

**Response from the Committee on Standards in Public Life to the Issues and Question paper issued in connection with its Triennial Review 2012**

**Part one of the review – the functions and form of the CSPL**

**Summary question:**

*Do the key functions of monitoring and reviewing big emerging questions performed by the CSPL continue to be necessary and, if so, do they need to be done by the CSPL?*

Answer: The Committee believes that these key functions continue to be valuable and that the Committee remains a relevant and efficient vehicle for performing them. We provide our detailed reasoning in answer to the specific questions below.

**Specific questions:**

1. *Does the UK still need a permanent ethics monitor and reviewer? Or, now that several regulators are in place (for example the Electoral Commission) are their other bodies that could effectively carry out this role?*

and

7. *Should the CSPL's role as an ethics monitor and reviewer remain separate from the remit of specific regulators?*

Answer: As this question correctly identifies, there is a key distinction between the role of regulators and that of the Committee on Standards in Public Life (CSPL). CSPL is not a regulator but reviews the activities of a number of ethical regulators, and monitors on a continuing basis ethical issues which emerge or persist in the UK's public life. Unlike regulators it has no remit to oversee day-to-day activities, nor to undertake individual investigations or administer any registration scheme. If the CSPL's functions were taken on by a regulatory body there would be a risk of them being submerged under the weight of the day-to-day business of regulation, and of the Committee's broader perspective being lost.

There could also be a confusion of roles. The CSPL is unique in its focus. Amongst all the ethics bodies which have been established in the UK, the CSPL is distinctive in its ability to look across the landscape of public life to identify ethical problems as well as best practice in preventing poor ethical behaviour (as in our current review) and to report its findings to government.

An important aspect of the CSPL is its independence. Its members are appointed by the Prime Minister. But these appointments (apart from those members nominated by the political parties) are made following a fair and transparent public appointments process. By protocol, the Committee consults the Prime Minister before initiating an inquiry, but it can make its own decisions about what to inquire into, when to do so and when to publish its reports. Formally the Committee is an NDPB attached to the Cabinet Office and despite the bureaucracy this sometimes entails, the sponsorship relationship is not one of control or supervision.

The Committee believes that both the creation of a number of regulators and the significant increase in transparency which have taken place over the past two decades have done much to heighten awareness of the need for high ethical standards and have led to an improvement in standards of ethical behaviour in public life in many organisations. Nonetheless, even the last few months have seen numerous examples of cases in which it appears the seven principles of public life may have been flouted (including the BBC (Saville inquiries), the police and media (Leveson inquiry), and further queries over the MPs expenses regime).

Thus, we do not think that the progress which has been made has removed the need for a body whose role includes: being an independent voice setting ethical standards and providing an ethical reference point for public office holders; drawing together and disseminating expertise from across the sector; maintaining a broad and detailed knowledge and understanding of ethical regulation in the UK; and producing evidence based and practical recommendations for change.

We consider the CSPL's permanent standing status as essential to its ability to fulfil the first three of these functions, and as a significant assistance to the fourth. Our current review has reinforced our view that ensuring the highest possible standards of behaviour requires a relentless focus on ethical standards. Recent scandals have demonstrated the need for leaders to be constantly reminded of their role in maintaining high ethical standards. In our view it would not be possible for ad hoc committees, or a committee which remained dormant except when a major scandal arose, to maintain the necessary focus.

*2. The CSPL's current remit covers Scotland, Wales and Northern Ireland. Should it be looking at developments in the Devolved Administrations?*

Answer: The majority of the devolved administrations have been established since the CSPL was created, but we continue to have a UK-wide Parliament and we think it appropriate that there should also continue to be other bodies with UK-wide remits. While mechanisms and processes designed to maintain ethical standards vary across the UK, the standards themselves are consistent. We therefore believe it is appropriate for them to be monitored and reviewed by a body with a UK-wide remit.

The CSPL takes seriously its remit as a UK-wide body: maintaining links with those responsible for standards issues in the devolved administrations; providing evidence and advice as requested; ensuring that it takes evidence on the specific circumstances pertaining to the devolved regions in connection with any specific inquiry; and, seeking to learn and disseminate lessons from differing practices in relation to standards across the UK.

We believe that these functions are valuable, and many of our interlocutors in the devolved administrations have told us informally that they agree. They will no doubt wish to make their own submissions to the Triennial Review and we welcome the opportunity this will provide for us to understand their views in more detail.

If the CSPL's remit were limited to England it would be for each of the devolved administrations to decide whether to replicate its functions in their own jurisdiction. It would obviously be possible to replace the CSPL with individual bodies with a similar remit in each of the devolved administrations, but this would increase cost and bureaucracy, make the learning of lessons across the UK a more laborious process and reduce the weight of the recommendations made by each individual body. If, on the other hand, the devolved administrations chose not to establish equivalent bodies, there would be a significant loss of focus on the scope and efficacy of ethical regulation.

*3. How well do you think the CSPL fulfils its role at present? What do you think it should do?*

Answer: It is largely for others to respond to this question. The Committee does, however, regularly reflect upon its own performance, particularly in the course of its annual accountability meetings and by conducting a secretariat-led lessons learned exercise following each major inquiry.

