REVIEW INTO THE DEVELOPMENT AND USE OF SUPPLY CHAIN FINANCE (AND ASSOCIATED SCHEMES) IN GOVERNMENT

PART 2:
RECOMMENDATIONS AND SUGGESTIONS

5 AUGUST 2021

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Summary of recommendations and other suggestions

The Declaration on Government Reform published on 15 June 2021 states that, "We have and expect high standards for conduct in public life. But we must continually reinforce these with leadership, proper process and transparency so that the public can have trust and confidence in the operation of government at all levels." With this in mind, while Part 1 of my report set out the facts related to the development and use of supply chain finance in government, Part 2 is more forward looking and focuses on how government can strengthen related processes.

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, explored further in Part 1 of this report, needs to be streamlined and stronger, with more consistent enforcement applied.

In June this year, the Prime Minister and Cabinet Secretary recognised this problem, and in their Declaration on Government Reform committed to "modernise the operation of government, and be more disciplined in prioritising and evaluating what we do". My recommendations, based on the events described in Part 1 of my report on Supply Chain Financing, and my suggestions, arising from my review but not directly derived from it, are intended to support this ambition.

In this part of my report I have made 19 recommendations, structured around the four sections in the first part of the report and summarised below. Alongside those recommendations, I have also made some suggestions which responsible policy teams might want to consider further as part of a wider implementation plan.

Section 1: Individuals' engagement, activities and terms of engagement with government

Recommendations

1. That government should establish an effective method for ensuring compliance with governance processes and the wider regulatory framework.
2. That government should introduce pre-appointment rules which prevent for a period of time civil servants dealing with or promoting their former employer after joining the civil service.
3. That government should further improve the management and monitoring of conflicts of interest in the Civil Service.
4. That government should strengthen whistleblowing processes in the Civil Service.
5. That direct ministerial appointments, whether or not remunerated, need a clearer and more transparent process, set out in a new Code of Practice which makes clear the expectations on both departments and appointees and reaffirms that express Ministerial approval is required.

6. That government strengthens the oversight of the honours process within departments.

Suggestions

- That government should establish a regular cycle of compliance reviews.
- That the Code of Conduct for Board Members of Public Bodies and the Corporate Governance Code for central government departments should be given a statutory basis.
- That government should consider introducing rules for securities dealings by civil servants.

Section 2: The development and use of supply chain finance (and associated schemes) in government

Recommendations

7. That government should restrict the use of supply chain finance in central government to exceptional circumstances only.
8. That ESAS should only be used by government in exceptional circumstances and when no other option (e.g. weekly or more frequent payment) is available.

Section 3: The relationship between current and former ministers and officials and external organisations

Recommendations

9. That government undertakes a follow up review to the Baxendale Report reviewing the experience of external hires into the Civil Service to ensure that impediments to effective recruitment and retention are eliminated, and that this exercise be repeated at regular intervals.
10. That the application process for secondary employment for civil servants should be more transparent and clearly regulated.
11. That government makes post employment restrictions on civil servants and ministers legally binding.
12. That government develops with ACoBA a Memorandum of Understanding that sets out more clearly how they can work more effectively together.

Section 4: Engagement with government by those acting for and on behalf of external organisations

Recommendations

13. That government strengthens its transparency reporting by:
    - requiring more frequent returns;

- defining more clearly what should be included in the return, including a sufficient explanation to enable a reader reasonably to be able to understand the purpose of the meeting and who was present at it;
- designating a senior responsible departmental official who is properly trained to supervise the transparency returns;
- reporting in their Annual Report on the timeliness of the publication of its transparency returns; and
- requiring accounting officers to explain to their responsible Select Committees any failure to publish transparency returns in a timely manner.

14. That government extends the definition of ‘meeting’ to include all forms of non-public interactive dialogue which, were it face to face, would constitute a meeting requiring inclusion in the transparency return.

15. That government publishes an appropriate set of principles to define when an interactive communication should be deemed official business and therefore disclosed.

16. That the requirement to register as a consultant lobbyist should be extended :
    - to lobbyists employed by more than one organisation;
    - to any former senior civil servant or minister who engages in lobbying;
    - by removing or severely curtailing the exemption for ‘incidental lobbying’; and
    - by removing the exemption for those not registered for VAT.

17. That the rules regarding the transparency of lobbyists be strengthened by:
    - requiring lobbyists to disclose the ultimate person paying for, or benefitting from, their lobbying activity;
    - lobbyists including in their quarterly information returns the number of incidents of lobbying, the subject matter in sufficient detail for a third party to understand the nature of the lobbying, and which named individuals were lobbied;
    - requiring registered lobbyists to meet a statutory code of conduct, setting minimum standards;
    - government keeping under review whether the Registrar of Lobbyists should be able to impose more meaningful penalties for non-compliance, particularly in the event a statutory code of conduct (which seeks to police behaviour) is introduced; and making knowingly deceiving in the process of lobbying a criminal offence.

18. That government impose a contractual prohibition on contractors referring to government contracts in marketing material without government consent.

19. That government requires tenderers to disclose any former minister or senior civil servant employed or retained by them and explain the steps they have taken to ensure that they have not thereby obtained an unfair advantage in a procurement exercise.

Suggestions:

- That government should consider extending transparency requirements to special advisers and to a wider group of civil servants with substantial policy responsibilities.
- That government should further strengthen equity in lobbying.
- That transparency requirements around lobbying of legislators should be reexamined.
- That the government should consult on whether think tanks, research institutes and lobbying academics should be required to disclose their sources of funding and whether there are circumstances when they ought to be required to register as consultant lobbyists.
- That legislation should be introduced to regulate lobbying by foreign countries along the lines of the Australian legislation.

Recommendations and suggestions

Section 1: Individuals' engagement, activities and terms of engagement with government

The events examined in the first section of Part 1 of my report presented a number of issues around the suitability and desirability of private sector personnel within government and how to manage their appointments, including any appropriate conditions on their engagement. There are related questions about how to manage the personal interests and levels of access of individuals working in government.

Recommendation 1: Compliance with government processes

The first of my recommendations is that government should establish an effective method for ensuring compliance with governance processes and the wider regulatory framework (Recommendation 1).

My preference would be for this to take the form of a cross-government compliance function, which would operate through a system of embedded compliance professionals within departments, coordinated by a central team in the Cabinet Office. These compliance officers should have a dual reporting line to departmental accounting officers and audit and risk committees, but there should also be increased central oversight via the Cabinet Office to ensure consistency in application of these processes.

