sanctions available according to the seriousness of the offence. There is no reason why this should not be the case for ministers. We are pleased to see that the Prime Minister has agreed to a system of graduated sanctions.<sup>36</sup>
- 3.25 Inadvertent or minor breaches may only require remedial action, such as a correction of the record or a resolution of a potential conflict of interest (for example, the returning of a gift or the delegation of a decision to another minister). Minor breaches, where a minister has made an error of judgement, should also be rectified with a written apology.
- 3.26 More significant or serious breaches, such as cases where ministers have allowed a substantial conflict of interest to arise, should necessitate more severe sanction. In some cases, an apology by means of a personal statement to Parliament may suffice. In others, ministers should be fined a proportion of their ministerial salary. Resignation remains the appropriate sanction for the most serious breaches of the Ministerial Code.
- 3.27 An updated version of the Ministerial Code should detail a range of sanctions the Prime Minister may issue in response to a breach of the code.
- 3.28 The issuing of sanctions must be a decision solely for the Prime Minister. To create a situation where any independent regulator of the Ministerial Code would effectively

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35 Correspondence between the Prime Minister and Lord Evans on the Independent Adviser on Ministers' Interests (April 2021). Accessed online May 2021: <https://www.gov.uk/government/publications/correspondence-between-the-prime-minister-and-lord-evans-on-the-independent-adviser-on-ministers-interests>

36 Correspondence between the Prime Minister and Lord Evans on the Independent Adviser on Ministers' Interests (April 2021).



have the power to fire a minister would be unconstitutional. The Prime Minister is ultimately accountable to Parliament for any decision on sanctions he or she makes. Recent reform to the Independent Adviser's role to allow the Adviser to recommend confidentially the appropriate sanction codifies the right balance of responsibilities in this area.

### **Recommendation 6**

The Ministerial Code should detail a range of sanctions the Prime Minister may issue, including, but not limited to, apologies, fines and asking for a minister's resignation.

## The Independent Adviser on Ministers' Interests

### **Appointment and terms of office**

3.29 There is no published information on the appointments process for the Independent Adviser, and past post-holders told the Committee it amounted to little more than a 'tap on the shoulder' approach. The appointments process for the Independent Adviser is therefore significantly less independent than for other standards regulators, nearly all of whom are appointed through the regulated process for significant public appointments.

**"I wasn't aware of any particular process when I was appointed, I was simply asked, would I be interested in taking on the role."**

**Sir Alex Allan, former Independent Adviser on Ministers' Interests, online evidence session, March 2021**

3.30 The Adviser must have the trust and confidence of the Prime Minister, so it is right that the Prime Minister has the final decision on who to appoint. The appointments process, however, should have a greater degree of independence to improve public confidence that the Adviser will be fair and unbiased in their investigations and findings. The Committee believes the appointment of all future Independent Advisers should be regulated by an enhanced version of the current process for significant public appointments, as detailed in chapter 5 of this report.

3.31 We were glad to see that the Prime Minister appointed the incumbent Adviser for a non-renewable five-year term and that he will be supported by civil servants reporting directly to him, in line with the Committee's recommendations.<sup>37</sup> Such arrangements act as a further guarantee of the Adviser's independence.

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37 Letter from the Prime Minister to Lord Evans, 28 April 2021. Accessed online May 2021: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/981905/Letter\\_from\\_the\\_Prime\\_Minister\\_to\\_Lord\\_Evans\\_\\_28\\_April\\_2021.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/981905/Letter_from_the_Prime_Minister_to_Lord_Evans__28_April_2021.pdf)

### **Recommendation 7**

The Independent Adviser should be appointed through an enhanced version of the current process for significant public appointments.

## **The initiation of investigations**

- 3.32 In April 2021, the Committee recommended that the Independent Adviser be able to initiate their own investigations. Though the Prime Minister rejected this recommendation, he agreed to amend the Independent Adviser's terms of reference so that the Adviser may now confidentially advise the Prime Minister if they believe an allegation warrants further investigation. In his first Annual Report as Independent Adviser, Lord Geidt described the Adviser's new "explicit authority" to advise on initiation "an important stiffening of the independence of the post".<sup>38</sup>
- 3.33 It is unclear, however, to what extent this represents a significant change to prior arrangements. Sir Alex Allan, former Independent Adviser, told the Committee that he would regularly discuss issues with the Propriety and Ethics team in the Cabinet Office, and that he was "not completely sitting back and waiting around". Sir Alex confirmed that "the formal initiation comes from the Prime Minister and that's as it must be, but there's the possibility for some discussion of the issue before that formal initiation".<sup>39</sup> So, while formalising the Adviser's right to advise confidentially on initiation is welcome, it may not represent a substantive improvement in the independence of the Adviser.
- 3.34 In his evidence to the Public Administration and Constitutional Affairs Committee (PACAC), Lord Geidt expressed his commitment to making the new terms of reference a success, and to assessing their effectiveness after a period of operation where the "revivified" terms of reference "are actively deployed".<sup>40</sup> The Committee has taken a similar approach, using the period since April 2021 to assess the extent to which new arrangements have restored trust in the regulation of ministerial standards.
- 3.35 The Independent Adviser undertook two investigations in summer 2021, both detailed in his annual report. The first, which assessed the circumstances surrounding the funding of refurbishments to the Prime Minister's flat, found no breach of the code. The second, which examined the former Health Secretary's stake in his sister's company (which was subsequently awarded an NHS contract), found

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38 Lord Geidt, Annual Report by the Independent Adviser on Ministers' Interests, paragraph 6. Accessed online May 2021: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/990394/Report\\_by\\_the\\_Independent\\_Adviser\\_May\\_2021\\_\\_1\\_.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/990394/Report_by_the_Independent_Adviser_May_2021__1_.pdf)

39 Sir Alex Allan, Sir Alex Allan and Sir Philip Mawer - Online Evidence Session with CSPL, 27:50 - 29:23 (2021). Accessed online May 2021: [https://www.youtube.com/watch?v=x\\_5eul7\\_ITI&t=28s](https://www.youtube.com/watch?v=x_5eul7_ITI&t=28s)

40 Lord Geidt, Post appointment hearing: The Independent Adviser on Ministers' Interests, Oral evidence given to the House of Commons Public Administration and Constitutional Affairs Committee (13 May 2021), response to Q24. Accessed online May 2021: <https://committees.parliament.uk/oralevidence/2159/default/>

a “minor” breach of the code had occurred. The investigation into the former Health Secretary was the first to take place under an explicit regime of graduated sanctions. Both investigations attracted a significant degree of media scrutiny.<sup>41</sup>

- 3.36 The Committee still believes that the Independent Adviser should have the ability to initiate their own investigations. Meaningful independence is the benchmark for any effective form of standards regulation and current arrangements still fall below this bar. Without stronger independence, the public will continue to doubt that ministers will be held to account for suspected breaches of high standards. A regulatory system that appears to be little more than self-regulation will inevitably be seen as one where party politics dominates, rather than the merits of each case.
- 3.37 The primary argument made by successive administrations against granting the Adviser the ability to initiate investigations concerns the Prime Minister’s constitutional role in determining the composition of the government. It is understandable for Prime Ministers to want to retain control of powers relating to the independence of investigations when the conclusion of such an investigation could force a ministerial resignation. It would be improper for the Independent Adviser effectively to have the power to erode the Prime Minister’s responsibility for the composition of the government.
- 3.38 The introduction of graduated sanctions, and sanctions remaining solely in the hands of the Prime Minister, removes this constitutional obstacle. It should be clear to all parties that it is for the Prime Minister alone to decide on whether or not a breach of the code warrants a resignation, and that no outcome of an investigation – including the finding of a serious breach – prejudices his or her conclusions. The use of graduated sanctions ensures that there is no constitutional impropriety in granting the Independent Adviser the ability to initiate investigations.
- 3.39 Concerns have also been raised that an Adviser with the ability to initiate investigations would be targeted with vexatious, trivial or politically motivated complaints. This is, unfortunately, already a risk under current arrangements. However, a more substantively independent Adviser would be in a more credible position to dismiss trivial or politically motivated complaints, as there would be less grounds for suspicion that decisions on initiating investigations are influenced by political interests. As the experience of the Parliamentary Commissioner for Standards shows, an Independent Adviser, supported by a team of officials, would be able to reject unsubstantiated complaints without further investigation.

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41 Lord Geidt, Annual Report of the Independent Adviser on Ministers’ Interests (May 2021).

“The power to launch independent investigations could potentially increase the risk of vexatious or unfounded allegations of breaches of the Ministerial Code, usually by political opponents of whichever party is in government at the time, and particularly in the run-up to elections. Those allegations need to be dealt with swiftly and efficiently, to avoid undermining public trust in the integrity of government or reducing the efficiency and effectiveness of government decision-making too. Fortunately, the Parliamentary Commissioner for Standards (who already has the same power of independent investigation, and who gets several hundred complaints each month) has a well-established and successful approach which provides a useful template for dealing with this issue.”

**John Penrose MP, Prime Minister’s Anti-Corruption Champion, written evidence, January 2021**

- 3.40 Comparisons with Parliament highlight the importance of greater independence. Improvements in the independence of investigations in the House of Commons on bullying, harassment, and sexual harassment bring matters under the Ministerial Code into sharp relief. On multiple occasions, witnesses to this review pointed out that if a minister bullied or harassed a parliamentary staffer, the complaint would be subject to a fully independent investigation. If the same minister bullied or harassed a civil servant, that complaint would not be assessed independently, and may never be investigated at all. Polling of FDA members found that 85% of the Senior Civil Service and 90% of Fast Streamers had no confidence in the regulation of the Ministerial Code.<sup>42</sup> This is not a sustainable position.

“If the point of this is to create confidence in a process, then the idea that an investigation can only be started by the person who is going to be making the final decision on it just creates such an obvious conflict... [currently] the way to stop difficult decisions having to be made under the Ministerial Code is to stop any investigation in the first place.”

**Dave Penman, General Secretary, FDA, online evidence session, March 2021**

- 3.41 Under reformed arrangements, the right to initiate investigations should not be the Adviser’s alone, and the Prime Minister or Cabinet Secretary should continue to be able to ask the Adviser to launch an investigation into any matter of concern. It may also be appropriate in some circumstances for the Prime Minister and Adviser to agree that some aspects of an investigation are better undertaken by the Cabinet Secretary.

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<sup>42</sup> Dave Penman, FDA Union: Why we’ve launched a judicial review of the Home Secretary’s breach of the Ministerial Code (February 2021). Accessed online May 2021: <https://www.fda.org.uk/home/Newsandmedia/Features/Why-we-ve-launched-a-judicial-review-of-the-Home-Secretarys-breach-of-the-Ministerial-Code.aspx>

### **Recommendation 8**

The Independent Adviser should be able to initiate investigations into breaches of the Ministerial Code.