The Committee makes its interventions on ethical issues in expectation that their impact will be felt over varying timescales. Thus while the vast majority of our recommendations on MPs' expenses were immediately accepted on the day our report was published, we made our recommendations on party political finance in the knowledge that their impact would be felt over a longer timescale. Overall, although implementation of the Committee's recommendations is outside of its control, the Committee's ratio of recommendations made to recommendations implemented is high.<sup>1</sup>

The Issues and Questions paper understandably focuses on the major inquiries we have undertaken. But we believe our other activities are also key to our contribution. These include: monitoring of public attitudes to standards through quantitative and qualitative research; horizon-scanning for potential ethical issues which may arise in future (including tracking reports on standards issues from other organisations); holding stand alone seminars to explore particular issues (such as Freedom of Information); making visits to the devolved administrations; and, using our accumulated expertise and understanding to respond to consultations on ethical issues by other bodies. We are interested to find out whether other respondents to the Triennial Review think we strike an appropriate balance between these activities within our existing resources.

The Committee is planning to discuss alternative methods of working once our current review and the Triennial Review are complete. These could include running a number of short specific inquiries simultaneously or holding a series of seminars on ethical themes involving other people and organisations in the field.

The manner in which we are able to fulfil our role is inevitably constrained by the Committee's limited resources and small secretariat (three permanent staff). Committee members are expected to work on average only two days a month (except towards the end of major inquiries) and the Chair is remunerated on the basis of working for two days a week on behalf of the Committee.

*4. Is the CSPL the right body to do this work, in the light of what it is doing now?*

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<sup>1</sup> 52 out of 60 recommendations on MPs' expenses have been implemented to date.

and

5. *If there is a need for a body to fulfil this role, should it be done by some other organisation?*

and

6. *What other organizations might carry out the CSPL's role - another non-departmental public body, or Parliament? Are there parts of the Committee's work, such as research into public attitudes, which could be done elsewhere?*

Answer: For the reasons set out in our answer to question one, we believe that it would be important for any body fulfilling the CSPL's role to be: non-regulatory; independent (of both Government and Parliament); and, permanent. We think there is clear value in such a body having a UK-wide remit and that it would need to be appropriately resourced. In light of this we think the current model for the CSPL (an advisory NDPB) is appropriate.

We think there would be potential difficulties in combining CSPL's functions with those of another organisation if it were either one which itself needed to be monitored (eg. Parliament) and/or one with regulatory functions which might obscure its monitoring and reviewing role. A decision to combine the functions of the Committee with those of another body, or to abolish them altogether, would imply a judgement either that ethical standards have reached an acceptable level or that the importance of ethical standards is being down-graded. Either way, we believe that this could be a dangerous signal to send.

The most obvious part of the Committee's role which could potentially be done elsewhere is its research into public attitudes. But those who undertake related work tend to focus on either very specific areas of attitudes (eg. the Hansard Society's audit of political engagement) or much broader themes (eg. the British Social Attitudes Survey).

We believe our research is important for two main reasons. First, it would be misguided to assume we know what the public is thinking about ethical issues. Actual standards of ethical behaviour are very difficult to measure and, although we are clear that there is no straightforward relationship between actual standards and perceptions of those standards, we nonetheless think that perceptions are important. At a time when the political classes are often criticised for being remote and out of touch with the public, the qualitative and quantitative data we produce provides concrete evidence about public attitudes to ethical standards. Tracking the findings of these surveys over time enables us to identify emerging trends in attitudes which also help guide our decisions about where to focus our inquiries.

Second, our qualitative research enables us to explore the issues into which we are inquiring, and sometimes test our emerging conclusions and recommendations, with a much larger sample of the public than it would be possible to engage via public hearings. We are starting to explore the possibilities presented by social media for engaging with the public, for example through our Twitter account and blog, but we are conscious that these techniques only allow engagement with a particular section of society. We would welcome further ideas about how to expand the scope and diversity of our public engagement.

8. *Should the CSPL have a more formal relationship with regulators, or is the current, informal, relationship the right one?*

Answer: As this question implies, unless the CSPL is undertaking a specific inquiry into a regulator, these relationships are usually confined to regular contact between the secretariats and the four-monthly lunch meetings which take place between the Chairs of the regulators.

The regulators in question are autonomous bodies with established lines of accountability to Parliament or Government. To give the CSPL any formal jurisdiction over ethical regulators would risk creating 'fleas on fleas'. We are currently able to provide independent comment on the role and activities of the ethical regulators and to stimulate change as necessary, without any formal relationship being in place. Formalising the CSPL's relationship with any of the ethical regulators would require a significant change in its remit which would probably in turn require an increase in resourcing.

There may be scope to make our informal contact more systematic, for example by running more regular seminars outside our major inquiries (perhaps in collaboration with outside bodies), bringing together ethical regulators to discuss issues of common concern. We have hosted such events in the past, including to explore whether the CSPL should undertake a larger inquiry into an issue and to facilitate wider discussion of the results of the Committee's biennial survey, but they have not taken place on a regular basis. We would welcome any further suggestions as to how this area of our work could be developed.