The central team would incorporate the responsibilities of some of the existing central policy teams, as well as providing sponsorship of the relevant Arm's Length Bodies - the Advisory Committee on Business Appointments (ACoBA), the Committee on Standards in Public Life (CSPL), the Civil Service Commission and the Registrar of Consultant Lobbyists. The Chairs of these bodies, alongside the Independent Adviser on Ministers' Interests, may wish to form an informal advisory panel through which to submit joint advice to the Cabinet Office Board on ethics issues.

This compliance function would have an investigation and enforcement power in relation to civil servants and contractors. I accept that political appointments fall within the authority of the Prime Minister, who is accountable to the electorate via Parliament, so I recommend that this function has only advisory power in relation to ministers. Special Advisers, being both temporary civil servants and political appointments, should be subject to the same rules and enforcement process as other civil servants, save in respect of those areas where currently different rules already apply to their conduct.

The compliance function's remit would include conflicts of interest, lobbying, whistleblowing, pre-appointments, business appointments, secondary employment, dealings in securities, fraud and transparency, and it should over time seek to consolidate all the various strands of compliance which comprise the 'patchwork' system of standards referenced by the CSPL in their 2020 "British Standards Landscape: A mapping exercise".

I recognise that the above approach may require a step change for the government, but it is clear that in recent years, alongside a more open and flexible Civil Service, we have also seen increased expectations from the public regarding how these issues ought to be managed. Areas of the economy outside the civil service which used to have a system of

self regulation have now generally moved to a stronger, third party enforced, regulatory regime. Many large organisations now have a compliance department. In order to retain the trust of the public the government machine ought to be applying a similarly structured and rigorous approach. Whilst from my own experience I would endorse the statement in The Declaration on Government Reform that “our civil service is world leading in many areas, and its values of honesty, integrity, impartiality and objectivity are the bedrock of its success”, putting in place a strong compliance system will reinforce rather than undermine these values.

Increased compliance and enforcement, while crucial in ensuring trust in the Civil Service, needs to go hand in hand with strengthening integrity through a stronger focus on values and culture. As the OECD state in ‘Lobbying in the 21st Century’, “Beyond transparency, the strength and effectiveness of the policy-making process also depends on the integrity of...public officials.” Increased awareness of the Civil Service Code through training and induction will be central to this. There should be greater emphasis, both formal and informal, on embedding integrity in the Civil Service, including through the implementation of a ‘stewardship code’ or similar scheme which will place greater responsibility on individual line managers to ensure their teams are aware of and understand the responsibilities on them as civil servants. The Cabinet Office should consider further work in this area in order to consolidate a shared understanding of what ‘integrity’ means as a civil servant.

To accompany this, government should also introduce mandatory propriety and ethics training, including how to identify and manage conflicts of interest, for all staff to build on existing awareness of integrity standards and develop understanding of any new measures. This training could include e-learning and should be mandatory on appointment to the Civil Service and refreshed at least annually, with regular short form refreshers of various aspects of the Civil Service Code throughout the year. There should be performance management implications for not completing the training. I understand there is some work currently underway in this respect by the Cabinet Office and this recommendation should build on this work.

Formal training is useful to ensure there is adequate knowledge of the rules, but it needs supplementing by example and exhortation from Senior Civil Servants. I suggest that each year in the process for approving the governance statement in the departmental annual report, the accounting officer makes a presentation to the departmental Audit, Risk and Assurance Committee on the steps taken by the department to embed a culture of integrity.

One of the lessons to be learned from Part 1 of my report is to ensure that officials can identify and manage conflicts appropriately. The training should also therefore contain comprehensive information on the correct management of real and potential conflicts of interest.

The government’s Anti-Corruption Strategy is an important means of ensuring that high standards of public integrity are upheld and appropriate enforcement measures are in place. I therefore also recommend that the government develops a successor to the current iteration of the Anti-Corruption Strategy for when it expires at the end of 2022, and that this incorporates measures on public sector integrity with strong Ministerial oversight.

Recommendation 2: Conflicts of interest: Pre-appointment rules

As the evidence set out in Part 1 of my report discusses, there is a risk of bias or perceived bias when civil servants deal with issues relating to any previous employer in the private sector, even if that is not for any personal gain. **I therefore recommend that government should introduce pre-appointment rules which prevent for a period of time civil servants dealing with or promoting their former employer after joining the civil service (Recommendation 2).** This in my view is an important part of creating a holistic approach to managing appointments which should deal with potential conflicts arising before, during, and subsequent to employment as a civil servant.

I suggest too that individuals joining the Senior Civil Service from the private sector should not be involved in any procurement activity in which their previous employer has an interest for a period of two years after joining the Civil Service; and in relation to decisions relating to policy affecting their previous employer within a two year period, the civil servant must declare their previous employment and seek approval from their line manager to participate in the process. I understand that in the United States, for example, former private sector employees and lobbyists are subject to a one year (and in some cases two year) 'cooling off' period in situations where their former employer is a party, or represents a party, in a particular government matter.

Recommendation 3: Management and disclosure of conflicts of interest

I understand that the Cabinet Secretary has already committed to introducing changes to how the interests of Senior Civil Servants are managed. In his letter to PACAC dated 23 April, he set out that:

- All Senior Civil Servants would be required to declare any relevant interests on at least an annual basis including providing a 'nil return' should they have no relevant outside interests. Senior Civil Servants would continue to be required to declare any outside interests on appointment, or if their circumstances changed, in real time.
- These returns would be scrutinised within departments by their Audit and Risk Committees, with assurance of this process set out in each department's Annual Report and Accounts. Departments would also be required to complete an annual return to the Cabinet Office, providing assurance that all outside interests are being managed appropriately.
- Departments should also ensure that as part of or alongside their Annual Report and Accounts they publish a register of relevant interests for all members of the Departmental Board, including Senior Civil Servants.

These are positive steps. **I recommend, however, that government should further improve the management and monitoring of conflicts of interest in the Civil Service (Recommendation 3).** I would suggest that all senior appointees, including civil servants, special advisers, Non-Executive Directors and unregulated direct appointees, should have any material potential or actual conflicts in their declarations of interest published unless there are exceptional circumstances, such as security concerns. The wording of these declarations should be consistent and based on standard templates.

Furthermore, each department should appoint a civil servant of appropriate seniority with responsibility for managing conflicts (in the absence of a compliance function which is my

preferred solution). This civil servant should undergo formal training - either online or face to face - before taking up the role, and should receive annual refreshers on conflict management. The civil service should develop a manual containing examples of good practice and processes in conflict management which is updated at least annually in the light of experience.