### **The determination of breaches**

- 3.42 Under current arrangements, the Independent Adviser, on examining the facts of a case, reports to the Prime Minister on whether or not they believe a minister's actions amount to a breach of the code. It is the Prime Minister, however, who makes the final determination on whether or not a breach of the code has occurred.
- 3.43 This two-step process places both the Adviser and the Prime Minister in a difficult position if there is a divergence of opinion on the finding of a breach. An Adviser whose conclusion of a breach is publicly rejected by the Prime Minister may find themselves critically undermined and considering resignation. For the Prime Minister, overruling the Adviser on the determination of a breach therefore comes with a significant and unwelcome additional political cost. Cases of misconduct are not always clear cut, and current arrangements mean that a slight difference of opinion may result in disproportionate consequences.
- 3.44 In addition, in the eyes of the public, the overruling of an Independent Adviser on the determination of a breach undermines the principle of independent scrutiny that Lord Nolan identified as so important to the upholding of standards in public life. Should an Adviser then subsequently resign, trust in the regulation of the Ministerial Code falls further.
- 3.45 Where any finding of a breach would lead to the expectation of a minister's resignation, it is understandable that the Prime Minister would want to retain the ultimate authority to declare a breach of the code. But the introduction of graduated sanctions means that the Committee sees no reason why the Adviser's determination of a breach cannot be final. By granting the Adviser the authority to determine a finding of a breach, while asserting the Prime Minister's right to choose from a range of sanctions for that breach, the Prime Minister's right to determine the composition of their cabinet is protected, and the integrity of the independent regulation of the code is upheld.

### **Recommendation 9**

The Independent Adviser should have the authority to determine breaches of the Ministerial Code.

## The publication of the Independent Adviser's findings

- 3.46 The Committee recommended to the Prime Minister in April 2021 that the Adviser should be able to publish their findings. Concerns had been raised in the course of evidence gathering that the publication of the Adviser's conclusions could be withheld or delayed. A lack of openness or timeliness risks fuelling perceptions that the Ministerial Code can be manipulated for political gain.
- 3.47 We welcome the Prime Minister's commitment that the Adviser's findings will be published in a timely manner. The Committee recommends that this should happen no more than eight weeks after the Adviser has submitted their report. A summary of the Adviser's findings should be published alongside the Prime Minister's decision on sanctions. We advise publishing a summary only given that evidence is usually contributed in confidence.

### **Recommendation 10**

The Independent Adviser's findings should be published no more than eight weeks after a report has been submitted to the Prime Minister.

## A statutory basis for the Independent Adviser

- 3.48 As discussed in recommendation 2, in order to guarantee the independence of the Adviser, key features of office should be established in primary legislation. These include the:
- appointments process for the Adviser (see chapter 5)
  - Adviser's term of office (a single non-renewable five-year term)
  - Adviser's role to advise on and oversee the production of the List of Ministers' Interests
  - Adviser's remit to initiate investigations, conduct investigations, and determine breaches of the Ministerial Code

# Chapter 4

## The Business Appointment Rules and ACOBA

- 4.1 The sharing of expertise between government and the commercial world improves the effectiveness and efficiency of both. Ministers and civil servants have a right to pursue or return to previous careers in the private sector after leaving public office, and interchange between the public and private sectors has been encouraged by successive governments.
- 4.2 It is equally important to recognise, however, that the privileges and obligations of public service distinguish employment in government from working for a private company, and that potential conflicts of interest must be considered when regulating movement from the public to the private sector.
- 4.3 The government's Business Appointment Rules regulate the employment of ministers, civil servants and special advisers after they leave public office. The rules allow government departments (or for the most senior cases, ACOBA), to advise waiting periods, conditions, and restrictions on private sector employment, or to advise that a proposed appointment is unsuitable. The rules apply for either one or two years after leaving public office, depending on the seniority of the applicant or the nature of their work. The rules include a general principle of a two-year ban on lobbying. The purpose of the rules is to avoid:
- any suspicion that an appointment might be a reward for past favours
  - the risk that an employer might gain an improper advantage by appointing a former official who holds information about its competitors, or about impending government policy
  - the risk of a former official or minister improperly exploiting privileged access to contacts in government<sup>43</sup>
- 4.4 For civil servants and members of the armed forces, the Business Appointment Rules have been in place since the 1970s. Ministers were first made subject to the rules on the recommendation of Lord Nolan's first report in 1995.<sup>44</sup> Though many aspects of the rules have since been reformed, the institutional architecture of the Business

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43 The Advisory Committee on Business Appointments, Business Appointments - making applications under the rules for former ministers and senior Crown servants (2020). Accessed online May 2021: <https://www.gov.uk/guidance/new-business-appointments-for-senior-public-servants>

44 Standards in Public Life: First Report of the Committee on Standards in Public Life (1995), 54.

Appointment Rules is broadly similar today to 25 years ago: the rules are issued and owned by government, are non-statutory, advisory, and administered by the independent Advisory Committee on Business Appointments (ACOBA) in the most senior cases.

- 4.5 Yet the context in which the Business Appointment Rules operate has changed in two important aspects. First, there is now significantly greater movement within careers and more frequent interchange between the public and private sectors. In 1995, Lord Nolan noted evidence arguing that “in most cases, senior civil servants will leave public service at a retirement age which is known in advance, and that on departure most will receive a full pension.”<sup>45</sup> Today, senior civil servants (and ministers) leave public office younger, and it is much more common for individuals to have careers which regularly move between the public and private sectors.
- 4.6 Second, government outsourcing today is significantly higher than it was 25 years ago. Even before the coronavirus pandemic, around one third of public expenditure was spent on buying goods and services from external suppliers, with a fifth of that spending going to ‘strategic suppliers’ who each receive over £100m in revenue from government.<sup>46</sup> As outsourcing increases, so does the risk that private companies may seek to gain advantage through employing a former public office holder.
- 4.7 Initial investigations into the circumstances surrounding Greensill Capital’s engagement with government have exposed flaws in the handling of conflicts of interest and the operation of the Business Appointment Rules. The Public Administration and Constitutional Affairs Committee cited “the complexity of the Business Appointment Rules and their implementation” as the reason behind one former official’s failure to consult ACOBA about their Greensill role.
- 4.8 Long-term changes in the risks around business appointments, alongside the flaws in the regulatory regime exposed in the Greensill Capital scandal, have resulted in widespread discontent around the current operation of the Business Appointment Rules. In the evidence we took, criticism of the current application of the rules was unanimous. This chapter covers four areas of reform identified in the Committee’s published findings: the scope of the rules; the two-year ban on lobbying; the lack of any investigation, enforcement and sanctions around the rules; and the application of the rules at departmental level. It also proposes that ACOBA takes on a formal regulatory function.

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45 Standards in Public Life: First Report of the Committee on Standards in Public Life (1995), 52.

46 The Institute for Government, Government Procurement: The scale and nature of contracting in the UK (2018). Accessed online May 2021: <https://www.instituteforgovernment.org.uk/publications/government-procurement>



## The scope of the Business Appointment Rules

- 4.9 As currently written, the government’s Business Appointment Rules are framed to focus on any direct regulatory, policy, or commercial relationship between the applicant and the hiring company. Such a framing targets the most obvious risk of corruption: that a minister or civil servant took a specific decision while in office in anticipation of future reward.
- 4.10 The Committee’s evidence raised concerns that such a framing may be too narrow. Contributors emphasised the risk to public trust when former ministers and civil servants take up private sector appointments in the sectors where they had broad regulatory and commercial responsibility, even where there is no direct relationship between a former office-holder and the hiring company. We were told that the perception of probity could be undermined in cases where, for example, former housing ministers go to work for construction companies, or former senior civil servants at the Department for Transport go to work for rail companies.

**“I don’t think it’s ethical. I’ve worked on contracts for businesses before where I had a clause that didn’t allow me to work for certain companies... because obviously it’s a conflict of interest.”**

**Focus group participant, August 2021**

- 4.11 Such perceptions must be balanced against the fact that the government’s Business Appointment Rules exist to regulate conflicts of interest, while actively encouraging the interchange between government and business. A significant expansion in the scope of the Business Appointment Rules would undoubtedly hinder beneficial interchange between the public and private sector, and it could also lead to a requirement to compensate former public office holders from the public purse for the period of time they are prohibited from taking other paid employment.
- 4.12 PACAC has previously recommended that the rules should include “a clearly defined principle that at a minimum, public servants should avoid taking up appointments within a two year time period that relate directly to their previous areas of policy and responsibility when they have had direct regulatory or contractual authority within a particular sector.”<sup>47</sup> Lord Pickles, Chair of ACOBA, wrote that “consideration should be given to making it explicit in the rules, and in employment contracts, that it is not appropriate for individuals to work in areas they have had direct regulatory, commercial or contractual responsibilities.”<sup>48</sup>

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47 House of Commons Public Administration and Constitutional Affairs Committee, Managing Ministers’ and officials’ conflicts of interest: time for clearer values, principles and action (2017), paragraph 63. Accessed online May 2021: <https://publications.parliament.uk/pa/cm201617/cmselect/cmpublicadm/252/25210.htm>

48 Lord Pickles, Written evidence to Greensill inquiries (2021), paragraph 10. Accessed online May 2021: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/984791/ACOBA\\_Submission\\_Greensill\\_inquiries.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/984791/ACOBA_Submission_Greensill_inquiries.pdf)

- 4.13 The Committee agrees with PACAC and Lord Pickles that the scope of the rules should be expanded. Conflicts of interest are not just the product of a relationship between an official and a specific future employer. An official may initiate policy or regulation sympathetic to a range of companies providing a particular service or product, with an eye to future employment, without having a direct relationship with any specific company.
- 4.14 The rules should not be so broad, however, as to prohibit the employment of a minister or official by a company with whom they have had no direct relationship and only tangential or incidental engagement with the relevant policy area. The Committee therefore proposes that the rules be expanded to prohibit for two years business appointments where the applicant has had significant and direct responsibility for policy, regulation, or the awarding of contracts relevant to the hiring company.
- 4.15 A second issue concerns the need for former ministers and senior civil servants to seek ACOBA approval for unpaid or low-risk roles. Unpaid roles, or roles in the public sector or academia, generally pose less of a threat to the integrity of government than private sector roles. The Committee welcomes Lord Pickles' proposals to apply a more proportionate, risk-based approach to "offer prompt, predictable and consistent advice" on such cases.<sup>49</sup>

#### **Recommendation 11**

The Business Appointment Rules should be amended to prohibit for two years appointments where the applicant has had significant and direct responsibility for policy, regulation, or the awarding of contracts relevant to the hiring company.

## The ban on lobbying

- 4.16 Lobbying on behalf of commercial interests poses a significant risk to public perceptions of the integrity of government where it appears that former office holders are trading on their time in office. The Seven Principles of Public Life are undermined when former officials use contacts made in government to provide privileged access for a private sector company in return for financial reward, particularly when such lobbying is not transparent.

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49 Lord Pickles, written evidence to the Standards Matter 2 Review (2021), paragraph 10. Accessed online May 2021: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/972449/Standards\\_Matter\\_2\\_-\\_Evidence\\_from\\_Witnesses\\_for\\_Online\\_Evidence\\_Sessions.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/972449/Standards_Matter_2_-_Evidence_from_Witnesses_for_Online_Evidence_Sessions.pdf)

“ACOPA makes it explicit that lobbying the government to unfairly benefit a new employer on leaving office is inappropriate and unacceptable. However, there is no blanket ban or statutory requirement not to lobby the Government on leaving office.”