9. *Should the CSPL's remit be limited to systems and structures, as it is now, or should it look into particular complaints?*

Answer: The limitation on our remit which prevents us from looking into individual complaints is important for two reasons. First, it prevents us from becoming drawn into often highly political individual cases which almost always fall within the jurisdiction of a regulator or ombudsman to investigate. Second, it is our observation that bodies with both a complaints and a policy role sometimes find it difficult to manage the tension between their complaints responsibilities and their policy focus. Given the breadth of our remit (and on the basis of the volume of correspondence currently dealt with by the secretariat) it is likely that we would receive a very large number of complaints. Furthermore, a change in remit to include investigation of individual complaints would require legislation and have significant resource implications.

However, we believe that we could do more to ensure that we are aware of trends in concerns expressed by the public to those bodies who are responsible for looking into particular complaints, which could usefully inform our decision-making about areas of inquiry. This is something we intend to explore.

10. *The Public Administration Select Committee recommended in its July 2012 Report: Business Appointments Rules that the Government consider merging the role of the CSPL into those of a statutory Conflict of Interest and Ethics Commissioner (based on the Canadian Commissioner of the same title). Should this idea be looked at in more detail?*

Answer: As mentioned in response to questions five, six and seven, we believe there would be a fundamental problem with the CSPL's remit being subsumed into a body which would also include a number of the regulators whose work we currently monitor and review.

Apart from ongoing uncertainty about the likelihood of our continued existence, we have not experienced any problems with our status as an advisory NDPB. Specifically we have not experienced any problems with our independence. Nonetheless we accept that putting the CSPL on a statutory basis might increase public perceptions of our independence. On the other hand, becoming a statutory body might make us less flexible in responding to issues.

If this idea was pursued, we would be concerned about the narrow interpretation of our remit which would be implied by the focus on 'Conflict of Interest' in the Canadian Commissioner's title.

11. *How do other countries manage the work that CSPL does and are there any lessons to be learnt from how similar bodies in these countries operate, like the Canadian model (see above)? Could they work in the UK?*

Answer: When the CSPL inquires into specific standards issues we always ensure that we examine lessons from how matters have been handled in other countries. Often this work is supported by our Research Advisory Board. In 2006 a small number of Committee members travelled to Canada and the United States as part of our inquiry into the Electoral Commission. We have also taken evidence from experts overseas over the telephone and via video link. The Chair regularly meets individuals from overseas standards bodies during their visits to the UK, during which he provides information about UK systems and learns lessons from overseas.<sup>2</sup>

However, we have not undertaken any systematic work looking at alternative models for managing the work that we undertake. We can only point to the reports produced by the Council of Europe's Group of States against Corruption (GRECO) which have highlighted the role of the Committee within the UK's system of ethical regulation<sup>3</sup>. This leads us to believe that it is relatively unusual for a country to have a body dedicated to the review and monitoring of ethical standards. While there is no evidence of a causal relationship between the existence of the Committee and the relatively high ethical standards enjoyed by the UK in comparison to the other countries surveyed by GRECO, it does seem reasonable to think that a society that values the issue highly enough to have established a body such as the CSPL is likely also to be one that achieves a greater measure of success in raising standards.

We would welcome the opportunity to learn from any lessons identified by others responding to the Issues and Questions paper regarding the work undertaken by bodies in other countries whose functions correspond to our role.

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<sup>2</sup> Recent visitors include the Integrity Commissioner from Queensland, Australia, officials from Japan's National Commission for the Management of Political Funds, and the European Ombudsman.

<sup>3</sup> For example GRECO, First Evaluation Round: Evaluation report on the United Kingdom, September 2001.

## Part two of the review – the control and governance of the CSPL

**Summary question:** *If you consider that an advisory NDPB is the right way to deliver the CSPL's functions are the current control and governance arrangements the right ones?*

### Specific questions:

*12. Membership – is the method of selecting the members of the Committee right? Should there be a change to the number of members of the Committee? Is the length of time Committee members serve, from 2012, fixed terms of five years right? Is the balance of members experience and background correct? Should an attempt be made to broaden the range of experience and background of members? Given the length of time it can take to appoint members, is the appointment process working as well as it should do? Or is it too time consuming? Should there be a smaller core of permanent members with the freedom to bring in expertise as necessary?*

Answer: We believe it is appropriate for non-political members of the Committee to be appointed following the process recommended by the Public Appointments Commissioner, based on merit, fairness and openness. Recommended candidates are then sent to the Prime Minister for approval. While the Committee does not have any concerns about the impact of the Prime Minister's role in the process, we accept that external observers might have concerns about the independence of Committee members appointed in this way.

There is an issue about the delay which can be introduced into the appointment process by the need for the Prime Minister to approve Committee appointments. During the most recent appointment process this led to a gap of several months between the completion of the interviews and the appointment of the new members. This delay affected the start of our latest piece of work.

While we are wholly convinced of the value of including political members on the Committee, and benefit greatly from their expertise and different perspectives, we are less persuaded that the process for appointing them is as transparent and effective as it could be. At present political representatives from each of the largest three political parties are nominated by their party leader. We believe that there should, at least, be a formal opportunity for the Chair to provide the party in question with his views on the characteristics and experience which would be appropriate for their political member. Prospective candidates should also make the time to talk to the Chair about expectations for the role before accepting it. Neither of these has happened consistently in the past. Ideally we would prefer a process analogous to that used in the past to recruit political members for the Audit Commission and Standards for England, involving expressions of interest from potential candidates and a light touch interview process.