Recommendation 4: 'Whistleblowing'

Some of the issues in Part 1 might have been mitigated if there had been a robust and trusted whistle blowing process. It is worth noting that in the Cabinet Office's 2019 staff survey, one in three civil servants were unaware of how to raise a complaint under the Civil Service Code and one in four were not confident that it would be investigated properly. I am aware that the Cabinet Office has more recently taken steps to promote awareness across government of the whistleblowing arrangements, but it is clear that there is room for some improvement in the process itself.

Departments have delegated responsibility for their own whistleblowing policies. Civil Service HR (Expert Services) provide a model 'Raising a concern' (whistleblowing) policy for those departments signed up to the service with regular 'health checks' for departments to assess their own policy against.

I recommend that government should strengthen whistleblowing processes in the Civil Service (Recommendation 4). As a minimum, I suggest that the following improvements are made to the process:

- Grounds for whistleblowing should be expanded to match private sector all-encompassing grounds (but not including usual employment matters).
- Whistleblowers should have the option to raise a concern with someone outside the Civil Service and the Civil Service Commission, e.g. the Chair of the audit and risk committee of the department.
- Whistleblowing cases should not be referred back to the department to investigate unless the whistleblower consents.
- Each department should appoint a Senior Civil Servant as the whistleblowing champion for the department.
- The staff survey for each department should continue to ask whether staff are aware of and trust the whistleblowing function. At least once a year the whistleblowing champion should report to the departmental board on the success of embedding a speaking up culture and use of the whistleblowing function by the department.
- There should be additional training provided by the compliance teams and a clear and consistent message from the top that it is a duty to stand up and anyone doing so in good faith will be protected from any retribution.

Recommendation 5: Direct ministerial appointments

As discussed in Part 1 of my report, there are a number of different ways in which an individual can be appointed to government and the rules governing these are for the most part clearly defined and understood, but not in relation to direct ministerial appointments.

This process is opaque and poorly understood, in particular with regard to unpaid appointments, as there seems to be a view that these are lower risk than remunerated posts. Whether someone is paid or not must be irrelevant to the level of diligence applied to their appointment. To be clear, this is not a criticism of those who offer to work for the government without pay, which is to be commended, but of the administrative processes within government.

I recommend that direct ministerial appointments, whether or not remunerated, need a clearer and more transparent process, set out in a new Code of Practice which makes clear the expectations on both departments and appointees and reaffirms that express Ministerial approval is required (Recommendation 5). In the interim, direct ministerial appointments should exclude the operation of the Carltona Principle (which allows civil servants to exercise a delegated authority on behalf of Ministers) to avoid any subsequent confusion on this issue.

I suggest the following should also be considered in further formalising this process:

- The appointment letter for direct ministerial appointees should include the name of the appointing minister, a commitment to abide by the Code, including the Nolan Principles, provision about security passes, IT access, title applicable to the role (and a confirmation from the appointee only to use this title) and whether or not business cards will be issued.
- If a direct appointee is not appointed following a competitive process, a written explanation from the minister as to why no competitive process was undertaken should be included in the department's annual report and account.
- A civil servant should be nominated as the line manager of a direct appointee in the appointment letter.
- If a direct appointee is to have a major role, a Senior Civil Servant should be nominated as the appointee's twin as proposed in my earlier report.
- A direct appointee must undergo induction training, including in relation to the Nolan Principles and appropriate communication with the media and the public.
- A direct appointee must make a full disclosure of potential, actual and perceived conflicts of interest, including all material interest in securities, and must agree appropriate mitigations with the civil servant line manager which should include restrictions on relevant securities dealings or taking on any new role without the consent of the civil servant line manager during the appointment and for a period after the appointment.
- Where ministers and civil servants disagree on whether a potential appointee is appointable (for example because of conflicts of interest which one considers resolvable and the other does not, or because the civil servant believes the post could and should be advertised and the minister does not) but the minister wishes to proceed, the minister must give a written direction to the Civil Service to that effect and it must be recorded in the departmental annual report and accounts.
- It should continue to be the case that a direct appointee should not take up the appointment until appropriate security clearances have been received, or in an urgent case, the procedure for a waiver has been followed and a waiver obtained.
- A direct appointment should be subject to regular review and there should, on termination, be an appropriate cancellation of clearances and recovery of laptops,

unused business cards and other government property. These should expressly be made the responsibility of the civil servant nominated as the line manager of the appointee.

- These procedures relating to direct appointees should be applied irrespective of whether the appointee is being remunerated and should also apply on any renewal or extension of the appointment.
- At the time of appointment the government should consider what restrictions should be placed on a direct appointee's ongoing and future activities. These should then be included in the appointment letter either as a restrictive covenant or as a requirement to obtain ACoBA clearance, as government thinks appropriate.
- Records of the procedures relating to direct appointments and the evidence for them should be retained by the department.

The Civil Service should not be able to make direct appointments in this way without the approval of a minister who is accountable to Parliament. I understand that the Cabinet Office's Civil Service HR function is currently carrying out an exercise to map and understand all the ways in which individuals are engaged by the government, including their terms, security vetting and standards of behaviour. I welcome this exercise and would expect the methods of appointment identified to adopt, mutatis mutandis, the provisions outlined above for the engagement of third parties.

Recommendation 6: Nominations for Honours awards

I have described in Part 1 of my report the process by which Mr Greensill was awarded a CBE. There is adequate guidance for proposing an Honour, including guidance that nominations by departments should be drafted by the most appropriate person and that they should be subject to appropriate due diligence. The committee process is also designed to ensure that subject matter experts are well placed to assess each citation on its merits.

There is scope for improvement, however, and **I recommend that government strengthens the oversight of the honours process within departments (Recommendation 6)**. As with conflicts of interest above, each department should appoint a civil servant of appropriate seniority with responsibility for managing and quality assuring honours nominations within their department. This civil servant should also undergo formal training before taking up the role and should receive annual refreshers on the honours process.

Suggestions

Cycle of compliance reviews

Best practice in compliance is not static but develops as new issues and technologies become relevant. Currently, government does not have a consistent mechanism for ensuring that it remains up to date with its compliance practices. **I therefore suggest that government should establish a regular cycle of compliance reviews**, say every five years, which are published and would be the responsibility of the Minister for the Cabinet Office, with departmental boards carrying responsibility for ensuring up to date best practice in the interim. This is consistent with the OECD lobbying principles which state that countries "should review the functioning of their rules and guidelines related to lobbying on a periodic basis and make necessary adjustments in light of experience".

