



**Committee on
Standards in
Public Life**

COMMITTEE ON STANDARDS IN PUBLIC LIFE

STANDARDS MATTER 2 - COMMITTEE FINDINGS

JUNE 2021

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Chair's Foreword

I am pleased to present the findings of the Committee on Standards in Public Life's review of the effectiveness of standards regulation in England.

The Committee launched this review, *Standards Matter 2*, last autumn to evaluate the strengths and weaknesses of the institutions, policies and processes that implement ethical standards in Westminster and beyond. We have received evidence from members of the public, civil servants, academia, think tanks, professional associations, standards regulators and the government. We are grateful to all who have contributed so far.



We have found that four areas of standards regulation require significant reform: the Ministerial Code and the Independent Adviser on Ministers' Interests, the business appointment rules and the Advisory Committee on Business Appointments (ACOBA), transparency around lobbying, and the regulation of public appointments.

Though it is unusual for the Committee to publish findings in advance of a final report, our system of standards regulation is currently under sustained public scrutiny, and the upholding and enforcement of the Seven Principles of Public Life is the subject of a number of parliamentary and government inquiries. The Committee is releasing these findings now to contribute to that debate in a timely manner.

The Committee's final report will be published later this year, and it will include the Committee's assessment of the relevance of the Seven Principles of Public Life, our view on how ethical standards are being upheld across public life, and our formal recommendations to the Prime Minister. These findings identify immediate issues with the current operation of the standards regulatory regime, and point in the direction of necessary reforms.

Selflessness, integrity, objectivity, accountability, openness, honesty, and leadership. Since their articulation by this Committee 25 years ago, the Seven Principles of Public Life have underpinned the public service ethos of this country. It is vital they continue to do so.

A handwritten signature in blue ink, which appears to read "Lord Evans".

Lord Evans of Weardale

Chair

Committee on Standards in Public Life

Summary of Findings

The Committee has identified four areas of standards regulation that require reform: the Ministerial Code and the Independent Adviser on Ministers' Interests; the business appointment rules and the Advisory Committee on Business Appointments (ACOBA); transparency around lobbying; and the regulation of public appointments. The Committee's findings in each area are as follows.

The Ministerial Code and the Independent Adviser on Ministers' Interests

- The Ministerial Code should be issued by the Prime Minister.
- There should be a range of graduated sanctions for breaches of the Ministerial Code, and the issuing of those sanctions should be a matter solely for the Prime Minister.
- The Independent Adviser should be able to initiate investigations, determine findings of breaches, and a summary of their findings should be published in a timely manner.

The Business Appointment Rules and the Advisory Committee on Business Appointments

- The business appointment rules should be expanded to prohibit for two years business appointments where the applicant has significant and direct responsibility for policy, regulation, or the awarding of contracts relevant to the hiring company.
- The government should amend the rules to enable government departments and ACOBA to issue a longer ban on lobbying, not exceeding five years, where deemed appropriate, and to make clear that applications to work with lobbying firms will not be accepted for a specified period of time.
- The business appointment rules should be made enforceable through employment contracts for civil servants and special advisers, and through parallel legal arrangements for ministers. Should that prove impossible or impractical then the government should explore how a statutory scheme with civil penalties could operate.
- Government departments should publish details on their implementation of the business appointment rules, and the Cabinet Office should ensure the application of the rules is consistent across all government departments.
- ACOBA should be given additional resources to promote awareness and understanding of the business appointment rules.

Transparency Around Lobbying

- To improve the quality of departmental transparency releases, the Cabinet Office should:
 - collate all departmental transparency releases and publish them in one centrally managed database
 - ensure that a sufficient level of detail is provided on the subject matter of all lobbying meetings and any policy matters discussed
 - ensure that all transparency releases are published in a timely manner on a monthly basis

- publish details of meetings held with external organisations by senior civil servants below permanent secretary level
- publish details of meetings held with external organisations by special advisers
- update guidance on the use of modern communications, to apply the principle that 'government business is government business' to any informal lobbying
- revise the categories of published information to close the loophole by which informal lobbying is not disclosed in departmental releases

The Regulation of Public Appointments

- Reforms are necessary to the regulation of significant public appointments to ensure the Commissioner has sufficient powers to uphold the integrity of the appointments process.
- The appointment process for Non-Executive Directors of government departments should be regulated.
- Government departments should each publish a list of unregulated appointments.
- The appointment process for standards regulators requires a greater element of independence than is the case for other significant appointments.