We believe that the current size of the Committee is appropriate; smaller than most select committees, yet large enough to contain members with a diversity of experience, and large enough to achieve an appropriate balance between independent and political members. We also think that

the recent move to five year non-renewable terms,<sup>4</sup> recruited on a staggered basis to minimise the resource implications of the recruitment process, is appropriate for both the Chair and members.

We support Sir David Normington's emphasis on public appointments being made from as strong and diverse a field as possible. We accept that the background and experience of the current members, while varied across the public sector, is not particularly diverse. While the Committee's gender balance is not particularly problematic (four women, six men), it is largely ethnically homogenous (White British) and England-centric (one member brought up in Scotland). We understand the argument of those who suggest that the Committee would benefit from a greater variety of experience and background in its membership. We believe that more time and resources are necessary to identify the most strong and diverse field of candidates, as not all those who may in fact be interested in applying for membership of the Committee are likely to seek out the opportunity.

The Issues and Questions paper suggests that one option would be to retain a smaller core of permanent committee members with the freedom to bring in expertise as necessary. It should be noted that the Committee already brings in additional expertise as required, including the research advice provided by the academics on our Research Advisory Board, and specific individuals recruited to advise the Committee in relation to particular inquiries (for example the former Principal Clerk of the House of Commons who advised on the MPs' expenses inquiry).

We believe that the model proposed would achieve only minimal cost savings. Much more significant would be the reduction in the effectiveness of the Committee's functioning. At present our standing membership and monthly Committee meetings enable Committee members to get to know each other well. This facilitates free and frank discussions which enable members to listen to each others' opinions and develop their views. This intimate productive dialogue would be more difficult to achieve with a membership which changed with each inquiry. The alternative model would also prevent members carrying forward expertise and understanding gained in the course of one inquiry to subsequent inquiries. Having only a small consistent core of members, with a necessarily more limited range of expertise and experience, would also inhibit the monitoring and review functions of the Committee, which carry on regardless of any specific inquiry work. Secretariat resource would still be required to support even a smaller Committee.

*13. Resources – does the Committee have enough resources and expertise to fulfil its functions? Should the Committee continue to be funded by the Cabinet Office and housed on the Cabinet Office estate? Should the Committee Secretariat continue to be staffed by civil servants?*

Answer: The Committee is minimally resourced with a permanent staff of only three, but the ability to request (but not necessarily to obtain) additional resources to support specific inquiries. This

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<sup>4</sup> Prior to the latest set of appointments, Committee members were appointed for a three year term which was renewable once. The Chair's appointment used to be a non-renewable three year term until the current Chair's appointment for a five year non-renewable term.



represents a significant reduction in the Committee's secretariat (the original Nolan Committee was supported by a staff of 11). The Committee has also accepted a thirty per cent reduction in its core budget over the current Spending Review period (from £638,000 in 2010-11 to £452,000 in 2013-14).

These restrictions in resource and staffing necessarily affect the manner in which the Committee is able to fulfil its functions. For example, the Committee secretariat investigated the option of web-casting the Committee's public evidence sessions for the MPs' expenses inquiry, which would have enabled us significantly to increase the extent of our public engagement, but had to reject this possibility on grounds of cost. Since our remit is wide and our resources limited, we have to ensure that we take a strategic approach and set priorities. We ensure that time spent in responding to inquiries and consultations initiated by others, while important, is not allowed to crowd out work on other issues we regard as important.

While it brings the advantage of sharing physical facilities such as meeting rooms, and the administration of pay, IT and so on, the fact that the Committee is funded by the Cabinet Office and housed on the Cabinet Office estate brings attendant bureaucracies which would otherwise be unnecessary for a Committee of our small size. These are a cause of occasional frustration to the Committee. But we are not clear what the alternative might be which would avoid them.

Although some knowledge of the operation and structure of the Civil Service is an advantage, it would be entirely possible for the Committee not to be staffed by civil servants. In fact the current Secretary is not a civil servant, being on secondment from the House of Commons, and a previous Secretary was seconded from the Audit Commission.

*14. Work programme – should the Committee, as now, have to consult, though not seek the agreement of, the Prime Minister before beginning its Inquiries, or should it be free to investigate issues as it sees fit? How does the Committee decide on what to investigate? Are its methods appropriate and effective? Are there areas that the Committee should have investigated but has not, and vice versa? Are there now areas that should be left to the specific regulators rather than the Committee? The Committee has historically conducted its Inquiries by seeking written evidence and then holding oral hearings, both in London and around the UK, is this the most inclusive and efficient method? Its current Inquiry is using themed seminars with invited attendees. Is that sufficient to get a wide range of opinions?*

Answer: We are not concerned by the requirement upon us to consult the Prime Minister, to whom we are accountable, before beginning an inquiry, so long as the current understanding of the Committee's independence of action continues. Nonetheless we accept that this is another factor which might create external concerns about our independence.

The choice and scope of our inquiries is informed by our assessment of the importance of an issue, the scope for the Committee to make a distinctive and authoritative contribution and its potential impact. In each inquiry we aim to identify concrete and practical recommendations. After reports have been delivered we continue to follow up on our recommendations, as appropriate, to monitor the extent of their implementation and the effectiveness of the measures taken.