Statutory Code of Conduct for Board Members of Public Bodies and Corporate Governance Code for central government departments

In terms of enforcement, certain central government codes of conduct are statutory whilst others are not. To address this, **I suggest that the Code of Conduct for Board Members of Public Bodies and the Corporate Governance Code for central government departments should be given a statutory basis**, when a suitable legislative opportunity arises.

Securities dealings by civil servants

I consider the patchwork of regulation applicable to civil servants to be especially weak in relation to dealing in securities. Rather than wait for an incident which highlights this weakness, **I suggest that government should consider introducing rules for securities dealings by civil servants**.

In my view, all securities dealings by Senior Civil Servants in central government departments who might have access to unpublished price sensitive information should be required to seek approval from their compliance teams before dealing in any related securities and should disclose on an annual basis those dealings to their compliance teams. The accounting officer in each department would be responsible, working with the compliance function, to determine which civil servants are subject to the requirement for prior consent. I suggest that the code should contain the following further requirements as a minimum:

- Civil servants with access to policy making discussions and to procurement decisions ("relevant civil servants") should be prohibited from dealing in derivatives or holding 'short positions' in any security.
- Relevant civil servants should be prohibited from buying securities for the short term as trading positions rather than for long term investment.
- Relevant civil servants should not enter into transactions or other arrangements whereby they may receive financial benefit from the movement of financial, commodity, currency or similar indices or benchmarks or from spread betting or similar activities.
- Relevant civil servants should only deal in securities with the prior consent of their line manager and the compliance function.
- These rules should apply to any connected person of a relevant civil servant. If a connected person has a profession or trade which requires any of these otherwise prohibited activities, the relevant civil servant must consult the compliance function and appropriate safeguards must be implemented.
- Relevant civil servants should not advise any other person to enter into any arrangement which the relevant civil servant is prohibited from doing or provide any relevant information to any third party knowing or intending that they should enter such an arrangement.
- All civil servants must not enter into any transaction if either (i) that civil servant is in possession of confidential information which could be considered relevant to that transaction; or (ii) that transaction could adversely affect the reputation of the Civil Service.

- Accounting officers should consider whether there are periods when no person in the department, or a segment of the department, should enter into transactions as described in these rules because of an announcement which is likely to be made, or an event is likely to occur, which could impact the price of securities, commodities, currencies or similar matters generally. In these circumstances Accounting Officers should issue a general instruction to those persons affected prohibiting all such activities until further notice.

Section 2: The development and use of supply chain finance (and associated schemes) in government

Section 2 of Part 1 of my report raised significant questions about the suitability of supply chain finance and associated schemes for central government and its Arm's Length Bodies.

Recommendation 7: Use of Supply Chain Finance

Supply chain finance is a wide category of financial tools, but my report focuses only on two types within government and its Arm's Length Bodies: the payment to a supplier at a discount of its invoice by a third party financier before the contract due date, where the invoice has been accepted as valid by the buyer; and purchase order or pre-purchase order finance where the buyer undertakes to purchase from a supplier and a financier pays the supplier on the strength of that undertaking.

I share HMT's scepticism, set out in Part 1 of my report, of the role of supply chain finance in central government given the government's low cost of capital. **I recommend that government should restrict the use of supply chain finance in central government to exceptional circumstances only (Recommendation 7)**.

I also note that the levers available to HM Treasury and government to manage working capital include basic mechanisms around prompt payment. I therefore suggest in relation to prompt payment and project bank accounts that government should continue to ensure that it meets its own targets for prompt payment and further tighten its enforcement of the prompt payment code. It should also consider progressively shortening the period currently allowed under the code until it is aligned with government performance. It should use, and encourage suppliers to use, Project Bank Accounts in appropriate circumstances.

Recommendation 8: Use of Employee Salary Advance Schemes

I also note in Part 1 of my report that the FCA does not currently regulate employer salary advance schemes (ESAS) and they are not within scope of the financial ombudsman. I am concerned about this given that these schemes have some similarities with pay-day loans.

I was encouraged to note that a Civil Service Financial Wellbeing Strategy was launched in February 2020. In relation to employer salary advance schemes, **I recommend that ESAS should only be used by government in exceptional circumstances and when no other option (e.g. weekly or more frequent payment) is available (Recommendation 8).** In those cases, I recommend that government should not (save in exceptional circumstances approved by HM Treasury) use a third party provider of finance but fund salary advances itself and that there should be no commission or other financial benefit for government by doing so.

Section 3: The relationship between current and former ministers and officials and external organisations

The issues explored in Section 3 of Part 1 of my report throw up a number of issues around the most appropriate conditions to place on public servants once they leave government service.

Recommendation 9: Interchange between government and the private sector

I am aware that one outcome of the events examined in Part 1 of my report might be to discourage the recruitment of external employees into roles in government, but it would be wrong to discourage the recruitment of talent into all levels of the Civil Service. I agree with the view expressed by Catherine Baxendale in her report of February 2015 that the Civil Service “needs to continue to build capability and has been clear on the need to use external recruitment to fill critical skill gaps.”

Whilst many of the recommendations from the Baxendale Report have been implemented, the interchange between government and private sectors remains patchy at best. As the Institute for Government said recently, the “Civil Service is not as porous (the extent to which people can move into and out of it) as it should be. While stronger ethical oversight of transfers between the private and public sector is needed, there are still too many barriers to the circulation of skilled people.” This is also the government’s view as outlined in the Declaration on Government Reform which states “There is … more we must do to attract a broader range of people to the privilege of public service.”

I recommend that government undertakes a follow up to the Baxendale Report reviewing the experience of external hires into the Civil Service to ensure that impediments to effective recruitment and retention are eliminated, and that this exercise be repeated at regular intervals (Recommendation 9).

However, as ever, it is important to maintain a balance between attracting the requisite skills and ensuring the integrity of the Civil Service is maintained. This is a difficult balance and requires careful management with regard to outside activity before, during and after appointments.

Recommendation 10: Secondary employment by civil servants

Having reviewed the circumstances of secondary employment in Part 1 of my report, **I recommend that the application process for secondary employment for civil servants should be more transparent and clearly regulated (Recommendation 10)**. Specifically:

- Accounting Officer approval should be sought for all civil servants’ secondary employment at Senior Civil Service level, and records kept by the department.
- Civil servants ‘giving back’ via unpaid, for instance, charity roles, should be encouraged, but guidance should be produced about how to prevent conflicts of interest. Departments should keep records of these roles.
- Secondary employment approvals for Senior Civil Servants should be published, unless there is a reason not to e.g. security concerns.