Introduction

1. In 1995, Lord Nolan, the first Chair of this Committee, was tasked by the then Prime Minister Sir John Major with articulating a shared set of values for all those in public life. The Committee produced the Seven Principles of Public Life: Selflessness, Integrity, Objectivity, Accountability, Openness, Honesty, and Leadership. These principles sought to encapsulate the traditions of public service in the UK and their continuing relevance has been repeatedly confirmed in both qualitative and quantitative research over the past 25 years.
2. The Nolan Principles are not a personal moral code but a prescriptive set of ethical responsibilities that define the meaning and substance of public office. To be elected (or appointed) and to take a public salary may place an individual in public office, but to fulfil the requirements of that office means an adherence to the ethical precepts that underpin it. The Seven Principles define the legitimate use of entrusted power in the public sphere.
3. Lord Nolan's original report made clear that the Seven Principles alone would not be enough to ensure high standards of conduct in the public sector, and that they would need to be supported by three broad mechanisms: codes of conduct, independent scrutiny, and education. Codes of conduct translate the Seven Principles into context-specific rules; independent regulation and scrutiny ensures those rules are enforced and upheld fairly; and education, primarily through guidance, training, and induction, inculcates the meaning and application of ethical standards into the culture of an organisation.
4. The development of much of the UK's standards architecture has followed Lord Nolan's blueprint. Ministers, MPs, peers, civil servants, special advisers, board members of public bodies, and a range of public service professionals are now covered by codes of conduct based on the Seven Principles. CSPL recommendations have played a part in the creation or reform of a range of regulatory bodies, including the Independent Adviser on Ministers' Interests, the Parliamentary Commissioner for Standards, the Commissioner for Public Appointments, IPSA, the Electoral Commission, and more. This Committee was established to provide independent, cross-party assurance that the arrangements in place to regulate and uphold standards in public life are thorough, fair, and free from partisan influence.
5. After a quarter century of institutional reform, the standards landscape that exists today is complex and intricate. In 2019, to mark 25 years since the establishment of CSPL, the Committee commissioned academic research to map this web of rules, regulations, and regulators that enforce and uphold the Seven Principles of Public Life.¹ In September 2020 the Committee launched this review, *Standards Matter 2*, to build on that research and evaluate the effectiveness of the current regulatory system.

6. Having assessed and taken evidence about the effectiveness of standards regulation in central government and Parliament, the Committee has found that four areas of executive standards regulation require significant reform: the Ministerial Code and the Independent Adviser on Ministers' Interests, the business appointment rules and the Advisory Committee on Business Appointments (ACOBA), transparency around lobbying, and the regulation of public appointments. This report outlines the Committee's findings in each of these four areas and the nature of reform required.

The Ministerial Code and the Independent Adviser on Ministers' Interests

7. 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.² The Committee's 6th report called for clarification on the consequences of breaking the Code, to make clear that the Prime Minister should be the "ultimate judge of the requirements of the Code and the appropriate consequences of breaches of it."³ The Committee's 9th report recommended the creation of the post of the Independent Adviser, to assist with the upholding of the Code and to refer breaches of the Code to the Prime Minister.⁴ The Committee's 14th report noted controversy over inconsistencies in the Prime Minister's use of the Independent Adviser, and voiced concern that the Adviser had no independent ability to initiate investigations.⁵
8. 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.
9. The trend towards greater independence has progressed in line with an important constitutional norm: 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.
10. 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."⁶ As former Cabinet Secretaries and former Independent Advisers contributing to this review made clear, the Code draws its power from the Prime Minister's authorship.
11. It is on this basis that the Committee does not support calls for the Code to be drafted or owned 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.
12. The issue of ownership is, however, distinct from the issues of investigation and sanction. Attempts to increase the independence of investigation under multiple administrations were constrained by the expectation that any breach of the Ministerial Code should lead to the resignation of the offending minister. 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. The composition of the government must be a matter solely for the Prime Minister, and to create a situation whereby any independent regulator of the Ministerial Code would effectively have the power to fire a Minister, would be undemocratic and unconstitutional.