The Issues and Questions paper notes that historically the Committee has carried out its inquiries by seeking written evidence and then holding oral hearings (a standard 'select committee model') and asks whether this is the most inclusive and efficient method. We believe it is important that anyone who wishes to submit evidence to us is able to do so. Our experience has been that open public evidence sessions are cost effective and attract the most media attention of all our inquiry activities, which increases the public profile of our work and that of the issues we are discussing. Their benefit in terms of public engagement should be seen in broader terms than the number of people who attend each session.

The Committee has in fact used a much wider variety of methods to gather evidence and engage the public. These have included quantitative (surveys) and qualitative (focus group) research, one-off seminars and exploratory hearings, video and telephone conferencing, and most recently a blog and Twitter account. We recognise that all these methods have limitations in respect of the breadth and depth of the opinions they are able to gather. During 2013 the Committee hopes to explore some new approaches for increasing its level of engagement with both informed interlocutors and the wider public. There may be scope, for example, for collaborative exercises with other organisations with a good reach to the public and across the public sector.

For our most recent review we held a series of seminars with invited attendees to provide an opportunity for a dialogue between the Committee and informed representatives of certain areas of the public sector, rather than pursuing a formal evidence gathering process through public hearings. Instead of posing prepared questions to invited witnesses we wanted to allow participants to tell us what questions we should be asking and then to discuss possible responses with the Committee and their peers. These seminars, on which we have received very positive feedback from the 75+ attendees, have demonstrated the value of an 'outreach' approach to gathering material and encouraging learning and cross-fertilisation from one area to another. We were aware, however, that this approach limited the extent of our public engagement, which was why we also conducted focus group research with seven groups of participants across the UK, invited contributions to the review through our website, and ran a blog with regular postings from all members of the Committee, giving the public an opportunity to comment on the key questions we were addressing.

*15. Governance – should the Committee continue to report to the Prime Minister? Or should it be accountable either wholly, or partly, to Parliament beyond a pre-appointment scrutiny by the Public Administration Select Committee? In order to reinforce its independence, should the Committee be put on a statutory basis? Should the Committee continue to be a standing committee, permanently active, monitoring, commenting on developments carrying out research etc, as it is now, or should it only be convened to carry out specific inquiries?*

Answer: The Committee is appointed by and reports to the Prime Minister and the Chair meets with the Prime Minister and the Cabinet Secretary as appropriate. But we regard ourselves as being accountable to all our stakeholders. We produce an annual report and hold an annual meeting open to all.

We are accountable to the Parliament through the Public Administration Select Committee (PASC). The current Chair was subject to a post-appointment hearing with PASC and has given evidence to the Committee on a broadly annual basis since then. He has also met the Chair of PASC privately to

discuss the work of the Committee. PASC reports regularly contain recommendations about or of relevance to the Committee. We expect the next Chair of the Committee to be subject to a pre-appointment hearing.

It would be possible to put the Committee on a statutory footing, which would no doubt increase perceptions of our independence from Government. However, we do not feel inhibited by our current non-statutory status, nor have we experienced any problems with individuals refusing to give evidence to us. There would be resource implications of such a move.

We believe that it is important for the Committee to continue to be a permanently active standing committee for two main reasons.<sup>5</sup> The first is the value of all the work the Committee carries on outside its major inquiries. We believe that the Committee's monitoring and review work, together with its research, create considerable added value which would be lost if the Committee were convened only for specific inquiries. The Committee's unique perspective over the whole ethics landscape, including in the devolved administrations, enables us to identify and highlight issues arising, to provide informed responses to inquiries being undertaken by others and to investigate specific ethical issues in more depth, outside the scope of our major inquiries. The Committee's quantitative and qualitative research produces data of use to policy makers, academics and civil society. All this would be lost if the Committee was convened only for major inquiries.

The second reason we believe the Committee should continue as a permanently active standing body is the value which this adds to our major inquiries. The standing nature of the Committee means that its members have the opportunity to accumulate additional expertise and breadth of understanding of standards issues during their time on the Committee. It might be difficult (and expensive) to find Committee members with appropriate expertise, experience and availability at short notice on every occasion an inquiry was required. Committee members also build up a rapport during their time on the Committee which enables them to function effectively together during the course of specific inquiries. A Committee convened only on an occasional basis would not have this opportunity. If the Committee were convened only for specific inquiries, its ability to follow up the implementation of its previous recommendations would also be lost.

A further question is who would be responsible for deciding whether or not the Committee should be convened for an inquiry? If it was the Prime Minister, then we anticipate that these decisions would attract the same controversy that currently attaches to the Prime Minister's decisions about whether to ask the Adviser on Ministers' Interests to investigate potential breaches of the Ministerial Code. If it were a permanent Chair of the Committee there would be a question about whether they would be in a position to identify issues arising and make a case for an inquiry without the Committee's ongoing body of work to support them. In some cases there would be a pressing political case for an inquiry to be carried out, in which case the absence of a standing Committee and secretariat would create inevitable delays in the inquiry process.

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<sup>5</sup> See also our response to Q12



11 October 2012

Rt. Hon. Peter Riddell CBE  
Cabinet Office  
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70 Whitehall  
LONDON SW1A 2AS

Dear Peter,

Committee on Standards in Public Life

I am replying to your letter of 4 October and the issuer and questions paper on the Triennial Review, which you attached.