**Lord Pickles, Chair, ACOBA, written evidence, March 2021**

- 4.17 In light of those risks, the two-year ban may be too short in some cases. Government departments and ACOBA should be able to issue a lobbying ban for a longer period of up to five years where they deem it appropriate. Whether or not a longer ban is warranted will depend on the nature of the position held by an applicant in government. If an applicant had a particularly senior role, or where contacts made or privileged information received will remain relevant after two years, a longer ban may be necessary to ensure that former officials are not directly benefitting from their time in office. Any longer ban should be applied proportionately and should not become the default option.
- 4.18 In his oral evidence to the Committee, Lord Pickles also highlighted the issue of officials joining lobbying companies while claiming not to be undertaking any lobbying. It is reasonable to view such claims with scepticism, and the Committee agrees with Lord Pickles that the government should amend the rules to make clear “that applications to work with lobbying firms will not be accepted for a certain period of time”.<sup>50</sup>

“The reasonable question is this. If a person is going into a lobby group, and they are not allowed to lobby, what are they doing? I think we need to address whether it is appropriate to join a lobbying company or not within a two-year period.”

**Lord Pickles, Chair, ACOBA, online evidence session, March 2021**

### **Recommendation 12**

The Business Appointment Rules should be amended to allow ACOBA and government departments to issue a ban on lobbying of up to five years.

### **Recommendation 13**

The lobbying ban should include a ban on any work for lobbying firms within the set time limit.

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<sup>50</sup> Lord Pickles, written evidence to the Standards Matter 2 Review (2021), paragraph 21.

## Enforcement and sanctions

- 4.19 Lord Pickles' evidence to this review was clear: "there are no sanctions" for breaches of the Business Appointment Rules. It is for this reason that "ACOBA is not a regulator nor a watchdog".<sup>51</sup> The rules, which are owned by the government, specify that ACOBA's role is solely to advise applicants on whether proposed appointments are in line with the rules.
- 4.20 ACOBA advises former ministers directly, and the Ministerial Code states that former ministers "must abide by the advice of the Committee".<sup>52</sup> For cases involving the most senior civil servants, ACOBA writes to the former department, setting out the advice that applies to the proposed appointment. For special advisers of equivalent standing, ACOBA advises the relevant permanent secretary, who has the final decision-making authority. Government departments and agencies are responsible for upholding the rules for all other civil servants.
- 4.21 In lieu of any formal sanctions, transparency has become the primary mechanism by which the rules are upheld by ACOBA. Public letters from ACOBA may pressure applicants and prospective employers into compliance with the rules, creating what the government terms "moral and reputational pressure on people leaving public office."<sup>53</sup> Such pressure may be significant, and in most cases, enough to ensure compliance. Lord Pickles was clear that compliance with the rules is, to the extent of ACOBA's knowledge, very high.
- 4.22 The effectiveness of transparency at ensuring compliance does not make up for the fact that there are no sanctions for former office holders who break the government's rules. Media scrutiny may cause an individual reputational damage, but it does not constitute a government-issued sanction for a breach of the government's own rules. The public credibility of any regulatory scheme depends on a visible range of sanctions, but neither ACOBA nor government departments can issue any.

**"ACOBA is not adequately regulating the 'revolving door'."**

**The Centre for the Study of Corruption (University of Sussex), written evidence, March 2021**

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51 Lord Pickles, Lord Eric Pickles - Online Evidence Session with CSPL, 25:36 - 25:51 (2021). Accessed online May 2021: <https://www.youtube.com/watch?v=1ztGUOOhU8o>; and Lord Pickles, written evidence to the Standards Matter 2 Review, paragraph 5.

52 Cabinet Office, Ministerial Code (August 2019), paragraph 7.25. Accessed online August 2021: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/826920/August-2019-MINISTERIAL-CODE-FINAL-FORMATTED-2.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/826920/August-2019-MINISTERIAL-CODE-FINAL-FORMATTED-2.pdf)

53 Government submission to Standards Matter 2 (2021), paragraph 50. Accessed online May 2021: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/980366/Government\\_Submission\\_to\\_Standards\\_Matter\\_2.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/980366/Government_Submission_to_Standards_Matter_2.pdf)

- 4.23 There are additional problems with relying on transparency alone as a means of ensuring compliance with the Business Appointment Rules. The most important of these is the fact that under current arrangements, transparency undermines not only the reputation of the individual accused of breaching the rules but also the reputation of ACOBA itself, as well as the credibility of the business appointments scheme. As one contributor told the Committee, the louder ACOBA's bark, the more evident it is that it has no bite.
- 4.24 This is compounded by the fact that compliance with the rules is less visible than breaches of the rules. ACOBA does not publish correspondence where applicants have complied with either formal or informal advice that an appointment is unsuitable, as ACOBA must be able to provide confidential advice to applicants unsure about the propriety of an appointment who want to consult with the Committee. However, this means that the net effect of the government's transparency-only approach to enforcing the rules is a series of media stories highlighting breaches of the rules and a lack of sanction for those doing so, while ACOBA's impact on inappropriate business appointments not being taken up is less visible. ACOBA publishes aggregate figures of applications not taken up or withdrawn in its Annual Report, but these figures receive limited media coverage.

**“The lack of any information about refusals creates the perception that ACOBA simply approves every application and that there are no real restrictions on what roles can be taken.”**

**Transparency International UK, written evidence, January 2021**

- 4.25 No system of ethical regulation can sustain the trust of the public, or those it is meant to regulate, when its primary method of enforcement serves only to highlight the lack of any meaningful sanctions for rule-breakers. On this basis, the Committee believes that transparency alone is not an adequate means of enforcing the Business Appointment Rules.

**“The court of public opinion can be a useful tool – very few individuals, or their employers wish to be found acting contrary to the high standards expected of officials. However, despite the shame and damage to reputation that can occur to an individual as a result of this transparency, likewise the high-profile nature of these cases can damage the reputation of the system as a whole.”**

**Lord Pickles, Chair, ACOBA, written evidence, March 2021**

- 4.26 The government is working with the ACOBA Chair to integrate breaches of the rules into the honours and appointments processes, including for the House of Lords. Such a move is welcome. However, these reforms are unlikely to resolve the issues of public trust outlined above. Lord Pickles made clear to this Committee that any consideration of breaches in the honours and appointments processes will not bind the Prime Minister's powers of patronage, and the public is unlikely to see

the possible future non-receipt of an honour, peerage, or public appointment as a genuine or serious sanction for a breach of the rules. These improvements therefore fall short of introducing a formal and credible sanctions regime.

- 4.27 A better option to ensure compliance would be to enforce the Business Appointment Rules via the relevant employment contracts. Part of this legal framework is already in place, as both the Civil Service Management Code and the Model Contract for Special Advisers contain provisions on the Business Appointment Rules. Currently, it remains unclear how such provisions are enforced in cases where ACOBA or departmental advice is either not sought or ignored.

**“As the CSMC underpins all civil servants’ terms and conditions, the requirement to observe the rules can be said to be a contractual obligation.”**

**Nigel Boardman, The Boardman Report on the Development and Use of Supply Chain Finance in Government, July 2021<sup>54</sup>**

- 4.28 The government should ensure that adherence to the Business Appointment Rules is an enforceable contractual obligation and outline what sanctions or remedial action they will pursue for any breach of contract. The government should also institute parallel legal arrangements for ministers, who do not have employment contracts. Possible options for sanctions may include seeking an injunction prohibiting the uptake of a certain business appointment, or the recouping of a proportion of an office holder’s pension or severance payment.

**“It should be an explicit post-employment contractual obligation to adhere to the government’s rules and make clear what the sanction will be.”**

**Lord Pickles, Chair, ACOBA, written evidence, March 2021**

**“I think MPs should have some sort of employment contract that prevents them from doing things like taking a job in a company after they’ve given them a contract.”**

**Focus group participant, August 2021**

- 4.29 Relying on transparency alone, or the honours and appointments reforms suggested, will not introduce a sanctions regime strong enough to restore public trust in the regulation of business appointments. The widespread perception that breaches of the government’s Business Appointment Rules go unpunished undermines the credibility of the regulatory regime, regardless of how high compliance is in practice.

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54 Nigel Boardman, A report by Nigel Boardman into the Development and Use of Supply Chain Finance (and associated schemes) related to Greensill Capital in Government: Report of the Facts (July 2021), 90. Accessed online September 2021: <https://www.gov.uk/government/publications/findings-of-a-review-into-the-development-and-use-of-supply-chain-finance-in-government>

The Committee believes that enforcing the Business Appointments Rules through employment contracts is necessary to ensure the Seven Principles of Public Life are upheld as public servants move into the private sector.

#### **Recommendation 14**

The government should make adherence to the Business Appointment Rules an enforceable legal requirement for ministers, civil servants, and special advisers, and set out what the consequences for a breach of contract may be.

## **A new regulator of business appointments**

- 4.30 Under such arrangements, ACOBA should take on a formal regulatory function. The Committee's decisions should be directly binding on applicants, rather than a recommendation to the relevant minister, Prime Minister, or permanent secretary. The Committee should also be able to investigate potential breaches of its decisions or failures to seek a ruling from it when one was required. (The Committee already undertakes fact-finding exercises through its letters to those it suspects of noncompliance.) Greater resources should be provided to the Committee as necessary.
- 4.31 On the finding of a breach of the rules, ACOBA should submit a report to the Cabinet Office. As a breach of the rules would constitute the breaking of a contract with the government, the Cabinet Office should then decide on sanctions or remedial action, as well as any possible appeals process.
- 4.32 To enshrine and strengthen the independence of the reformed regulatory regime, the Business Appointment Rules and the Committee should be established on a statutory basis, as outlined in recommendation 2. Legislation should include the following:
- An obligation on the government to publish the Business Appointment Rules to regulate any potential conflicts of interest of ministers, special advisers and civil servants moving into the private sector, and to consult with the Committee on Business Appointments on any significant amendments to those rules.
  - The establishment of a Committee on Business Appointments as an independent arm's-length body, whose purpose is to:
    - rule on applications under the rules for ministers, the most senior civil servants and special advisers
    - investigate potential breaches of the rules
    - provide guidance on the rules to any potential applicants
  - The terms of office for the Committee's Chair, including:
    - the appointments process, as outlined in chapter 5
    - that the chair serve for a single non-renewable five-year term

### **Recommendation 15**

Rulings of the Advisory Committee on Business Appointments should be directly binding on applicants.

### **Recommendation 16**

ACOPA should have the power to undertake investigations into potential breaches of the Business Appointment Rules, and be granted additional resources as necessary. The Cabinet Office should decide on sanctions or remedial action in the case of a breach.