13. Such an expectation is also wrong on its own merits. We know of no other area of public life where such a binary sanctions system exists. In both Parliament and the Civil Service there is a range of graduated sanctions according to the seriousness of the offence. There is no reason why this should not be the case for ministers. Many breaches of the Code may be minor, inadvertent, or subject to mitigating circumstances, though serious breaches of the Ministerial Code should lead to a minister's resignation. The appropriate sanction must be a decision for the Prime Minister, who is accountable to Parliament and the public.
14. It is for these reasons that the Committee recommended to the Prime Minister in April that the Code should be subject to graduated sanctions, and we welcome his agreement.⁷ The Committee will comment on a range of appropriate sanctions in its final report this autumn. We are firmly of the view, however, that the implementation of graduated sanctions should occur alongside significant improvements in the independence of the Adviser, which has been a matter of serious and longstanding concern. The introduction of graduated sanctions removes any constitutional obstacle to greater independence in the investigatory process.
15. There are three parts of the investigatory process that require greater independence: the initiation of investigations, the determination of a breach, and the publication of the Adviser's findings. These matters are discussed below. We will return to other matters on the Code, including its composition, in our final report.
16. The Committee welcomes the appointment of Lord Geidt as Independent Adviser. We were glad to see that the Prime Minister appointed the 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.⁸ 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 (see paragraph 92).

The Initiation of Investigations

17. The Independent Adviser currently has no independent ability to initiate investigations into breaches of the Code. This lack of independence, combined with high profile allegations over the past 12 months that at first look warranted investigation, has served to undermine public confidence in the regulation of the Ministerial Code. The perception has taken root - fairly or not - that an allegation of a breach that may be politically damaging to the government of the day will not be investigated.

- 18.** Improvements in the independence of investigations in Parliament 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.⁹ This is not a sustainable position.
- 19.** The Committee believes the Independent Adviser's inability to initiate investigations independently undermines confidence in the regulation of the Code. This is critical as the Ministerial Code serves a dual purpose: it exists not only to ensure the highest standards of conduct in government as a matter of procedure, but also to give the public confidence that ministers will uphold high standards and will be held to account if they do not. Even if, on the former, the Code still operates well, on the latter it is clear that current arrangements are not fit for purpose. For these reasons, the Chair wrote to the Prime Minister recommending that the Adviser be granted the independent authority to initiate investigations.
- 20.** Though this recommendation was not taken forward, the Committee notes the provision in the role's new terms of reference for the Independent Adviser to advise the Prime Minister confidentially on the initiation of investigations. In his first Annual Report, Lord Geidt described the Adviser's new "explicit authority" to advise on initiation "an important stiffening of the independence of the post".¹⁰
- 21.** It is unclear, however, to what extent this represents a significant change to prior arrangements. Sir Alex Allan, the former post-holder, 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". In response to a question asking if an accurate description of his role was 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", Sir Alex confirmed "Yes".¹¹ Though 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, and so there may be little reason to believe that concern on the initiation of inquiries will be alleviated by new arrangements.
- 22.** We recognise the risk that granting the Independent Adviser the power to initiate investigations could lead to the Adviser being targeted with vexatious, trivial, or politically motivated complaints. Currently many such complaints are directed to the Cabinet Secretary. 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.
- 23.** 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 assess their effectiveness after a period of operation where the "revivified" terms of reference "are actively deployed".¹² The Committee still believes that full independence on the initiation of investigations is necessary, and we will monitor the impact of the new terms of reference in the coming months, prior to our final report this autumn.

The Determination of Breaches

- 24.** 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.
- 25.** This two-step process places both the Adviser and the Prime Minister in a difficult position when 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.
- 26.** 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.
- 27.** 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, whilst 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.

The Publication of the Adviser's Findings

- 28.** 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.
- 29.** To ensure the highest degree of transparency around the Code, the Committee recommended that the Adviser be able to publish their own findings. 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.) We welcome the Prime Minister's commitment that the Adviser's findings will be published in a timely manner.