Recommendation 11: Post-employment restrictions

The events in Part 1 of my report pose questions relating to post employment restrictions on those leaving government.

An important part of the process for managing the influence of lobbyists is making sure that individuals are not able to exploit their former public sector position to benefit private sector organisations. ACoBA is a key mechanism for managing this risk. The ACoBA process governing post-employment restrictions on civil servants and ministers is one that is under almost constant scrutiny from the media and Parliament and it is clear that there would be widespread support for a more powerful mechanism for enforcement. **I recommend that government makes post employment restrictions on civil servants and ministers legally binding (Recommendation 11).**

One option suggested to me to achieve this would be for ACoBA to be given statutory powers to undertake its role and with enforcement powers for breach to be allocated to ACoBA. An alternative approach, which I would favour for the reasons set out below, would be to change the way in which post-employment restrictions are managed for civil servants and ministers. For civil servants their post-employment restrictions could be a straightforward contractual arrangement of restrictive covenants in the same way as the private sector, with ACoBA used as the enforcement body.

Ministers are office holders and not employees, and as such have no formal written contract of employment, but ministers could on appointment be required to sign a legally enforceable Deed of Undertaking which binds them to follow the Business Appointment Rules process and to abide by ACoBA's ruling at the end of their ministerial term. This should be enforceable by ACoBA by obtaining an injunction if the former minister does not comply.

Given its enhanced powers, ACoBA should also consider adopting a two tier model to allow for an appeal process against its decisions. It would also need to develop an enforcement arm.

The advantages of the restrictive covenant approach over a statutory framework are that:

- it does not require legislation and can therefore be introduced more speedily;
- it is more flexible and easier to change both in individual cases and more generally in the light of changing circumstances; and
- individuals should be able to see, upon accepting a role, exactly the sort of restrictions that would be placed upon them on leaving, which would enable them to make an informed decision about accepting the role.

Recommendation 12: ACoBA

Given the importance of ACoBA's role, **I recommend that government develops with ACoBA a Memorandum of Understanding that sets out more clearly how they can work more effectively together (Recommendation 12)**, including a service level agreement imposing time limits on ACoBA from the receipt of relevant information to giving its verdict.

If the restrictive covenant method is adopted, those covenants relating to civil servants should be reviewed in consultation with ACoBA and ACoBA's approval should be obtained for any waiver, amendment or decision not to enforce a covenant.

While detailed policy on restrictive covenants should be developed in consultation with ACoBA, it should be standard practice for those in the commercial function to have a time-limited restriction on taking up roles with entities where they have been involved in a relevant procurement.

I also suggest that there should be additional exit interviews for all Senior Civil Servants by the department to understand the nature of the job offered and to advise on whether there is a potential breach of contract in taking up the role.

The Department for Business, Energy and Industrial Strategy (BEIS) has recently undertaken a consultation on the use of non-compete clauses in contracts of employment ("Non-Compete Clauses: consultation on measures to reform post-termination non-compete clauses in contracts of employment"), suggesting these may be restricted or even banned in future. This would of course require some careful consideration regarding the role of civil servants, and I know the relevant teams are aware of this. BEIS acknowledges this issue in its paper when it says,

> "The implications of this proposal for the public sector will be subject to further consideration. In the public sector, some public servants e.g. civil servants, the Military, or the diplomatic service, are subject to Business Appointment Rules or an equivalent set of rules. ...It is in the public interest that people with experience of public administration should be able to move into other sectors, and that such movements should not be frustrated by unjustified public concern over a particular appointment. However, the aim of the principles underpinning the Rules is to avoid any reasonable concerns that a public servant, in carrying out their duties, may be influenced by the hope or expectation of future employment with a particular employer; or may improperly exploit privileged access to contacts or information, or use such information in a way that confers improper advantage on a subsequent employer. The government continues to attach much weight to these underlying principles."

My view is that whatever the considerations are for the retention or removal of restrictive covenants in the private sector, restrictive covenants or legislative backing in the public sector are necessary to perform a uniquely important function in maintaining trust in the impartiality of the Civil Service. As the June 2021 report of the Committee on Standards in Public Life says, "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."

In the case of both civil servants and ministers, there should be a commitment to the spirit and not just the letter of post-employment restrictions. To add to the enforcement of post-employment restrictions, ACoBA should have a responsibility to notify the relevant honours committees of any failure to abide by the restrictions. It is also my strong suggestion that anybody breaking the spirit or letter of their post-employment restrictions should also be deemed ineligible for appointment to positions in public life, including in Arm's Length Bodies.

Section 4: Engagement with government by those acting for and on behalf of external organisations

The events explored in Part 1 of my report raise questions about the ability of certain individuals to gain access to decision makers in government and pose the broad question of whether the current rules relating to the 'lobbying' of government are adequate and, if not, how they should be strengthened.

Recommendation 13: Transparency reporting in government

The OECD publication "Lobbying in the 21st Century: Transparency, Integrity and Access" states,

> "Transparency is the disclosure and subsequent accessibility of relevant government data and information. The OECD … lobbying Principles states that Adherents 'should provide an adequate degree of transparency to ensure that public officials, citizens, and businesses can obtain sufficient information on lobbying activities."

I believe from my work on Part 1 of my report that greater transparency than exists under the current process is required to give the public the 'adequate degree of transparency' they expect. **I therefore recommend that government strengthens its transparency reporting (Recommendation 13) by:**

- **requiring more frequent returns;**
- **defining more clearly what should be included in the return, including a sufficient explanation to enable a reader reasonably to be able to understand the purpose of the meeting and who was present at it;**
- **designating a senior responsible departmental official who is properly trained to supervise the transparency returns;**
- **reporting in their Annual Report on the timeliness of the publication of its transparency returns; and**
- **requiring accounting officers to explain to their responsible Select Committees any failure to publish transparency returns in a timely manner.**

Making transparency publications more frequent would reduce delays in publication, enable more effective public scrutiny, and encourage the more accurate recording of ministers' activities. More frequent publication of transparency returns should be published centrally, easily searchable, and give sufficient information to enable a person reasonably to understand the purpose of the meeting and those who attended it.

During the process of preparing Part 1 of my report, it became clear that there are significantly different understandings about when a discussion constitutes a matter requiring disclosure in a transparency publication. This has two elements: the medium of communication; and the content of the communication.

Recommendation 14: Definition of 'meeting' for transparency reporting

A specific area of concern has been about which media for communicating with ministers should be covered in the transparency publications. The Ministerial Code requires the publication of 'Ministers' external meetings'.