## The application of the rules in government departments

- 4.33 A serious area of concern shared by both Lord Pickles and the Committee concerns the application of the Business Appointment Rules in government departments, below ACOBA level. Lord Pickles characterised the approach of some departments as “slapdash” and “verging on negligent”, while praising the approach of others. The Committee agrees with Lord Pickles’ assessment that a “predatory company” would target those below ACOBA level, particularly Civil Service directors and deputy directors.<sup>55</sup> The risk posed by business appointments taken up by those in less senior roles is therefore significant.
- 4.34 We are pleased that the Cabinet Office is working with other government departments to trial changes to the process for leaving the government, as well as improvements in reporting to audit and risk committees. Currently, a Non-Executive Director on each departmental board should exercise oversight of the application of the rules. However, the lack of transparency in how departments are implementing the Business Appointment Rules prohibits any meaningful scrutiny. At a minimum, departments should publish more information on how they implement the rules, as well as anonymised and aggregated data on how many applications under the rules are submitted, approved, or rejected every year.
- 4.35 In the longer term, the Cabinet Office should ensure that the application of the rules is consistent across all government departments. The government should take up Lord Pickles’ suggestion that ACOBA could “share best practice, raise awareness and transparency on the rules” across government departments.<sup>56</sup> A useful model to replicate here would be the work of the Civil Service Commission, which holds events to promote awareness and understanding of the Civil Service Code, which is also implemented by government departments in the first instance. Additional resources should be granted to ACOBA as necessary.

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<sup>55</sup> Lord Pickles – Online Evidence Session with CSPL (2021), 33:58 - 35:16

<sup>56</sup> Lord Pickles, written evidence to the Standards Matter 2 Review (2021), paragraph 12.



**Recommendation 17**

Government departments should publish anonymised and aggregated data on how many applications under the Business Appointment Rules are submitted, approved, or rejected each year.

**Recommendation 18**

The Cabinet Office should ensure the Business Appointment Rules are applied consistently across all government departments, and work with ACOBA to promote best practice and awareness of the Business Appointment Rules.

# Chapter 5

## The Regulation of Public Appointments

- 5.1 The Commissioner for Public Appointments was established on the recommendation of the Committee's first report. Lord Nolan outlined the principles that guide public appointments to this day: that "ultimate responsibility for appointments should remain with ministers", but that the appointments process "should be governed by the overriding principle of appointment by merit" and that ministers should be advised on appointments by "a panel or committee which includes an independent element".<sup>57</sup>
- 5.2 These principles remain relevant and valid today. Many public appointments are to bodies which have a significant impact on the implementation of government policy. It is therefore right that ministers retain the ability to appoint candidates who they believe will implement government policy in line with ministerial priorities. The former Commissioner for Public Appointments, Peter Riddell, pointed out that the use of the term 'politicisation' is unhelpful in this regard, as the public appointments process is inherently political. Lord Nolan rejected proposals for a wholly independent appointments system and we see no reason to overturn that judgement.
- 5.3 It is equally important to stress that the principle of ministerial patronage is tempered by the principle of appointment by merit. Ministers should not appoint unqualified or inexperienced candidates to important public roles. Such appointments feed public perceptions of cronyism and undermine trust in the quality of public administration. In order to guarantee that the assessment of merit is fair and nonpartisan, it should be undertaken by a panel which includes a credible independent element.
- 5.4 The fair assessment of candidates serves a second purpose: to improve and ensure diversity in public appointments. Public bodies should reflect the communities they serve. When appointments are made without any assessment of merit there is a tendency for like to appoint like, and for candidates from diverse backgrounds who do not see themselves as 'fitting the mould' not to apply for roles. An initial independent assessment of merit gives greater confidence to candidates from diverse backgrounds to put themselves forward and gives those candidates a greater chance of success.
- 5.5 These principles – described by Peter Riddell as "either constrained open competition or constrained political patronage" – manifest themselves today in a process by which assessment panels produce a list of candidates who are deemed

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57 Standards in Public Life: First Report of the Committee on Standards in Public Life (1995), 65-76.

appointable, with the final decision left to ministers.<sup>58</sup> Assessment panels must include a departmental official and an independent member. The process is defined in the government's Governance Code for Public Appointments.

- 5.6 The 2016 Grimstone Review significantly increased the ability of ministers to shape the appointments process, giving them the right to determine panel composition and advise panels on preferred candidates at all stages of the competition. The 2016 review also gave ministers powers to overrule assessment panels, either by asking that the entire recruitment process be re-run with a new panel, or by appointing someone an assessment panel deemed unappointable. If appointing an 'unappointable' candidate, ministers "must consult the Commissioner for Public Appointments in good time before a public announcement and will be required to justify their decision publicly."<sup>59</sup> Similarly, in exceptional circumstances, ministers may make a direct appointment to a regulated role, after consulting with the Commissioner and publicly justifying their decision.
- 5.7 The Grimstone reforms also replaced the Commissioner's independent assessors with Senior Independent Panel Members (SIPMs), who are appointed by departments after consultation with the Commissioner, transforming the Commissioner's role from a real time participant in appointments processes to an independent regulator of it. Ensuring fair and equal assessment by a panel against the job specification remains central to the Commissioner's oversight.
- 5.8 The question for the Committee concerns whether current arrangements uphold the right degree of balance between ministerial patronage and appointment on merit. The evidence submitted to this review indicated that the post-Grimstone system has generally worked well until now, but it is highly dependent on informal mechanisms, including the willingness of ministers to act with restraint and the preparedness of the Commissioner to speak out against breaches of the letter or the spirit of the code.
- 5.9 The former Commissioner, Peter Riddell, has warned that the precarious balance between ministerial patronage and appointment by merit "is under threat".<sup>60</sup> Of particular concern to the Committee is the leaking of preferred candidates to the media, which may discourage suitable candidates from applying for posts, undermine the integrity of the system and weaken the public's perception of the independence of the regulatory process. As the issue of 'pre-briefing' shows, it is unlikely that a system so dependent on personal responsibility will be sustainable in the long term. The Public Accounts Committee recently noted that "the

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58 Peter Riddell, written evidence to the Standards Matter 2 review (2021), paragraph 4. Accessed online May 2021: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/972449/Standards\\_Matter\\_2\\_-\\_Evidence\\_from\\_Witnesses\\_for\\_Online\\_Evidence\\_Sessions.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/972449/Standards_Matter_2_-_Evidence_from_Witnesses_for_Online_Evidence_Sessions.pdf)

59 Cabinet Office, Governance Code for Public Appointments (2016), clause 3.2. Accessed online August 2021: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/578498/governance\\_code\\_on\\_public\\_appointments\\_16\\_12\\_2016.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/578498/governance_code_on_public_appointments_16_12_2016.pdf)

60 Peter Riddell, Letter to Lord Evans (2020), 3. Accessed online May 2021: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/932513/Peter\\_Riddell\\_to\\_Lord\\_Evans.docx.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/932513/Peter_Riddell_to_Lord_Evans.docx.pdf)

current public appointments process does not give confidence that it is efficient, transparent and fair”.<sup>61</sup>

**“Ministers are in a strong, even dominant, position in public appointments but some are now seeking to tilt the process even further to their advantage.”**

**Peter Riddell, former Commissioner for Public Appointments,  
Pre-Valedictory Speech, May 2021<sup>62</sup>**

- 5.10 In light of increasing pressure on the public appointments process, the Committee shares concerns on the current provision within the Governance Code for ministers to be able to appoint candidates not deemed appointable by assessment panels. The appointment of those judged ‘below the line’ would likely undermine the credibility of the entire appointments process, as well as the appointee.
- 5.11 The Committee considered endorsing a recommendation made by Peter Riddell to remove the ability of ministers to appoint those deemed unappointable. Though the Committee believes ministers should not appoint candidates that panels deem unappointable, the final decision on all public appointments must ultimately remain with ministers.
- 5.12 However, the accountability around such appointments should be strengthened. The Governance Code currently states that should a minister appoint someone not deemed appointable, they must consult with the Commissioner and provide a public justification for their decision. The Committee believes that the nature of any such public justification should be in Parliament, at a meeting of the department’s relevant select committee. We recommend that the Governance Code be changed accordingly.
- 5.13 Further reforms are necessary to the regulation of significant appointments and the appointments process for the heads of standards bodies to ensure the credibility of the post-Grimstone system. The Committee’s recommendations would strengthen the ability of the Commissioner to ensure a genuinely fair assessment of merit precedes ministerial choice. This chapter also includes recommendations on unregulated appointments, covered in the Committee’s published findings earlier this year.

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61 Public Accounts Committee, Government’s delivery through arm’s length bodies (2021). Accessed online September 2021: <https://publications.parliament.uk/pa/cm5802/cmselect/cmpubacc/181/report.html>

62 Peter Riddell, Pre-Valedictory speech to the UCL Constitution Unit on Public Appointments (2021). Accessed online May 2021: <https://publicappointmentscommissioner.independent.gov.uk/pre-valedictory-speech-to-the-ucl-constitution-unit-on-public-appointments/>

### **Recommendation 19**

The Governance Code for Public Appointments should be amended to make clear that ministers should not appoint a candidate who is deemed unappointable by an assessment panel, but if they do so, the minister must appear in front of the relevant select committee to justify their decision.

## The regulation of significant appointments

- 5.14 The list of significant appointments, agreed by ministers and the Commissioner for Public Appointments, details the competitions that require the presence of a Senior Independent Panel Member (SIPM).<sup>63</sup> These are usually competitions for roles that exercise a significant degree of executive or regulatory authority and attract a high degree of public scrutiny. The presence of a SIPM acts as a stronger guarantee of the independence of an advisory panel. The Commissioner must be consulted on a minister's choice of SIPM and the SIPM has a duty to report any material breaches of the Governance Code in the appointments process.

**“For significant appointments, that is mainly the chairs of public bodies, a Senior Independent Panel Member is chosen after consultation with me – someone who has no ties to the sponsoring department and no reported party activity. For a long period, this worked well and harmoniously. But in the past year there have been a few cases of ministers trying to appoint SIPMs such as Conservative peers who clearly breach this rule. Fortunately, acceptable alternatives were agreed and official guidance has clarified the meaning of the code.”**

**Peter Riddell, former Commissioner for Public Appointments,  
Pre-Valedictory Speech, May 2021<sup>64</sup>**

- 5.15 While the Commissioner has sufficient powers to ensure the independence of SIPMs, he or she has no formal role in relation to the rest of a panel. As with all other appointments, ministers determine panel composition, and they may appoint politically affiliated panel members. While politically affiliated panel members should not be prohibited, their presence should not undermine the overall credibility of the advisory panel, which should still be seen to be independent of ministerial control and predisposed to produce a fair assessment of all applicants.