The Committee's Findings:

- *The Ministerial Code should be issued by the Prime Minister.*
- *There should be a range of graduated sanctions for breaches of the Ministerial Code, and the issuing of those sanctions should be a matter solely for the Prime Minister.*
- *The Independent Adviser should be able to initiate investigations, determine findings of breaches, and a summary of their findings should be published in a timely manner.*

The Business Appointment Rules and the Advisory Committee on Business Appointments (ACOBA)

- 30.** 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.
- 31.** 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 consideration of potential conflicts of interest is necessary when regulating movement from the public to the private sector.
- 32.** 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 apply delays, 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 ¹³
- 33.** 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 CSPL's first report in 1995.¹⁴ Though many aspects of the rules have since been reformed, the institutional architecture of the business 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.
- 34.** Yet the context in which the business appointment rules operate has changed in two important aspects. First, there is now significantly greater 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."¹⁵ 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.

- 35.** Second, government outsourcing today is significantly higher than it was 25 years ago. According to the Institute for Government, around one third of public expenditure is now spent on buying goods and services from external suppliers, with a fifth of that spending going to 'strategic suppliers' who receive over £100m in revenue from government.¹⁶ As outsourcing increases, so does the risk that private companies may seek to gain favour through a business appointment.
- 36.** These increased risks around business appointments, alongside criticism of the ways in which the rules are currently enforced, 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. There are four issues where reform is necessary: 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.

The Scope of the Business Appointment Rules

- 37.** As currently written, the 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 to favour a private company in anticipation of future reward.
- 38.** 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.
- 39.** Such perceptions must be balanced against the fact that the government's business appointment rules exist to regulate conflicts of interest, and actively encourage 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 could lead to a requirement to pay former public office holders for significant periods of gardening leave, where office holders are paid for a certain period despite leaving their role, as they are prohibited from taking other paid employment.
- 40.** 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."¹⁷ 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."¹⁸

- 41.** 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 institute 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. 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 *significant and direct responsibility for policy, regulation, or the awarding of contracts relevant to the hiring company*.
- 42.** 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.¹⁹

The Two Year Ban on Lobbying

- 43.** 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.
- 44.** 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 lobbying government are not directly benefiting from their time in office when they do so. Any longer ban should be applied proportionately and should not become the default option.
- 45.** In his oral evidence to the Committee, Lord Pickles also highlighted the issue of officials joining lobbying companies whilst 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".²⁰ The Committee will consider the practical and legal issues around extending and strengthening the lobbying ban in its final report.

Lack of any investigation, enforcement, and sanctions capacity

- 46.** 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 "ACOPA is not a regulator nor a watchdog".²¹ 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. For civil servants below the most senior levels, such advice is provided by government departments.
- 47.** In lieu of any formal sanctions, transparency has become the primary mechanism by which the rules are enforced at senior levels. Public letters from the Chair of 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."²² 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.
- 48.** The effectiveness of transparency at ensuring compliance does not make up for the fact that there are no sanctions for office holders who break the government's rules. Media scrutiny may cause an office holder 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.
- 49.** 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.
- 50.** 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, whilst 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.

- 51.** 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 unsanctioned breaches whilst compliance goes unnoticed. On this basis, the Committee believes that transparency alone is not an adequate means of enforcing the business appointment rules.
- 52.** 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.
- 53.** An alternative or additional option would be to ensure compliance through writing the business appointment rules into relevant employment contracts. Lord Pickles argues that "It should be an explicit post-employment contractual obligation to adhere to the Government's rules and make clear what the sanction will be."²³ The Committee agrees. By writing the business appointment rules into employment contracts for civil servants and special advisers, and instituting parallel legal arrangements for ministers, it will be clear to those taking up public office what the government's expectations are of any post-employment activity. Such contractual and legal requirements should be binding, taking into account any restraint of trade considerations.
- 54.** In the event that legal or commercial issues prevent the enforcement of the business appointment rules through employment contracts, the government should explore how a statutory business appointments scheme with civil penalties could operate. 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.

The Application of the Rules at Departmental Level

- 55.** A serious area of concern shared by both Lord Pickles and the Committee concerns the enforcement 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", whilst praising the approach of others. We agree with Lord Pickles' assessment that a "predatory company" would target those below ACOBA level, particularly civil service directors and deputy directors.²⁴ The risk posed by business appointments in less senior roles is therefore significant.