The term 'external meetings' can be construed narrowly to cover physical face to face encounters only (since the start of the pandemic this has been extended to cover virtual meetings over a platform which take the place of face to face meetings). My view is that there is insufficient distinction between a telephone call and, for example, a virtual meeting, to justify including one in a transparency return and not the other. Equally, an extended interchange of messages on an instant messaging platform can serve as effective a lobbying device as a physical meeting. **I therefore recommend government extends the definition of 'meeting' to include all forms of non-public interactive dialogue which, were it face to face, would constitute a meeting requiring inclusion in the transparency return (Recommendation 14)**. Further, to remove any ambiguity, government should make clear that, whether official business is discussed at a private event or at an official meeting should not alter the judgement of whether to include the meeting on the minister's or civil servant's transparency return.

Recommendation 15: Principles for including interactive communications in transparency reporting

On the content of communication with ministers and senior officials, I accept it is not possible to produce a clear 'bright line' by which ministers and Senior Civil Servants can understand the distinction between what should be disclosed and what should not. **I recommend, however, that government publishes an appropriate set of principles to define when an interactive communication should be deemed official business and therefore disclosed (Recommendation 15).** I have attached in an appendix a potential set of such principles.

Ministers should be offered the opportunity, and special advisers should be required, to take part in an induction process on all aspects of their respective codes of conduct. Departments should have the responsibility of ensuring that ministers and special advisers understand their responsibilities. This should include specific guidance on the use of social media for official business and a strong discouragement of the use for any purpose of self deleting messaging systems.

Recommendation 16: Registration of lobbyists

The Registrar of Consultant Lobbyists has recently updated the Guidance on Registration to make some helpful improvements. There is now, for instance, more clarity that it is the nature of the activity rather than the sector the lobbyist belongs to which is important. But there is still room for improvement. **I recommend therefore that the requirement to register as a consultant lobbyist should be extended (Recommendation 16)**:

- **to lobbyists employed by more than one organisation;**
- **to any former senior civil servant or minister who engages in lobbying;**

- **by removing or severely curtailing the exemption for 'incidental lobbying'; and**
- **by removing the exemption for those not registered for VAT.**

I am aware that a person can be employed by several companies and lobby for one or more of them without a requirement to register under the Lobbying Act, whereas if they were a consultant to these companies they would have to register. It seems anomalous that the payment of PAYE should provide an exemption from a requirement to make disclosure when the clarity of for whom the person is lobbying is equally obscure. Persons who undertake lobbying and have more than one employer should be required to register as a consultant lobbyist.

Former ministers and former senior civil servants (who in that capacity had to complete transparency returns) have a privileged position from their knowledge of government. The Register of Consultant Lobbyists should also include any former minister or Senior Civil Servant who undertakes any lobbying activity, irrespective of whether they are employed or a consultant at least for a period of time after leaving government service.

I note that, were these recommendations in force at the relevant time, Mr Cameron would have been required to register as a lobbyist.

The Registrar has recently clarified the exemption from registration for 'incidental lobbying[1]', which I welcome. However, the 'incidental' exemption creates a considerable potential gap in the transparency returns in the register. Accounting and law firms, consultancies and public relations organisations can be very large, thereby enabling very substantial lobbying activities which are not the main part of the business. They may well be able to undertake significantly more lobbying, and not be registered, than a small specialist lobbying organisation.

The most radical solution would be to remove this exemption for 'incidental lobbying' which would be my preference. If the government chooses not to remove the exemption it should add two further requirements - that the lobbying must not only be incidental, but must also be infrequent and must not form part of the services normally offered by the organisation. The Registrar would be asked to provide guidance on the meaning of infrequent.

The reason for exempting incidental lobbying is to balance the burden of registration with the benefit of disclosure. However, the consequence is that accountants, lawyers and consultancies can lobby without disclosing the client for whom they are lobbying. This seems an unreasonable benefit and I further suggest that if this exemption is retained, any person using it should in any lobbying communication disclose their client and the ultimate payer or beneficiary of the lobbying activity. In addition, parties relying on the incidental exemption from registration should keep a central record of all lobbying activity and make this available

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[1] The Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014 (the "Lobbying Act"), Schedule 1, Part 1, contains exceptions from the requirement for those lobbying to register under the Lobbying Act. The first exception is if -
"(a) the person carries on a business which consists mainly of non-lobbying activities, and
(b) the making of the [lobbying] communication is incidental to the carrying on of those activities."

on demand to the Registrar who can determine whether such activity is sufficiently incidental and infrequent to fall within the exemption**.**

The exemption from registration for organisations or individuals not registered for VAT should be removed; with the move to graduated fees the cost should not be an unfair burden on smaller businesses.

I have considered the arguments for removing the exemption from the obligation to register as a lobbyist for lobbyists employed to lobby for their employer. In general, government will wish to keep this under review but I have concerns that the burden of registration may be disproportionate to the benefits achieved and may have the result of silencing those who would wish occasionally to contribute to a public debate, but are concerned that it might require them to register.

<u>Recommendation 17: Lobbyists' reporting and conduct obligations</u>

I recommend (Recommendation 17) that the rules regarding the transparency of lobbyists be strengthened by:

- **requiring lobbyists to disclose the ultimate person paying for, or benefitting from, their lobbying activity;**
- **lobbyists including in their quarterly information returns the number of incidents of lobbying, the subject matter in sufficient detail for a third party to understand the nature of the lobbying, and which named individuals were lobbied;**
- **requiring registered lobbyists to meet a statutory code of conduct, setting minimum standards;**
- **government keeping under review whether the Registrar of Lobbyists should be able to impose more meaningful penalties for non-compliance, particularly in the event a statutory code of conduct (which seeks to police behaviour) is introduced; and making knowingly deceiving in the process of lobbying a criminal offence.**

Currently, lobbyists have to reveal the person who contracts with them to lobby. This may not, however, be the person ultimately paying their fees or the intended beneficiary from the lobbying. A key purpose of the measures being recommended is to ensure transparency, particularly of who ultimately is the person driving the lobbying. The information required of lobbyists is too sparse and omits key information and I recommend that this be changed.

The Office of the Registrar has recently introduced a code of conduct checklist for registrants who would like their code published on the Register. This is a welcome addition to the Guidance on Registration, but I would like to see further steps taken. At present, the responsibility for the content and enforcement of a code of conduct still rests with registrants which is unsatisfactory.