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63 The list of significant public appointments can be found here: <https://publicappointmentscommissioner.independent.gov.uk/regulating-appointments/significant-appointments/>

64 Peter Riddell, Pre-Valedictory speech to the UCL Constitution Unit on Public Appointments (2021). Accessed online May 2021: <https://publicappointmentscommissioner.independent.gov.uk/pre-valedictory-speech-to-the-ucl-constitution-unit-on-public-appointments/>

- 5.16 However, concerns have been raised by the former Commissioner and others that ministers are, on occasion, seeking to pack assessment panels with majorities of political affiliates, therefore undermining the independence of the panel. Peter Riddell cited as one notable case the panel for the competition of the Office for Students, which had “a panel of five where there is no one with senior recent experience of higher education or a student involved.”<sup>65</sup> The Commissioner’s ability to resist the packing of panels is solely the product of their willingness to challenge the responsible minister, either publicly or privately.
- 5.17 Peter Riddell has called for reforms so that the Commissioner is “consulted on the composition of all members of interview panels for all significant appointments to ensure a fair balance.” The Committee agrees. While public criticism may deter panel packing, attempts to pack panels nonetheless undermine public trust in the credibility of the appointments process. A guarantee of a process of consultation will allow the Commissioner to intervene more readily and with less friction where assessment panels do not have a credible independent element.
- 5.18 Similarly, the Committee also agrees with Peter Riddell’s recommendation that SIPMs have a “specific duty of reporting” on the conduct of their competitions, as many already do informally. Such a reform would provide an additional check against unfair panel assessments.<sup>66</sup>

#### **Recommendation 20**

The Governance Code should be amended so that ministers must consult with the Commissioner for Public Appointments on the composition of all panel members for competitions for significant appointments.

#### **Recommendation 21**

Senior Independent Panel Members should have a specific duty to report to the Commissioner on the conduct of significant competitions.

## The appointments process for standards regulators

- 5.19 The chairs of ACOBA and HOLAC, and the Registrar of Consultant Lobbyists, are appointed through the regulated process for significant appointments. The Commissioner for Public Appointments and the Independent Adviser are both direct ministerial appointments, though the government states the process for appointing

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65 Peter Riddell, Letter to Lord Evans (2020), 3. [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/932513/Peter\\_Riddell\\_to\\_Lord\\_Evans.docx.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/932513/Peter_Riddell_to_Lord_Evans.docx.pdf)

66 Peter Riddell, Pre-Valedictory speech to the UCL Constitution Unit on Public Appointments (2021).

the Commissioner is “run in line with the principles of the Governance Code”.<sup>67</sup> The First Civil Service Commissioner undergoes a slightly more rigorous appointments process, as the Constitutional Reform and Governance Act mandates that the Commissioner is appointed “on merit on the basis of fair and open competition”, and that opposition leaders and the First Ministers for Scotland and Wales are consulted.<sup>68</sup> All successful candidates, other than the Independent Adviser, undergo pre-appointment scrutiny by the Public Administration and Constitutional Affairs Committee (PACAC).

- 5.20 The Committee believes that the appointments process for the heads of all standards regulators warrants a greater degree of independence than the current process for significant public appointments, as the role of these bodies is to scrutinise government, rather than implement government policy. Currently, only the First Civil Service Commissioner undergoes a stricter process.
- 5.21 The independent element of the appointments process for the five other lead regulators should be strengthened. Each should be appointed by the process for significant public appointments, but the assessment panel should have a majority of independent members, as well as a Senior Independent Panel Member. We believe that a majority independent panel will provide a sufficient safeguard to ensure that successful candidates will be willing and able to hold the government to account effectively.
- 5.22 Some standards bodies, such as ACOBA and HOLAC, operate as committees and include a number of independent members. When new independent members are appointed to standards bodies, the chair of each body should always serve as the chair of the assessment panel, as is often already the case.

### **Recommendation 22**

The chairs of ACOBA and HOLAC, the Registrar of Consultant Lobbyists, the Commissioner for Public Appointments and the Independent Adviser on Ministers’ Interests should all be appointed through the process for significant public appointments, and the assessment panel for each should have a majority of independent members.

### **Recommendation 23**

Chairs of standards committees should chair assessment panels for the appointment of their independent members.

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67 Cabinet Office, Commissioner for Public Appointments: Candidate Information Pack (2020), 5. Accessed online August 2021: <https://publicappointments.cabinetoffice.gov.uk/wp-content/uploads/2020/11/Commissioner-for-Public-Appointments-Candidate-Pack.pdf>

68 The Constitutional Reform and Governance Act 2010. Accessed online August 2021: <https://www.legislation.gov.uk/ukpga/2010/25/contents>

## Unregulated (direct) appointments

- 5.23 Recent years have seen the creation of a considerable number of new posts which are appointed directly by ministers and go through no regulatory process. As these are new posts, ministers do not need to consult with the Commissioner to make a direct appointment.
- 5.24 A number of these appointments were made to coronavirus-related roles and had to be made with urgency. Former Cabinet Secretary Lord Sedwill told PACAC that unregulated appointments were a temporary response to the pandemic and not a precedent for future appointments.<sup>69</sup> The Committee agrees with PACAC chair William Wragg MP that should unregulated appointments become the norm, the role and remit of the Commissioner for Public Appointments would need to be reassessed.<sup>70</sup>
- 5.25 Though it may be appropriate in some circumstances for appointments to be unregulated – for example for the heads of short-term policy reviews or some tsars or envoys – there is a lack of transparency on the number and nature of unregulated appointees. Without further information on these roles, it is impossible to ascertain the influence unregulated appointees have over public policy, or judge whether it is appropriate for such roles to remain unregulated. The former Commissioner has recommended that government departments should publish a list of all unregulated and regulated appointments. The Committee agrees.
- 5.26 One such category of direct appointments is Non-Executive Directors (NEDs) of government departments. NEDs were introduced to provide better oversight and corporate governance of government departments, and the 2010 Ministerial Code emphasised that NEDs should largely be drawn from the “commercial private sector”.<sup>71</sup> However, there is an increasing trend amongst ministers to appoint supporters or political allies as NEDs. This both undermines the ability of NEDs to scrutinise the work of their departments, and has a knock-on effect on the appointments process elsewhere, as NEDs are often used on the assessment panels for other public and senior civil service appointments. Like members of boards of other public bodies, the appointment process for departmental NEDs should be regulated.

**“Around 20% of departmental NEDs have political experience or alignment.”**

**The Institute for Government, The appointment and conduct of departmental NEDs, July 2021<sup>72</sup>**

69 Lord Sedwill, The work of the Cabinet Office, Oral evidence given to the House of Commons Public Administration and Constitutional Affairs Committee (17 November 2020), response to Q517. Accessed online May 2021: <https://committees.parliament.uk/oralevidence/1208/pdf/>

70 William Wragg MP, William Wragg MP – Online Evidence Session with CSPL, 31:50 - 32:35 (2021)

71 Institute for Government, Government departments’ boards and non-executive directors (2021). Accessed online May 2021: <https://www.instituteforgovernment.org.uk/explainers/government-departments-boards-and-non-executive-directors#:~:text=How%20are%20non%2Dexecutive%20directors,appointed%20by%20the%20prime%20minister>

72 The Institute for Government, The appointment and conduct of departmental NEDs (July 2021). Accessed online August 2021: <https://www.instituteforgovernment.org.uk/sites/default/files/publications/Departmental-NEDs.pdf>



**Recommendation 24**

Government departments should publish a list of all unregulated and regulated appointments.

**Recommendation 25**

The appointments process for Non-Executive Directors of government departments should be regulated under the Governance Code for Public Appointments.

## Placing the regulation of public appointments on a stronger statutory basis

- 5.27 The powers of the Commissioner for Public Appointments, and the Governance Code for Public Appointments, are laid out in the Public Appointments Order in Council. The Commissioner does, therefore, have a statutory basis, but it is one that can be amended by ministers with little process or debate.
- 5.28 The independence of the Commissioner would be better protected if the office were established in primary legislation, rather than Order in Council. Sir David Normington, who held the offices of Commissioner for Public Appointments and First Civil Service Commissioner simultaneously, told the Committee that the different legislative status of the two offices had significant consequences on his ability to uphold the relevant codes; namely that his ability to uphold the Governance Code for Public Appointments was hampered by the relative statutory weakness of Commissioner's office.
- 5.29 A stronger statutory basis for the Commissioner is of particular importance given that much of the Commissioner's role now depends on formal or informal advice, rather than enforceable regulatory power. Currently, a commissioner who chooses to advise against a minister's desired course of action does so knowing their office could be abolished or its powers limited further by those same ministers. A statutory basis for the Commissioner would allow him or her to give honest, impartial advice, free from the implicit pressure that results from weak statutory foundations.
- 5.30 The following aspects of the Commissioner's role and remit should be placed in primary legislation, as outlined in recommendation 2:
- the appointments process for the Commissioner
  - that the Commissioner serve for a single non-renewable five-year term
  - that the government must publish, after consultation with the Commissioner, a Governance Code for Public Appointments (as currently set out in the Order in Council)
  - the functions of the Commissioner (as currently set out in the Order in Council)

# Chapter 6

## Transparency around Lobbying

- 6.1 Lobbying is an important and legitimate aspect of public life in a liberal democracy. The right of individuals, businesses and interest groups to make representations to government, and the need for government to discuss policy proposals with those who might be affected, is essential. As this Committee argued eight years ago, “Free and open access to government is necessary for a functioning democracy as those who might be affected by decisions need the opportunity to present their case.”<sup>73</sup>
- 6.2 Lobbying undermines trust in the integrity of our democracy when it is associated with money, undue influence, and secrecy. The perception that preferential access is given to party donors, that ministerial decision-making can be influenced through gifts and hospitality, or that important policy decisions are made in secret consultations with vested interests, all serve to lower impressions of standards in public life.
- 6.3 Such perceptions are preventable if all those in public life on the receiving end of lobbying – including ministers, civil servants and special advisers – act in the spirit of the Nolan Principles. Transparency, in particular, is vital in enabling the government to prove to citizens that it acts in accordance with the Seven Principles of Public Life. As the Committee wrote in its 2013 report, *Strengthening Transparency Around Lobbying*, “The need for greater transparency is a matter of perception and substance. The more that lobbying activity is hidden from public view, the more it will be seen as ‘murky’ and the greater in fact will be the concerns about lobbying in general. Lobbying which is secret without good reason inhibits even-handedness, results in distorted evidence and arguments, fuels suspicions, facilitates excessive hospitality, corruption and other impropriety, hides or clouds accountability, undermines trust and confidence in political processes, and is inconsistent with modern democratic standards.”<sup>74</sup>
- 6.4 In government, upholding transparency around lobbying is a matter of statutory regulation and codes of conduct. The 2014 *Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act* established the Register of Consultant Lobbyists, overseen by a Registrar, to require multi-client lobbying agencies to disclose their clients. Government departments publish quarterly returns on gifts, hospitality, and external meetings of ministers, permanent secretaries, and special advisers (though only meetings with the media in the case of special

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73 The Committee on Standards in Public Life, *Strengthening Transparency Around Lobbying* (2013), 5. Accessed online May 2021: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/407530/2901376\\_LobbyingStandards\\_WEB.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/407530/2901376_LobbyingStandards_WEB.pdf)

74 *Strengthening Transparency Around Lobbying* (2013), 22.

advisers). Transparency obligations on ministers and special advisers are found in their respective codes of conduct.