- 56.** We are pleased that the Cabinet Office is working with other government departments to trial changes to off-boarding processes, as well as improvements in reporting to audit and risk committees. 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. In the longer term, the Cabinet Office should ensure that the application of the rules is consistent across all government departments.
- 57.** Similarly, the government should take up Lord Pickles' suggestion that ACOBA could "share best practice, raise awareness and transparency on the rules" across government departments.²⁵ 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.

The Committee's Findings:

- *The business appointment rules should be expanded to prohibit for two years business appointments where the applicant has significant and direct responsibility for policy, regulation, or the awarding of contracts relevant to the hiring company.*
- *The government should amend the rules to enable government departments and ACOBA to issue a longer ban on lobbying, not exceeding five years, where deemed appropriate, and to make clear that applications to work with lobbying firms will not be accepted for a specified period of time.*
- *The business appointment rules should be made enforceable through employment contracts for civil servants and special advisers, and through parallel legal arrangements for ministers. Should that prove impossible or impractical then the government should explore how a statutory scheme with civil penalties could operate.*
- *Government departments should publish details on their implementation of the business appointment rules, and the Cabinet Office should ensure the application of the rules is consistent across all government departments.*
- *ACOBA should be given additional resources to promote awareness and understanding of the business appointment rules.*

Transparency Around Lobbying

- 58.** 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 8 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."²⁶
- 59.** 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.
- 60.** 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."²⁷
- 61.** 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 advisers). Transparency obligations on ministers and special advisers are found in their respective codes of conduct.
- 62.** 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 does not meet this requirement. Transparency International cite 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.²⁸

- 63.** The Committee believes that the primary responsibility for transparency around lobbying should rest with the lobbied. 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. The government's transparency output must enable the public to understand who is attempting to influence public policy and their connections to those taking decisions.
- 64.** This is not currently the case. 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 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.

Improving the Accessibility, Quality and Timeliness of Government Data Releases

- 65.** The Cabinet Office should collate all departmental transparency releases and publish them in an accessible, centrally managed and searchable database. 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. In the USA, Canada and Ireland, all lobbying activity is available in one place. The government should consider ways in which it can provide a similar single source of all transparency data, rather than leaving it to journalists and NGOs to collate multiple different data sources. With one government-maintained lobbying database, records would be more easily searchable, 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.
- 66.** 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".²⁹ 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.

- 67.** 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".³⁰ 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 recent releases, all convey a suitable level of detail.
- 68.** 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."³¹ This spirit of this guidance is not consistently followed and ambiguous meeting descriptions can be 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.
- 69.** The Cabinet Office should also ensure that all transparency releases are published in a timely manner. 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.³² 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.

Scope of Transparency Requirements for Senior Civil Servants and Special Advisers

- 70.** Departmental transparency releases do not consistently cover senior civil servants below permanent secretary level, meaning that the lobbying of deputy directors, directors, and directors general 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 or deputy director. The government should therefore publish meetings held with external organisations by senior civil servants below permanent secretary level.

- 71.** 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".³³ Given the influence that many special advisers now hold, the government should publish the full diaries of special advisers' external meetings.

Informal Lobbying and Alternative Forms of Communication

- 72.** 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."³⁴ In recent 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."³⁵
- 73.** 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.³⁶
- 74.** 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 recent 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."³⁷ 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.³⁸
- 75.** It would be neither practical nor desirable for government to publish proactively 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.
- 76.** 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.

The Committee's Findings:

- *To improve the quality of departmental transparency releases, the Cabinet Office should:*
 - *collate all departmental transparency releases and publish them in one centrally managed database.*
 - *ensure that a sufficient level of detail is provided on the subject matter of all lobbying meetings and any policy matters discussed*
 - *ensure that all transparency releases are published in a timely manner on a monthly basis*
 - *publish details of meetings held with external organisations by senior civil servants below permanent secretary level*
 - *publish details of meetings held with external organisations by special advisers*
 - *update guidance on the use of modern communications, to apply the principle that 'government business is government business' to any informal lobbying*
 - *revise the categories of published information to close the loophole by which informal lobbying is not disclosed in departmental releases*