At present the Office of the Registrar relies on consultant lobbyists to register and to provide accurate and timely Quarterly Information Returns. If a person or organisation commits an offence under the Act the Registrar can impose a civil penalty of up to £7500 or refer the matter to the Director of Public Prosecutions for potential criminal prosecution. Given the

potential implications of non-compliance with the requirement of the Lobbying Act on the public interest, and the size of some of the organisations which engage in lobbying this needs reconsideration.

Deliberate omission from the register, or deliberate concealment from the recipient of the lobbying, by a remunerated lobbyist of the interest of the party ultimately paying for or driving the lobbying should be a criminal offence. If a person lies in discussing a contract this may well constitute the criminal offence of fraud and result in criminal prosecution. Given the significance of government policy making it appears anomalous that a person could lie while lobbying a minister to achieve a certain policy outcome and not have to suffer any sanction for their deceit. Criminalising such behaviour would not be intended to catch innocent errors, but only deliberate and knowing falsehoods designed to pervert policy decisions. The Code of Conduct should also set out that lobbyists must take reasonable steps to ensure the information they are communicating is true and if they are relying on the information their paymaster supplied to them without further verification, they should disclose that fact.

I also considered suggestions that former prime ministers and other former holders of major offices of state should be subject to a longer fixed-term ban, say for five years. I do not think this solves the concern. Mr Cameron began his lobbying of HM Treasury in March 2020, having stepped down as Prime Minister in July 2016. In these circumstances, I do not believe that the levels of public discomfort with his actions would have been assuaged had he resigned in February 2015, five years before he began lobbying government. However, it would, following my recommendation, be for ACoBA to decide in each case what the appropriate business appointment restrictions should be for former ministers, including former prime ministers.

Mr Cameron's own suggestion was that there should be a 'special ACoBA', perhaps of a subset of privy councillors who could advise a former Prime Minister on what roles he or she could take. I am not persuaded that this is a worthwhile solution - there would not be a sufficient flow of activity that such a body could develop the skill sets to perform such a role to the standards of ACoBA, let alone a higher level of skill.

Recommendation 18: Use of government contracts in marketing material

In order to prevent contractors gaining unwonted credibility from working for government, **I recommend government impose a contractual prohibition on contractors referring to government contracts in marketing material without government consent (Recommendation 18).**

Recommendation 19: Disclosure of ex-ministers in tender documents

In order to ensure an even playing field in procurement processes, **I recommend government requires tenderers to disclose any former minister or senior civil servant employed or retained by them and explain the steps they have taken to ensure that they have not thereby obtained an unfair advantage in a procurement exercise (Recommendation 19).**

In government procurement, improvements can and should be made. Roles and responsibilities need to be more clearly defined, transparency increased, and processes much better delineated in order to eliminate the risk that inappropriate pressure is exerted on

decision makers or that decision makers are wrongly attacked for non disclosure when disclosure is not required.

Ministers are accountable and responsible for the decisions and actions taken by their departments. It is therefore appropriate for ministers, should they wish, to be involved in commercial activity. There has been work undertaken by the Cabinet Office to set out some important principles for ministerial involvement in the development of key commercial strategies and the prescribed role of ministers in procurement. The Cabinet Office guidance that has been developed and led by the Government Commercial Function focuses both on ministerial involvement outside of and during a procurement process. The guidance also addresses ministerial involvement during contract award and after contract signature. I support this guidance and its broader circulation so that the general public can understand the roles played by ministers and by civil servants in relation to the award of contracts.

Suggestions:

Transparency returns for civil servants and special advisers

Special Advisers are not currently required to make transparency returns except in relation to media engagements. In their role, as described in the Code of Conduct for Special Advisers they are expected to “undertake long term policy thinking and contribute to policy planning within the Department” and to “liaise with the Party, briefing party representatives and parliamentarians on issues of government policy”. In working with civil servants special advisers can “hold meetings with officials to discuss the advice being put to Ministers; and review and comment on - but not suppress or supplant - advice being prepared for Ministers by civil servants.” They therefore have a very significant role in the formulation of government policy.

It is also the case that civil servants other than the permanent secretary within a department are responsible for developing policy although the decisions are ultimately those of the Minister or Permanent Secretary. This will not just be a matter of grade - some senior grades may not have significant input into policy, being operationally focussed, and some more junior grades may have greater policy input.

I suggest that government should consider extending transparency requirements to special advisers and to a wider group of civil servants with substantial policy responsibilities. Some commentators suggest an even broader sweep of civil servants should be required to publish transparency returns, given their input into policy formation. I consider this to be too burdensome. For levels below the senior policy makers, in order to achieve a better balance between practicality and disclosure, more junior civil servants should not be required to publish transparency returns but should list in any policy submission to decision makers those who have materially lobbied that civil servant in relation to that policy. This should achieve disclosure of any influences the more senior policy makers should be aware of.

Equity in access to government

Democracy depends not only on elections but on the elected listening to the concerns of the electorate. Most of the recommendations I make are designed to ensure there is

transparency and that a particular person or group cannot use an influential position to gain an unfair advantage. But an effective lobbying regime ought also to be designed to encourage those who do not have privileged access nonetheless to have a voice. **I therefore suggest that government should further strengthen equity in lobbying.**

Departments should be encouraged to develop innovative ways to 'level the playing field' and ensure that the widest possible consultation, gathering the most diverse range of views, precedes any proposal. Departments should also include in their annual report and accounts the steps they have taken to ensure the broadest possible consultation processes.

Lobbying legislators

Transparency requirements for ministers and civil servants as above are but part of an appropriate regime. Given their ability to influence policy, some commentators suggest that all legislators should also make transparency returns. Whilst the government will wish to keep this under review, I do not go so far in my recommendations, but **I do suggest that transparency requirements around lobbying of legislators should be reexamined**, so that:

- The register and disclosure requirements should also extend to any lobbying of the chairs of select committees in the House of Commons and to lobbying of the leader of the opposition.
- The House of Lords may wish to consider whether a similar extension of requirements would be appropriate for them.
- The House of Lords should consider whether the rules governing lobbying activity by Peers cover all reasonable circumstances. I understand aspects of this are already underway, with ongoing examination by the Conduct Committee of the use of parliamentary email addresses and official titles in external correspondence. I suggest this review also considers participation by Peers in lobbying organisations even where the Peer is not directly involved in such lobbying.
- Both Houses may wish to consider whether members who join any All Party Parliamentary Group should disclose their membership of the Group in their personal registers.

Think tanks and lobbying

I understand that think tanks, research institutes and academics are only required to register as consultant lobbyists if they are in effect creatures of those who provide the funding and the output of the institution is controlled by the funder. This seems to me difficult to prove and leaves significant scope for malpractice. **I suggest that the government should consult on whether think tanks, research institutes and lobbying academics should be required to disclose their sources of funding and whether there are circumstances when they ought to be required to register as consultant lobbyists.** Similar issues arise in relation to trade associations which might also be included in the consultation.