- 6.5 We include here the argument made in the Committee’s published findings: the current system of transparency around lobbying is not fit for purpose. Transparency matters not just for transparency’s sake. Transparency matters to the extent that data released facilitates effective scrutiny and accountability. Despite significant improvements in the availability of government information over the past 25 years, lobbying data published by government and the Registrar of Consultant Lobbyists does not meet this requirement. Transparency International cites 26 lobbying scandals since 2010 where “critical information... was not captured either by the statutory lobbying register or departmental disclosures”, and academic analysis that showed “major discrepancies” between reported ministerial meetings and the Register of Consultant Lobbyists.<sup>75</sup>

**“The UK is in the difficult position where we have a lobbying register but lack real transparency. We still do not have a complete picture of lobbying activity and lobbying scandals continue to be a feature of our politics.”**

**Transparency International UK, written evidence, January 2021**

- 6.6 It is too difficult to find out who is lobbying government, information is often released too late, descriptions of the content of government meetings are ambiguous and lack necessary detail, transparency data is scattered, disparate, and not easily cross-referenced, and information in the public interest is often excluded from data releases completely. As outlined in our published findings, reforms are needed to the accessibility, quality, and timeliness of government data and to the scope of transparency rules. The rules and guidance on informal lobbying and alternative forms of communication also require improvement and greater clarity. This chapter also discusses the Register of Consultant Lobbyists.

## Improving the accessibility, quality and timeliness of government data releases

- 6.7 Releases are currently published across different departmental web pages, as well as the Register, meaning that any attempt to obtain a clear picture of one company or organisation’s attempts to influence government is difficult and time consuming. Journalists and NGOs need to collate multiple different departmental publications in order to get a clear picture of lobbying activity.
- 6.8 This scattered approach to transparency should be improved. We believe a better approach would be for the Cabinet Office to collate all departmental transparency releases and publish them in an accessible, centrally managed and searchable

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<sup>75</sup> Transparency International, Written evidence to Standards Matter 2 (2021), paragraphs 41-42.

database. With one government-maintained lobbying database, records would be easier to find, networks of influence easier to see, and discrepancies in the quality and timeliness of data released by departments would become more visible. Significant improvements in government capabilities in digital and data create an opportunity to build an important resource for open government.

- 6.9 A centrally managed database would also provide better clarity on responsibility and accountability for poor-quality data releases. Currently, individual private offices have responsibility for collating quarterly returns and submitting them to the Cabinet Office “for sense checking”.<sup>76</sup> It is unclear what the consequences are, if any, if returns are incomplete or deficient. Ongoing cross-government work to highlight the importance of transparency and ensure consistent standards across private offices is welcome. However, a system of meaningful oversight and accountability for the quality of departmental returns, run by the Cabinet Office as it publishes all returns centrally, is necessary. Compliance with the government’s own transparency rules is an important ethical responsibility, and should not be seen as a low priority administrative exercise.
- 6.10 To improve the quality of transparency data, the government should ensure that a sufficient level of detail is provided on the subject matter of all lobbying meetings and any policy matters discussed. In some cases, this is done already, and the Committee notes GRECO’s assessment that “more information is now available on the content of meetings”.<sup>77</sup> However, transparency releases still too often describe meetings in ambiguous language and terms such as “regular catch up”. When the subject matter is specified, this can still be too broad. Descriptions such as “To discuss COVID-19”, “To discuss the Union”, or “To discuss EU exit” do not provide the public with the minimum necessary information to understand what representations the government is receiving on a specific policy matter. In comparison, descriptions such as “To discuss access to public land for digital infrastructure rollout”, “To discuss September schools announcement with vulnerable children stakeholders” and “To discuss BBC’s plans for England around their announcement on regional cuts”, all found in releases from the past year, all convey a suitable level of detail.
- 6.11 Cabinet Office guidance from 2018, released under FOI, states that “Departments should make every effort to provide details on the purpose of the meeting” and that the term “‘General Discussion’ should not normally be used.”<sup>78</sup> This spirit of this guidance is not consistently followed and ambiguous meeting descriptions can be

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76 Cabinet Office, Guidance: Quarterly publication of ministers’ gifts (given and received), overseas travel, hospitality received and meetings with external organisations (2018). Accessed online May 2021: [https://www.whatdotheyknow.com/request/452972/response/1225829/attach/4/IC325618%20Quarterly%20Transparency%20Return%20Guidance.pdf?Cookie\\_passthrough=1](https://www.whatdotheyknow.com/request/452972/response/1225829/attach/4/IC325618%20Quarterly%20Transparency%20Return%20Guidance.pdf?Cookie_passthrough=1)

77 The Council of Europe’s Group of States Against Corruption (GRECO), Fifth Evaluation Round, Preventing corruption and promoting integrity in central government (top executive functions) and law enforcement agencies, Compliance Report, United Kingdom (May 2021). Accessed online June 2021: <https://rm.coe.int/fifth-evaluation-round-preventing-corruption-and-promoting-integrity-i/1680a2a1b1#>

78 Cabinet Office, Guidance: Quarterly publication (2018).

found in multiple recent transparency returns. The Cabinet Office should provide stricter guidelines on minimum standards for the descriptions of meetings and ensure compliance by government departments.

- 6.12 The Cabinet Office should also publish collated transparency releases more regularly. Under current practice, departments should publish data quarterly, up to three months after the end of the reporting period. Yet this deadline is often missed, with some departments on occasion taking up to a year to disclose meetings.<sup>79</sup> Such delays undermine the purpose of the transparency release itself: without prompt publication, Parliament and the media cannot scrutinise the activity of government as it happens, and accountability delayed is too often accountability denied. The government should publish transparency returns monthly, rather than quarterly, in line with the MPs' and peers' registers of interests. Publishing returns more regularly will help transparency become part of private offices' regular routine, rather than a one-off task which can be too easily delayed.

“If we want to translate transparency into accountability, then a lot of things matter around the quality of the transparency... if you get delayed information, it's much less valuable and it's much harder to hold [the government] to account with that. If you want transparency to have the effect of deterring bad behaviour, then we need the information to be made available in a timely way.”

**Professor Liz David-Barrett, online evidence session, March 2021**

“I think they should make available [lobbying] information on the government website... It should happen in a meeting which is recorded, with minutes taken... then if anything happens in the future, you can go back and see what happened at the meeting, who was there and what was said.”

**Focus group participant, August 2021**

### **Recommendation 26**

The Cabinet Office should collate all departmental transparency releases and publish them in an accessible, centrally managed and searchable database.

### **Recommendation 27**

The Cabinet Office should provide stricter guidelines on minimum standards for the descriptions of meetings and ensure compliance by government departments.

<sup>79</sup> Institute for Government, *Whitehall Monitor 2020* (2020), 88. Accessed online May 2021: [https://www.instituteforgovernment.org.uk/sites/default/files/publications/whitehall-monitor-2020\\_1.pdf#page=88](https://www.instituteforgovernment.org.uk/sites/default/files/publications/whitehall-monitor-2020_1.pdf#page=88); and Transparency International written evidence to Standards Matter 2, paragraph 46.

**Recommendation 28**

The government should publish transparency returns monthly, rather than quarterly, in line with the MPs' and peers' registers of interests.

## Scope of transparency requirements for senior civil servants and special advisers

- 6.13 Departmental transparency releases do not consistently cover senior civil servants below permanent secretary level, meaning that the lobbying of directors general and directors is not always disclosed. These are roles with significant authority, often with more direct responsibility for an area of government policy than the relevant minister or permanent secretary. In many cases, a company or organisation seeking to influence government policy is more likely to approach a director than a permanent secretary.
- 6.14 The government should therefore publish meetings held with external organisations by senior civil servants below permanent secretary level, including directors general and directors. The Committee considered recommending the inclusion of deputy directors in transparency releases too, but contributors told us that doing so would cover an unnecessarily large proportion of Civil Service leadership.
- 6.15 Quarterly transparency releases include details of special advisers' external meetings only if they are held with "newspaper and other media proprietors, editors and senior executives".<sup>80</sup> Given the influence that many special advisers now hold, the government should publish the full diaries of special advisers' external meetings.

**Recommendation 29**

The government should include meetings held between external organisations, directors general, and directors in transparency releases.

**Recommendation 30**

The government should include meetings held between external organisations and special advisers in transparency releases.

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80 Cabinet Office, Code of Conduct for Special Advisers (December 2016), paragraph 15. Accessed online May 2021: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/832599/201612\\_Code\\_of\\_Conduct\\_for\\_Special\\_Advisers.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/832599/201612_Code_of_Conduct_for_Special_Advisers.pdf)

## Informal lobbying and alternative forms of communication

- 6.16 The Ministerial Code makes clear that if a minister “meets an external organisation or individual and finds themselves discussing official business without an official present... any significant content should be passed back to the department as soon as possible after the event.”<sup>81</sup> In evidence given to PACAC, the Cabinet Secretary made clear that the underpinning principle regarding any ministerial discussions with external individuals or organisations is that “government business is government business however it is conducted and by whatever means of communication.”<sup>82</sup>

**“If it’s an official discussion, I think more people should be part of that discussion and it should happen in an office somewhere, where it feels more official, more documented and regulated, rather than a place where it’s just a conversation.”**

**Focus group participant, August 2020**

- 6.17 Under this principle, any lobbying of ministers through informal channels or alternative technologies, such as WhatsApp or Zoom, should be reported to civil servants. This clarification is welcome, given that recent controversies have focused attention on the fact that significant attempts to lobby government can occur through private messages and phone calls, rather than formal face-to-face meetings. Updated guidance should make clear that WhatsApps, texts, Zooms, and any other informal lobbying should be reported back to officials, given that the only relevant guidance on alternative communications at present was published in 2013 and concerns the use of private email.<sup>83</sup>
- 6.18 The implementation of the principle that ‘government business is government business’ will not, however, solve concerns about the transparency of informal lobbying. The Director General for Ethics and Propriety at the Cabinet Office made clear in evidence to PACAC that quarterly transparency releases do “not cover phone calls unless the phone call is in place of a meeting. It covers phone meetings, but it does not include routine phone calls or texts.”<sup>84</sup> For this reason, former Prime Minister David Cameron’s extensive lobbying of ministers and officials on behalf of Greensill Capital in late 2020 was not included in any departmental disclosures.<sup>85</sup>

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81 Cabinet Office, Ministerial Code (August 2019), paragraph 8.14. Accessed online May 2021: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/826920/August-2019-MINISTERIAL-CODE-FINAL-FORMATTED-2.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/826920/August-2019-MINISTERIAL-CODE-FINAL-FORMATTED-2.pdf)

82 Simon Case, The work of the Cabinet Office, Oral evidence given to the House of Commons Public Administration and Constitutional Affairs Committee (26 April 2021), response to Q754. Accessed online May 2021: <https://committees.parliament.uk/oralevidence/2084/default/>

83 Cabinet Office, Guidance to Departments on the Use of Private Email (2013). Accessed online May 2021: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/207131/Private\\_Email\\_guidance.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/207131/Private_Email_guidance.pdf)

84 Darren Tierney, The work of the Cabinet Office, Oral evidence given to the House of Commons Public Administration and Constitutional Affairs Committee (26 April 2021), response to Q753.

85 Research conducted via a search of Transparency International’s database of ministerial meetings, <https://openaccess.transparency.org.uk/>. Database accessed May 2021.