The Regulation of Public Appointments

- 77.** 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".³⁹
- 78.** 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 whom they believe will implement government policy in line with ministerial priorities. The Commissioner for Public Appointments, Peter Riddell, points out that the use of the term 'politicisation' is unhelpful in this regard. 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.
- 79.** 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 corruption and undermine public 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.
- 80.** 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 diverse candidates who do not see themselves as 'fitting the mould' not to apply for roles. An independent assessment of candidates gives greater confidence to candidates from diverse backgrounds to put themselves forward and gives those candidates a greater chance of success.
- 81.** These principles - described by the Commissioner for Public Appointments 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 appointable, with the final decision left to ministers.⁴⁰ The process is defined in the government's Governance Code on Public Appointments, which is overseen by the Commissioner.
- 82.** Prior to the 2016 Grimstone Review, the Commissioner played a more active role in significant appointments.⁴¹ The Grimstone reforms replaced the Commissioner's independent assessors with Senior Independent Panel Members (SIPMs), who are appointed by departments after consultation with the Commissioner. To the disapproval of many, including the previous Commissioner, PACAC, and this Committee's predecessors, the Commissioner's role was transformed from an active

participant in the appointments process to an independent regulator of it. Fair and equal assessment by a panel against the job specification remains central to the Commissioner's oversight.

- 83.** The question for the Committee concerns whether current arrangements uphold the right degree of balance between ministerial patronage and appointment on merit. We agree with the Commissioner that the post-Grimstone system has generally worked well until now, but it is highly dependent on both 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.
- 84.** The Commissioner has warned that the precarious balance between ministerial patronage and appointment by merit "is under threat".⁴² Of particular concern to the Committee is the leaking of preferred candidates to the media, which may discourage suitable candidates from applying for posts, undermines the integrity of the system and weakens 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.
- 85.** In the case of significant appointments, reforms are necessary to ensure the Commissioner has sufficient powers to uphold the integrity of the process by which a list of appointable candidates is produced, from which ministers can make their choice. The Committee welcomes proposals by the Commissioner to strengthen the role and will consider these as part of our final report this autumn.⁴³
- 86.** The Committee has also heard concerns about the growth of unregulated appointments, and the need to strengthen the appointments process for the heads of standards regulators. These are discussed below.

Unregulated (Direct) Appointments

- 87.** Recent years have seen a considerable expansion in the number of direct appointments by ministers, which go through no regulatory process. A number of these appointments were made to Covid-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.⁴⁴ The Committee agrees with PACAC Chair William Wragg that should unregulated appointments become the norm, the role and remit of the Commissioner for Public Appointments would need to be reassessed.⁴⁵
- 88.** The most concerning category of unregulated appointments are 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".⁴⁶ 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. The appointment process for NEDs should be regulated.

- 89.** The Commissioner has also recommended that Government departments should publish a list of all unregulated appointments. The Committee agrees.

Appointment of Standards Regulators and Watchdogs

- 90.** A final issue concerns the appointment of standards regulators whose role is to provide independent scrutiny of government. The appointments process for these roles, including the Chair of CSPL, ACOBA, the House of Lords Appointments Commission, the Commissioner for Public Appointments, and the Independent Adviser on Ministers' Interests, require a greater element of independence. The Commissioner has suggested that assessment panels for these roles could have a majority of lay members or the relevant Parliamentary Select Committee could have the power of veto. All the appointments listed above already have a pre- or post-appointment hearing with the Public Administration and Constitutional Affairs Committee (PACAC). The Committee will assess these options, and others, before making final recommendations this autumn.

The Committee's Findings:

- *Reforms are necessary to the regulation of significant public appointments to ensure the Commissioner has sufficient powers to uphold the integrity of the appointments process.*
- *The appointment process for Non-Executive Directors of government departments should be regulated.*
- *Government departments should each publish a list of unregulated appointments.*
- *The appointment process for standards regulators requires a greater element of independence than is the case for other significant appointments.*

Notes

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- ⁴ 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
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- ⁶ The Committee on Standards in Public Life, *Reinforcing Standards: Sixth Report of the Committee on Standards in Public Life* (2000), 51.
- ⁷ 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>
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- ¹⁰ 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
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- ¹² 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/>
- ¹³ 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>
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- ¹⁵ *Standards in Public Life: First Report of the Committee on Standards in Public Life* (1995), 52.
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²¹ Lord Pickles, *Lord Eric Pickles - Online Evidence Session with CSPL*, 25:36 - 25:51 (2021).

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²⁸ Transparency International, *Written evidence to Standards Matter 2* (2021), paragraphs 41-42.

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