Please forgive me if I answer quite briefly because I have not studied closely all the work which the Committee has done in recent years. But I remember clearly the circumstances of its establishment. I regarded its establishment as being chiefly motivated by a desire on the part of the Prime Minister to show that he took ethical standards seriously in the face of various allegations of "sleaze" which it was then fashionable to make against Government and individual Ministers. It was the Prime Minister's own initiative - it was not

Something proposed by officials - but I was the leading adviser on the way in which the decision was implemented and I was charged with approaching Lord Nolan about chairing it and advising on the original membership.

My concept at the outset was that it should be like the Security Commission which existed at that time - does it still? - in the sense that it should be a standing committee but <sup>one</sup> which should only be activated when issues arose, or incidents occurred, which it was useful to refer to the Committee and on which it would be helpful to have the Committee's advice on how to prevent a recurrence. But this aspect was left open in the original announcement and, after the Committee had completed its first report, Lord Nolan made clear that he expected the Committee to remain active and the Government did not go against that wish.



My present view is like my original one. I am sceptical about the value of a Committee permanently active and looking around for issues to put into a continuing work programme. There may be some value in keeping the Committee in existence on a retainer so that issues can be referred to it if that becomes desirable. In that case it could have a much smaller membership and no permanent secretariat. Its cost would then be much lower. But, on the basis of the information I have, I would be in favour of bringing it to an end and saving the public money.

I hope that this helpful.

Yours ever,

Robin

Submission on behalf of the Ulster Unionist party by Party Chairman, Lord Empey of Shandon Kt. OBE.

Committee on standards in public life

- 1) Yes. One must always look at duplication, but this issue is so important at present that dilution of this role would not be helpful.
- 2) Yes. It is important that there are uniform standards throughout the UK as some people operate in more than one Institution.
- 3) Adequately
- 4) Content
- 5) Yes.
- 7) Yes. We refer to our answer to question 1
- 10) There may be merit in looking at this but it must not deflect from the effectiveness of the organisation now.

With reference to the quinquennial review of 2000 when a reference to the house of Lords was made. Sadly things have got worse since then, A number of Members of the Upper House have been guilty of fiddling Parliamentary expenses; some have served jail terms others have not. Yet all are allowed to serve their terms in jail and return to the House to participate fully in its work as a revising chamber. They speak and vote and receive allowances. We may see the return of Conrad Black to the House of Lords next year. The House has no power at present to expel Members who have been guilty of criminal offences. This is totally unsatisfactory and injurious to public confidence in Parliament and public life.

The Government should support legislation to allow the House of Lords to expel Members in such circumstances.

We believe there is substantial support in the House of Lords for such measures and they would be welcomed by the public.

reg empey  
8th November 2012.



by e-mail 8/11/12

## Response by Prof Robert Hazell to CSPL Triennial Review 3 Nov 2012

17. In summary: **Do the key functions of monitoring and reviewing big emerging questions performed by the CSPL continue to be necessary and, if so, do they need to be done by the CSPL?**

The functions are still necessary, but they do not necessarily need to be done by CSPL.

18. Some specific questions are:

Q1: Does the UK still need a permanent ethics monitor and reviewer? Or, now that several regulators are in place (for example the Electoral Commission) are there other bodies that could effectively carry out this role?

Since the creation of CSPL, we have seen the establishment of the Electoral Commission, Commissioner for Public Appointments, Parliamentary Commissioner for Standards, House of Lords Appointments Commission, Independent Parliamentary Standards Authority. So there is now quite a tight network of regulatory bodies, but with gaps.

Parliament is now tightly regulated (but with a small gap in regulating conduct in the Lords). Central government is tightly regulated. Public appointments are tightly regulated (Civil Service Commissioners, OCPA, HoLAC, Judicial Appointments Commission); but there may now be a gap in regulating appointments to the NHS, with the abolition of the NHS Appointments Commission.

The biggest regulatory gap is in relation to local government, with the abolition of the Audit Commission, and the Standards Board for England. That exposure does need to be closely monitored by people with good knowledge of local government, such as SOLACE and CIPFA

Q2: The CSPL's current remit covers Scotland, Wales and Northern Ireland. Should it be looking at developments in the Devolved Administrations?

No. The CSPL was created before devolution. It is inappropriate for a UK body to be monitoring the devolved administrations. They have their own ethical and specialist regulators, and can devise their own monitoring machinery if they want it

Q.3 How well do you think the CSPL fulfils its role at present? What do you think it should do?

I think it should be wound up, because there is no longer sufficient work to justify its continuing existence as a permanent body.

Q4: Is the CSPL the right body to do this work, in the light of what it is doing now?

The CSPL does give the impression of scratching around for things to do. Its last two annual reports are pretty thin.

Q5: If there is a need for a body to fulfil this role, should it be done by some other organisation?

I would like to float the idea of a collegiate model: an organisation which is an umbrella body of the main ethical regulators. It might include the Parliamentary Ombudsman; Local Govt Ombudsmen;



NAO; Electoral Commission; OCPA/Civil Service Commissioners; ACoBA; HoLAC; Parliamentary Commissioner for Standards. The chair or chief office holder should represent each body, so that it has political clout, and does not simply become a bureaucratic committee. They should meet at least quarterly, and have the capacity to initiate thematic inquiries, as CSPL has done. The secretariat should be supplied by one of the larger organisations, such as NAO or the Ombudsman.

Q6: What other organizations might carry out the CSPL's role - another non-departmental public body, or Parliament? Are there parts of the Committee's work, such as research into public attitudes, which could be done elsewhere?