- 6.19 It would be neither practical nor desirable for government to proactively publish details about all engagements with external bodies made by email, phone call or text, although all are subject to FOI. However, it is clear that the current categories of published information – gifts, overseas travel, hospitality and meetings – effectively exclude the disclosure of informal lobbying, which appears to be an increasingly common way for external organisations to attempt to influence government.
- 6.20 It is both unreasonable and impractical to ask ministers to reject all informal approaches on policy matters, and so instead government should revise the categories of published information to close the loophole by which informal lobbying is not disclosed in departmental releases. Either the ‘meetings’ category should be broadened or a fifth category should be added to include representations made to government by alternative means. Instant messaging applications, virtual meetings, phone calls and emails should be included in this category when the representations to government are serious, premeditated, and credible, or are given substantive consideration by ministers, special advisers or senior civil servants.

**Recommendation 31**

The government should update guidance to make clear that informal lobbying, and lobbying via alternative forms of communication such as WhatsApp or Zoom, should be reported to officials.

**Recommendation 32**

The government should revise the categories of published information to close the loophole by which informal lobbying is not disclosed in departmental releases.

## The Register of Consultant Lobbyists

- 6.21 The Register was created in 2014 as the first, and only, statutory regulation of lobbying in the UK. The Register was established to resolve the issue that government transparency releases would not identify whose interests were being advocated for when ministers met with third-party consultants. It was not seen as necessary to legislate for in-house lobbyists, as they would be disclosed in departments’ quarterly returns.



“The statutory Register of Consultant Lobbyists is a UK-wide legislative measure to regulate consultant lobbying of ministers and permanent secretaries, which ensures that third-party lobbyists cannot use consultants to hide their engagement in policy making.

The register does not cover in-house lobbyists as the government publishes data on meetings between ministers and permanent secretaries and external interests including details of attendees and the organisations they represent; this information captures the activities of in-house lobbyists.”

**Government submission to this review, written evidence, April 2021**

- 6.22 As a result, the overwhelming majority of lobbying in the UK is not subject to statutory regulation. Estimates place the proportion of lobbying declared in the register between 5 and 15%. Industry bodies, the CIPR and PRCA, have called for the Register to be expanded to cover “all those engaged in lobbying”, including in-house lobbyists in “charities, campaigning groups, think tanks, trade unions, business, organisations, and private companies”.<sup>86</sup>
- 6.23 The CIPR and the PRCA both told this review that they advocate for broader regulation in order to improve transparency around lobbying. Francis Ingham, Director General of the PRCA, told us that the Register “gives a misleading perception that the industry consists only of third-party lobbyists, which is very far from the truth. In the interest of public information, it would be better if people understood how big and broad the lobbying industry actually is... it would be in the public interest for people to see the BBC, CBI, TUC etc. all on the same register as [PR company] Edelman. It would be in the public interest for everyone who lobbies to declare that they lobby.”
- 6.24 The CIPR emphasised the importance of trust, telling us that “When the register was launched it was designed to rebuild public trust... A register that only captures the tip of the iceberg doesn’t do anything to restore that public trust, if anything hiding the majority of the activity that does take place does the opposite.” Many lobbying companies sign up to the PRCA and CIPR’s voluntary registers, and the CIPR added that many of their members want to be on a register to express their commitment to transparency and emphasise the ways lobbying can positively contribute to the democratic process.
- 6.25 An expanded lobbying register appears a compelling solution to the lack of transparency around lobbying. The primary argument against an expanded register – that it would duplicate material found in government quarterly releases – carries little force when those releases often do not contain the relevant information. Despite the publication of both the Register and government releases, meaningful data about lobbying often remains hard to find and it is extremely difficult to get a clear and complete picture of the scale and extent of lobbying in Whitehall.

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86 PRCA, Open letter to Government on lobbying reform (2021). Accessed online May 2021 <https://news.prca.org.uk/prca-publishes-open-letter-to-government-on-lobbying-reform/> and CIPR, Lobbying Policy Proposal. Accessed online May 2021 [https://cipr.co.uk/CIPR/Our\\_work/Policy/Lobbying\\_Policy\\_Proposal.aspx](https://cipr.co.uk/CIPR/Our_work/Policy/Lobbying_Policy_Proposal.aspx)

**“If we had a system where no lobbyists disclosed anything and just ministers and MPs declared who had contacted them, we could dispense all registers and that would be fine. But now we have a jigsaw with lots of pieces missing. The other bits of the jigsaw aren’t in place.”**

**Alastair McCapra, Chief Executive, CIPR, oral evidence, July 2021**

- 6.26 There are, however, reasons to focus attention on improving the quality of government transparency releases, rather than shifting transparency obligations to the private and third sectors. Openness is one of the Seven Principles of Public Life, and the obligations of open government should fall on the shoulders of ministers, special advisers and senior civil servants, rather than those making representations to them.
- 6.27 An expanded lobbying register would also likely create additional obligations on small charities, campaign groups, and local community organisations who want to contact ministers. Few of these organisations have the same resources as large PR companies to navigate the bureaucracy of a register. It remains unclear if such bodies would also be subject to the same civil penalty notices if they fail to register in time. Compelling any form of organisation wishing to engage with government to register as lobbyists would create an unnecessary hurdle to the exercise of the democratic right to make representations to government.
- 6.28 It remains the case that an expanded lobbying register would duplicate, and therefore potentially replace, departments’ quarterly releases. Such a register may improve transparency around lobbying, but at the cost of removing the impetus for better transparency from government. As the CIPR and PRCA already run voluntary lobbying registers, the net gain from such an approach would be small.

**“Widening the scope of the Register of Consultant Lobbyists to include in-house lobbyists won’t help. Under the current system, if a minister correctly discloses they have met someone working for Rolls Royce, or Oxfam, or the National Union of Mineworkers or the Church of England, together with the subjects that were discussed under [improved data standards], it will already be clear whose interests they were representing and how.”**

**John Penrose MP, Prime Minister’s Anti-Corruption Champion, written evidence, January 2021**

- 6.29 While the Committee recognises frustrations over the poor quality of government transparency releases, we believe the right solution is for the Cabinet Office and government departments to radically improve the quality of their transparency data. Government transparency releases do not need to be replaced by an expanded lobbying register provided there is a substantial improvement in the prompt publication of every department’s transparency releases.

- 6.30 It is worth reiterating, however, that should government transparency obligations continue to remain poor, the case for an expanded lobbying register would strengthen. The Committee will keep a watching brief on the quality of departmental transparency returns and would expect to revisit the question of an expanded lobbying register should it not prove possible to deliver these improvements in a reasonable timescale.
- 6.31 Evidence submitted to this review also identified a number of improvements that could be made to the Register of Consultant Lobbyists in its current form. Contributors recommended that consultant lobbyists who contact special advisers and senior civil servants below permanent secretary level (including directors general and directors) should be required to register. The Committee agrees.
- 6.32 Consultant lobbyists should also be required to submit more information on their lobbying activities, to mirror the declarations that ministers make. Currently, consultant lobbyists need only declare their clients on a quarterly basis. They do not have to declare which minister or permanent secretary they lobbied, when they lobbied, or what the subject matter was. This makes it unnecessarily difficult for both the Registrar and interested parties to corroborate data in the register with ministerial diaries. Those on the register should also have to declare the date, recipient, and subject matter of their lobbying.

**Recommendation 33**

Consultant lobbyists should also have to register on the basis of any communications with special advisers, directors general, and directors.

**Recommendation 34**

Consultant lobbyists should have to declare the date, recipient, and subject matter of their lobbying.

# Appendix 1

## The Seven Principles of Public Life

### **This includes the updated descriptor to leadership.**

The Seven Principles of Public Life apply to anyone who works as a public office-holder. This includes all those who are elected or appointed to public office, nationally and locally, and all people appointed to work in the Civil Service, local government, the police, courts and probation services, non-departmental public bodies (NDPBs), and in the health, education, social and care services. All public office-holders are both servants of the public and stewards of public resources. The principles also have application to all those in other sectors delivering public services.

### **Selflessness**

Holders of public office should act solely in terms of the public interest.

### **Integrity**

Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.

### **Objectivity**

Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.

### **Accountability**

Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.

### **Openness**

Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.

### **Honesty**

Holders of public office should be truthful.

### **Leadership**

Holders of public office should exhibit these principles in their own behaviour and treat others with respect. They should actively promote and robustly support the principles and challenge poor behaviour wherever it occurs.

# Appendix 2

## Recent Committee reports relevant to this review

### **Regulating Election Finance (2021)**

1. In July 2021, the Committee published a comprehensive review of the current system for regulating the money spent to influence the outcome of elections and referendums in the UK. Our report reiterated our strong belief in the value of an independent regulator, insulated from political pressures and at arm's length from the government. We proposed a package of practical reforms to address modern campaign practices, meet emerging threats around the source of donations, deliver greater transparency and enhance compliance with election finance law. We welcomed the government's prompt initial response to our report and promise of further consideration of the recommendations made.

### **Local Government Ethical Standards (2019)**

2. In January 2019, the Committee published a report on local government ethical standards, an area of long-standing interest for CSPL. The report provided a health check of the standards framework in place for local authorities across England, established by the Localism Act 2011. The report concluded that the arrangements in place are promoting and maintaining the standards expected by the public, and reinforced our view that the majority of local councillors maintain high ethical standards. However, we recommended that some improvements were required, in particular, the need for maximum independence in local complaints processes and the need for greater sanctions where appropriate in the rare cases of significant or repeated breaches of the code of conduct.
3. A key recommendation was that the Local Government Association (LGA) should develop a non-mandatory, model code of conduct. Following consultation, the LGA published this model code, which CSPL views as a welcome step forward, helping to set clear standards and avoid confusion for both councillors and members of the public alike. As well as making recommendations to government, CSPL identified 15 best practice recommendations to drive high ethical standards in local government which we expect local authorities to implement. We await the government's response to this report.

### **MPs' Outside Interests (2018)**

4. The ongoing inquiry by the House of Commons Standards Committee into the MPs' Code of Conduct provides an important opportunity to ensure the MPs' Code reflects the public's expectations on the management of MPs' financial interests. The Committee argued in its 19th report, MPs' Outside Interests, that MPs should

be able to undertake paid employment, providing that these activities remain within reasonable limits, and that MPs should be prohibited from accepting any paid work to provide services as a parliamentary strategist, adviser or consultant. These recommendations remain valid today.

### **Intimidation in Public Life (2017)**

5. In July 2017, the Committee was asked by the then Prime Minister, Theresa May, to undertake a review on the intimidation of parliamentary candidates, considering the broader implications for all holders of public office. The Committee's report put forward a package of recommendations to government, social media companies, political parties, the police, broadcast and print media, and MPs and parliamentary candidates themselves.
6. [The Committee's progress report, published December 2020](#), noted that "much has happened to tackle threats to public office holders... but there remains more to do, and at a greater pace". The Committee welcomed developments outlined in 2019's Online Harms White Paper, and the government's consultation on a new electoral offence of intimidation of candidates and campaigners during elections.
7. The Committee also noted that all of the political parties represented in Westminster now have in place their own code of conduct, which sets out the minimum standards of behaviour expected of their members. The Committee worked with [the Jo Cox Foundation to develop a joint code of conduct on intimidatory behaviour, resulting in a high-level statement of principle outlining the minimum standards of behaviour that all party members should aspire to](#). We welcome support for the statement from the Labour Party, the Scottish National Party, the Liberal Democrats, Plaid Cymru, and the Green Party.