Lobbying by foreign governments

In relation to the lobbying by or on behalf of foreign governments, other countries, such as Australia and the USA, have introduced special legislation and a proposal to do so was included in the Queen's Speech in 2019. The need to regulate foreign countries' lobbying and assure the public that it is regulated has not lessened. **I therefore suggest that legislation should be introduced to regulate lobbying by foreign countries along the lines of the Australian legislation.**

APPENDIX: Proposed principles for defining 'official business' on transparency returns

It is essential that ministers are able to engage with many different stakeholders who can help shape their understanding of the context and implications of their decisions. Members of the electorate may, however, have legitimate concerns about unelected stakeholders influencing government policy behind closed doors.

To preserve confidence in government it is therefore important that there is a culture of openness and transparency around lobbying. The public needs to have confidence that ministers will make appropriate disclosures of meetings or other encounters where they have held discussions on substantive or sensitive matters, or held extended discussions that may have substantially influenced their thinking. Ministers need to have confidence that they can continue to meet stakeholders and hold discussions, both formally and informally, whilst upholding the public interest and maintaining public trust.

Ministers are, rightly, held to a high standard for conduct in public life. They must not only be trustworthy, but they must appear to be trustworthy. In many cases an innocuous encounter may appear to be inappropriate if it seems that there has been some effort to conceal it.

No single rule could cover all the situations where a minister might discuss policy with a stakeholder. I therefore propose a principles-based approach to help ministers determine whether any given policy related encounter should lead to a disclosure.

Any discussion relating to official business which is substantive should always be declared irrespective of the medium through which that discussion occurs. In other cases, decisions should be made based on consideration of a full set of principles such as those described below.

Lobbying relating to procurement[2] should always be considered higher risk, and have a lower threshold for disclosure than lobbying on policy. Additional guidance related to ministerial involvement in procurement should also be consulted.

Advice should be sought from the departmental compliance team in cases of doubt, and records kept of the consideration process. The principles, when finalised, should be read alongside guidance on how to identify a real or perceived conflict of interest.

The above is drafted with ministers in mind, but the same principles should apply to Senior Civil Servants and special advisers who are required to make disclosures under the transparency requirements.

Proposed criteria

Was the discussion **substantive**?

- Any engagement with a minister by outside interests which could reasonably be perceived by a member of the public as representing a sustained or substantial effort to inform or influence policy making must be disclosed.

[2] For these purposes, 'procurement' should also include applications for grants or other financial assistance and the grant of any licence or other authorisation

- An encounter may not be substantive if, for example, a stakeholder informally raises a sensitive policy issue and a minister immediately refers them to a more formal approach.
- Discussions on a subject outside the minister's area of responsibility or influence are less likely to be substantive since the influence of the discussions is not an influence on the policy makers. Conversely, if the minister is in a position to make a decision affecting a policy area then the encounter is more likely to be considered substantive
- Did the minister engage in a discussion with the lobbying party or was the minister merely in listening mode? If the latter, disclosure is less likely to be required..
- An encounter does not have to have actually impacted on a policy decision in order to be substantive. If an independent observer might reasonably conclude that the encounter *could have* influenced policy then it should be treated as substantive for disclosure purposes.

Was the subject matter **sensitive**?

- A subject could be sensitive due to potential personal benefit or harm that a minister's decision might imply for the stakeholder who raised it. For example, lobbying about a piece of legislation which directly affects the individual is more likely to require disclosure than lobbying for a matter of more general public concern. For example, a discussion about furlough schemes by an economist who is concerned with macro-economic impacts is less likely to require disclosure than an individual who is seeking to obtain a benefit for their business.
- Is the issue being discussed in the public domain, or does the stakeholder have access to privileged information? For example if the matter raised by the lobbying party is already one under public consultation, the threshold requiring disclosure would be higher since other parties would already be putting forward their own points of view. Issues of security or confidentiality relating to disclosure should be addressed separately.

What was the **duration** of the encounter?

- The length of an encounter can be considered as a proxy for its significance to the minister. A meeting that lasts an hour appears to have more weight than one which lasts fifteen minutes. A text conversation spanning several days appears more likely to influence decision-making than a single exchange of texts or emails.
- Frequent short encounters could, over time, add up to a significant level of influence on a minister's thinking and should be considered for disclosure.

If the encounter was a meeting or call, what were the **circumstances**?

- Was the meeting/call pre-arranged in order to discuss this issue, to discuss something else, or was it a spontaneous meeting or chance encounter?
- If pre-arranged, who arranged the meeting or call? Was it the minister's private office, constituency office, parliamentary office or were the logistics arranged by the other party?

- Did the lobbying party prepare a pitch document, video or slides or is it a spontaneous piece of lobbying? The more premeditated it is the more likely it is to require disclosure.
- Does the lobbying take place as part of a public forum – for example a roundtable or constituency meeting? An encounter that took place in an open forum is likely to be less sensitive than one that took place in private. It may also be in the public domain already and further disclosure may be redundant. If so disclosure is materially less likely to be required.

What is the **relationship** between the person lobbying and the person being lobbied?

- Somebody who has a close or privileged relationship with a minister will always appear to have greater influence over their decision-making. Even a single, brief conversation with a family member, close friend, or former colleague on a sensitive subject should be considered for disclosure.
- In some encounters the person lobbying may appear to have something to offer the minister in exchange for the opportunity to influence a policy decision. For example, somebody who represents a significant group of stakeholders may be in a position to offer valuable political support. If the encounter could appear transactional, it should be considered for disclosure.
- Has the lobbying party made significant donations to the political party of the minister? Or is the lobbyist a political colleague? If the lobbying party has made donations or is a political colleague, transparency is more important and therefore the threshold would be lower.

What is the **status** of the person lobbying?

- Is the person lobbying a consultant or employed lobbyist? If so, disclosure is more likely to be required.
- Does the person lobbying hold a privileged position, such as a former minister, whose status may mean they are able to secure greater access? If so, there may be a lower threshold for disclosure
- How related is the policy to the specific economic interests of the lobbyist? The greater the correlation, the greater the need for disclosure.

What **medium** was used for the access?

- The more privileged the access route (for example, a personal telephone number), the more likely disclosure would be required.
- If self-deleting messages are used (and my position is that they should not be), disclosure becomes significantly more important since trust will otherwise be eroded.