See answer to Q5. The research into public attitudes need not be continued: it has not added greatly to the sum of public knowledge

Q7: Should the CSPL's role as an ethics monitor and reviewer remain separate from the remit of specific regulators?

If CSPL remains in existence, it should continue to have a widespread overview of ethical standards and their enforcement, to remain separate from the work of specific regulators.

Q8: Should the CSPL have a more formal relationship with regulators, or is the current, informal, relationship the right one?

See answer to Q5. On my collegiate model, the College of Regulators would become the new CSPL

Q9: Should the CSPL's remit be limited to systems and structures, as it is now, or should it look into particular complaints?

It should not look into specific complaints, save insofar as they expose a gap in the current complaints machinery or ethical regulatory structure. Any investigation should be into the regulatory gap, not into the complaint

Q10: The Public Administration Select Committee recommended in its July 2012 Report: *Business Appointments Rules*<sup>8</sup> that the Government consider merging the role of the CSPL into those of a statutory Conflict of Interest and Ethics Commissioner (based on the Canadian Commissioner of the same title). Should this idea be looked at in more detail?

I don't know enough about the Canadian Commissioner to be able to comment. ACoBA has its own problems, so merging ACoBA with CSPL doesn't sound a promising way forward

Q11: How do other countries manage the work that CSPL does and are there any lessons to be learnt from how similar bodies in these countries operate, like the Canadian model (see above)? Could they work in the UK?

## **Part two of the review – the control and governance of the CSPL**

19. In summary: **If you consider that an advisory NDPB is the right way to deliver the CSPL's functions are the current control and governance arrangements the right ones?**

Q12: Membership – is the method of selecting the members of the Committee right? Should there be a change to the number of members of the Committee? Is the length of time Committee members serve, from 2012, fixed terms of five years right? Is the balance of members experience and background correct? Should an attempt be made to broaden the range of experience and background of members? Given the length of time it can take to appoint members, is the appointment process working as well as it should do? Or is it too time consuming? Should there be a smaller core of permanent members with the freedom to bring in expertise as necessary?

The membership should reflect all the different parts of the public sector: central government, local government, Quangos and public bodies, the NHS, Parliament. Appointments should be staggered to ensure continuity

Q13: Resources – does the Committee have enough resources and expertise to fulfil its functions? Should the Committee continue to be funded by the Cabinet Office and housed on the Cabinet Office estate? Should the Committee Secretariat continue to be staffed by civil servants?

Yes to all these questions. The staff is too small to make independent staffing a practical proposition. If there are concerns about the independence of the secretariat, the Secretary could be a recently retired civil servant (so not seeking a return to Whitehall, or promotion), appointed by open competition.

Q14: Work programme – should the Committee, as now, have to consult, though not seek the agreement of, the Prime Minister before beginning its Inquiries, or should it be free to investigate issues as it sees fit? How does the Committee decide on what to investigate? Are its methods appropriate and effective? Are there areas that the Committee should have investigated but has not, and vice versa? Are there now areas that should be left to the specific regulators rather than the Committee? The Committee has historically conducted its Inquiries by seeking written evidence and then holding oral hearings, both in London and around the UK, is this the most inclusive and efficient method? Its current Inquiry is using themed seminars with invited attendees. Is that sufficient to get a wide range of opinions?

I believe that (like PASC) the Committee has held occasional private seminars to seek ideas for its forward work programme. It should do this on a more regular basis, every 2-3 years, inviting the leading Regulators (see Q5), and the chairs of the relevant parliamentary Select Committees.

Q15: Governance – should the Committee continue to report to the Prime Minister? Or should it be accountable either wholly, or partly, to Parliament beyond a pre-appointment scrutiny by the Public Administration Select Committee? In order to reinforce its independence, should the Committee be put on a statutory basis? Should the Committee continue to be a standing committee, permanently active, monitoring, commenting on developments carrying out research etc, as it is now, or should it only be convened to carry out specific Inquiries?

CSPL has sufficient accountability to PASC: PASC can take a close interest in the Committee's work if it wishes to. CSPL does not need to be put on a statutory basis. There is not sufficient work for it to be a permanently active committee.

To: Rt Hon Peter Riddell CBE

Cabinet Office

Room 208

70, Whitehall

#### TRIENNIAL REVIEW OF THE COMMITTEE ON STANDARDS IN PUBLIC LIFE

Thank you for inviting me to respond to the questions in the issues and questions paper. Here are my comments.

Q1 Yes: the remit of the CSPL is very broad, as are the possible areas of ethical concern in public life. These are not all predictable. It would be very unfortunate if the CSPL were wound up and then a new area of concern about standards in public life were to emerge which was not within the remit of any other appropriate body.

Q2: If the current remit is not wide enough to cover the devolved administrations then it should be amended to allow the Committee to investigate concerns there. However, there should be a protocol to the effect that the CSPL should not concern itself with matters in the devolved administrations (or legislatures) if it considers that there is an appropriate independent body in those parts of the UK with powers to do so.

Q3: I consider the CSPL fulfils its present role very well.

Q4: yes

Q5: The CSPL is the right body to do this work. It is well respected and established. If it were wound up and replaced by another body there would be bound to be suspicion that the government wanted to escape effective accountability for poor standards in public life.