### **Ethical Standards for Providers of Public Services (2014 and 2018)**

8. In 2014, the Committee undertook a [review into departmental commissioning activity and the ethical standards of public service providers](#). It found that government departments were not well equipped to support ethical conduct by public service providers. The report recommended that the Cabinet Office should reinforce the message that the Nolan Principles apply to any organisation delivering public services; ensure that ethical standards reflecting the Nolan Principles are addressed in contractual arrangements; and develop guidance on how value for money could be aligned with high ethical standards.
9. In 2018, the Committee published a [follow up report](#) charting progress since 2014. It found that government had made some improvements in managing the ethical conduct of contractors but that the Civil Service had made limited progress on introducing formal measures to reinforce the application of ethical standards in public service delivery. We did not find any compelling evidence that ethical considerations were sufficiently incorporated into service delivery design, contractor selection or formal contract management processes.

### **Political Party Finance: Ending the big donor culture (2011)**

10. There have been a number of recent media controversies surrounding party funding. The Committee's thirteenth report examined party funding agreements in detail. It concluded that the only way to remove the influence of big donors in party politics would be the introduction of a cap on the level of donations and new state funding for political parties. However, the report's recommendations were not accepted and the argument for state funding of political parties remains unpopular. So long as the principle of state funding and a cap on donations remains unpalatable to the major parties, concerns over the influence of large donors in party politics will remain.

### **MPs' Expenses and Allowances: Supporting Parliament, safeguarding the taxpayer (2009)**

11. This review also took stock of the role of the Independent Parliamentary Standards Authority (IPSA), over ten years on from the Committee's report on its establishment. Compliance with rules on salaries and expenses is now extremely high, and IPSA today should be considered a successful response to the parliamentary expenses scandal. The existence of an independent, statutory body to set MPs' pay and expenses is a vital part of parliamentary standards arrangements.

# Appendix 3

## About the Committee on Standards in Public Life

The Committee on Standards in Public Life (CSPL, the Committee) advises the Prime Minister on ethical standards across the whole of public life in England. It monitors and reports on arrangements for upholding ethical standards of conduct across public life in England. The Committee is an advisory non-departmental public body sponsored by the Cabinet Office. The chair and members are appointed by the Prime Minister.

The Committee was established in October 1994, by the then Prime Minister, with the following terms of reference:

“To examine current concerns about standards of conduct of all holders of public office, including arrangements relating to financial and commercial activities, and make recommendations as to any changes in present arrangements which might be required to ensure the highest standards of propriety in public life.”

The remit of the Committee excludes investigation of individual allegations of misconduct.

On 12 November 1997, the terms of reference were extended by the then Prime Minister:

“To review issues in relation to the funding of political parties, and to make recommendations as to any changes in present arrangements.”

The terms of reference were clarified following the Triennial Review of the Committee in 2013. The then Minister for the Cabinet Office confirmed that the Committee “should not inquire into matters relating to the devolved legislatures and governments except with the agreement of those bodies”, and that “the Government understands the Committee’s remit to examine ‘standards of conduct of all holders of public office’ as encompassing all those involved in the delivery of public services, not solely those appointed or elected to public office”.

The Committee is a standing committee. It not only conducts inquiries into areas of concern about standards in public life, but can also revisit those areas to monitor whether and how well its recommendations have been put into effect.



## **Membership of the Committee for the period of this review**

Lord (Jonathan) Evans, Chair

The Rt Hon Dame Margaret Beckett DBE MP

Ewen Fergusson (from 1 August 2021)

Dr Jane Martin CBE

Dame Shirley Pearce DBE

Professor Gillian Peele (from 1 August 2021)

Jane Ramsey (until 28 October 2020)

Monisha Shah (until 31 July 2021)

The Rt Hon Lord (Andrew) Stunell OBE

The Rt Hon Jeremy Wright QC MP

## **Chair of the Committee's Research Advisory Board**

Professor Mark Philp

## **Secretariat**

The Committee is assisted by a Secretariat consisting of Lesley Bainsfair (Secretary to the Committee), Amy Austin (Senior Policy Adviser), Nicola Richardson (Senior Policy Adviser), Aaron Simons (Senior Policy Adviser) and Lesley Glanz (Executive Assistant). Press support is provided by Maggie O'Boyle.

## **Declarations of Interest**

Member declarations of interest can be found on the Committee's website and are updated regularly.

Maggie O'Boyle also provides part time press support to the Office of the Commissioner for Public Appointments, the Advisory Committee on Business Appointments, the House of Lords Appointments Commission, and the Civil Service Commission.

# Appendix 4

## Methodology

The Committee used a range of methods as part of its evidence gathering for this review, including:

- a public consultation, which ran from 22 September 2020 to 29 January 2021 and received 115 responses
- a confidential public sector survey, which ran from 22 September 2020 to 29 January 2021 and received 120 responses
- 16 online evidence sessions, held on 10, 17, and 24 March 2021
- one academics' roundtable, held on 1 April 2021
- 23 stakeholder meetings, held between October 2020 and July 2021
- public polling and focus group research, undertaken by Deltapoll from July - August 2021, with additional analysis conducted by Martha Radford Kirby in collaboration with Mark Philp
- analysis of the British standards landscape, conducted by Rebecca Dobson Phillips
- analysis of past research on the Seven Principles of Public Life, conducted by the Committee secretariat

Responses to the public consultation, a transcript of the academics' roundtable, reports and analysis of public polling and focus groups, and analysis of the British standards landscape [are available on the Committee's website](#).

The online evidence sessions can be watched back [on the Committee's YouTube channel](#).

The Committee's evidence gathering included contributions from the government, the Labour Party, and the Liberal Democrats.

### **Stakeholder list**

A list of all stakeholders who held discussions with the Committee in person is below. All meetings were held virtually due to the coronavirus pandemic.

## Online evidence sessions, March 2021

Name	Position at time of evidence session
Sir Alex Allan	Former Independent Adviser on Ministers' Interests
Douglas Bain	Acting Senedd Commissioner for Standards
Daniel Bruce	Chief Executive, Transparency International UK
Professor Liz David-Barrett	Professor of Governance and Integrity and Director of the Centre for the Study of Corruption, University of Sussex
Commissioner Mario Dion	Conflict of Interest and Ethics Commissioner, Canada
Dame Carolyn Fairbairn DBE	Former Director-General, the Confederation of British Industry (CBI)
Professor Matthew Flinders	Professor of Politics and Director of the Sir Bernard Crick Centre for Public Understanding of Politics, University of Sheffield
Jonathan Goolden	Regulatory and Public Sector Partner, Wilkin Chapman LLP Solicitors
Sir Bernard Jenkin MP	Chair, Liaison Committee
Sir Philip Mawer	Former Independent Adviser on Ministers' Interests
Dr Melissa McCullough	Northern Ireland Commissioner for Standards
Jacqui McKinlay	Chief Executive, Centre for Governance and Scrutiny
Sir David Normington GCB	Former First Civil Service Commissioner and former Commissioner for Public Appointments
Lord O'Donnell	Former Cabinet Secretary
Dave Penman	General Secretary, FDA Union
Lord Pickles	Chair, Advisory Committee on Business Appointments (ACOBA)
Rt Hon Peter Riddell CBE	Commissioner for Public Appointments
Lord Sedwill	Former Cabinet Secretary
Sir Jonathan Symonds CBE	Non-Executive Chairman, GlaxoSmithKline
Dr Hannah White OBE	Deputy Director, Institute for Government

Name	Position at time of evidence session
William Wragg MP	Chair, Public Administration and Constitutional Affairs Committee
Professor Tony Wright	Emeritus Professor of Government and Public Policy, UCL

## Meetings (oral evidence), October 2020 - July 2021

Name	Position at time of meeting
Debbie Abrahams MP Caroline Lucas MP	Members of Parliament
Rob Behrens	Parliamentary and Health Services Ombudsman
Lord Bew	Chair, House of Lords Appointments Commission
Nigel Boardman	Lead, Review into the Development and Use of Supply Chain Finance in Government
Chris Bryant MP	Chair, House of Commons Standards Committee
Simon Case CVO	Cabinet Secretary
Wendy Chamberlain MP	Liberal Democrat Chief Whip
Gareth Davies	Comptroller and Auditor General, National Audit Office
Francis Ingham	Director General, Public Relations and Communications Association (PRCA)
Mick King	Local Government and Social Care Ombudsman
Richard Lloyd Lee Bridges	Interim Chair, Independent Parliamentary Standards Authority (IPSA) Director of Regulation, IPSA
Lord Mance	Chair, House of Lords Conduct Committee
Alastair McCapra Jon Gerlis	Chief Executive, the Chartered Institute of Public Relations (CIPR) Public Relations and Policy Manager, CIPR
Sir David Norgrove	Chair, UK Statistics Authority

Name	Position at time of meeting
John Penrose MP	Prime Minister's Anti-Corruption Champion
Rt Hon Angela Rayner MP	Deputy Leader of the Labour Party and Shadow Chancellor of the Duchy of Lancaster
Harry Rich	Registrar of Consultant Lobbyists
Lucy Scott-Moncrieff CBE	Lords Commissioner for Standards
Chloe Smith MP	Minister for the Constitution
Kathryn Stone OBE	Parliamentary Commissioner for Standards
Baroness Taylor of Bolton	Chair, House of Lords Constitution Committee (meeting was attended by all present Constitution Committee members)
Ian Watmore	First Civil Service Commissioner
Rob Whiteman Andrew Burns	Chief Executive, Chartered Institute of Public Finance and Accountancy (CIPFA) Associate Director, CIPFA

## Academics' roundtable, April 2021

Name	Position at time of roundtable
Professor Leighton Andrews	Professor of Practice in Public Service Leadership and Innovation, Cardiff University
Professor Robert Barrington	Professor of Anti-Corruption Practice at the Centre for the Study of Corruption, University of Sussex
Professor Sarah Birch	Professor of Political Science at King's College London
Marcial Boo	Chair, Institute of Regulation
Dr Alistair Clark	Reader in Politics at Newcastle University
Rebecca Dobson Phillips	Doctoral researcher at the Centre for the Study of Corruption at the University of Sussex
Professor Robert Hazell	Professor of Government and the Constitution at the Constitution Unit, University College London
Professor Paul Heywood	Sir Francis Hill Professor of European Politics at the University of Nottingham
Professor Heather Marquette	Professor of Development Politics at the University of Birmingham
Professor Ciaran Martin	Professor of Practice in the Management of Public Organisations at the Blavatnik School of Government, University of Oxford
Professor Gillian Peele	Emeritus Professor in Politics at Lady Margaret Hall, University of Oxford
Dr Sam Power	Lecturer in Corruption Analysis at the Centre for the Study of Corruption at the University of Sussex

Committee on Standards in Public Life  
1 Horse Guards Road, London, SW1A 2HQ

November 2021