Q6: It may be that other bodies could carry out some of the CSPL's role. But possible duplication can be avoided by protocols directed to avoiding such overlap.

Q7: yes. It is independent and not subject to capture.

Q8: Current relationship is fine. Any difficulties could be remedied by protocols negotiated between the CSPL and regulators.

Q9: The CSPL should not look into complaints. It does not have the resources to do so, and other bodies do.

Q10: No. The CSPL has a valuable broad remit which could extend beyond conflicts of interest and ethics if the need arose – e.g. openness, lack of which does not necessarily imply conflicts of interest or ethics, poor leadership, which may also not imply such weaknesses.

Q11: I am unable to respond to this question.

Dawn Oliver, FBA, QC, Emeritus Professor of Constitutional Law, UCL

22 October 2012

24 October, 2012

The Rt Hon Peter Riddell CBE  
Cabinet Office  
Room 208  
70 Whitehall  
London  
SW1A 2AS

Dear Mr Riddell

### **Response to the CSPL: Triennial Review: Issues and Questions Paper**

Many thanks for your email of October 11, and your invitation to respond to the Issues and Questions Paper. The following comments are my own personal views and are not the views of Teesside University. I will try and answer the questions in the order in which they appear in the paper.

In my estimation the CSPL is an essential component in ensuring high ethical standards of conduct across a wide range of public bodies. It has done an excellent job since its inception and continues to be admired throughout the world. Colleagues in New Zealand, for example, (I have recently been appointed at Victoria University in New Zealand beginning in 2014) have already started mooted the notion of establishing an equivalent body. International comparisons are quite difficult to make as many agencies that have an international reputation (for example, Hong Kong *Independent Commission Against Corruption*) have a much more narrowly defined brief.

The scope of the CSPL's work is a tricky question, especially when faced with such a monumental amount of public integrity issues as in the last few years. Certainly, the committee should take an interest in the whole of the UK, inasmuch as that is feasible (its current enquiry into local government standards, for example, would be inappropriate if applied to devolved administrations as the *Localism Act* does not apply to them). Clearly the CSPL cannot respond to each situation but I'm not convinced that it needs to be hugely expanded. Key to its success is its independence and some of the suggestions being considered (e.g. an expansion on the Canadian lines) may mitigate against this. Similarly I'm not sure that the CSPL

should handle individual complaints – or at least if it was to do so it would necessarily have to change into an entirely different type of organisation. Its contribution in terms of leading and informing the public debate are important enough, especially when allied to improvements in systems and regulation. Making its relationship with regulators more formal could also compromise its independence and I think it would be absolute folly for any Parliamentary body to conduct its work.

In terms of governance I'm not really in a position to comment on its appointment processes. The number of members could be expanded slightly but it would seem unnecessary to double its membership or increase its number too much. Having a small core of members and expertise when needed doesn't need to necessarily be formalized: each enquiry will have its own specific experts anyway, although it may be a good idea to bring in this expertise during the formation of the enquiry to guide questions, research outcomes, etc. In terms of overall governance it would be very welcome to see the CSPL being made a statutory body with accountability to the whole of Parliament: not only would this increase its independence but also potentially its impact on decision makers. It should definitely remain a standing committee.

The CSPL has already done a fine job but problems with public integrity remain, and no doubt will continue to do so especially as loopholes continue to be found in current systems and processes; or, indeed, where some recent legislation has potentially weakened our systems and processes (e.g. the *Localism Act*). Our research for Transparency international last year on the UK *National Integrity System* indicated how important the CSPL is to ethics and standards in the UK.

The need for a body such as the CSPL is as great (if not greater) as ever, despite many of its victories having seemingly been already won. Trust in public institutions is at a critically low stage and we do not need to delve very far into the recent past to see a raft of scandals that has only exacerbated this already delicate situation: MPs expenses; party funding; phone hacking; the relationship between government and the media; Hillsborough; Savile and the BBC; etc. CSPL cannot attend to all of these issues, of course, but it can provide an intelligent, independent view and also provide no small degree of leadership. Let's not forget that it was as a direct consequence of CSPL enquiries that Ministerial Codes; PPERA; the local government standards framework and many other crucial bulwarks to our national integrity system were introduced.

I hope that these comments have been helpful and again many thanks for inviting me to respond to the paper. If there is anything else I can do for you please do not hesitate to ask.

Yours faithfully

A handwritten signature in cursive script, appearing to read 'M Macaulay', written in a light grey or blue ink.

Michael Macaulay MA (Hons), MSc, PGCIthE, PhD, JP  
Professor of Public Management

*Triennial Review of the Committee on Standards in Public Life*

November 2012

Submission of Evidence

By

Professor Matthew Flinders

Professor of Parliamentary Government &amp; Governance

University of Sheffield

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1. The Committee on Standards in Public Life (CSPL) was established almost twenty years ago and its reports have led to the creation of a number of what might be termed 'ethical regulators' or 'constitutional watchdogs'. This includes the Office of the Commissioner for Public Appointments and the NHS Appointments Commission. The simple argument of this submission is that although the role of the CSPL is arguably still one that needs to be fulfilled the current organisational form (i.e. an advisory NDPB of the Cabinet Office) is no longer appropriate.
  2. Although the CSPL has been instrumental in terms of changing the ethical context in which British politics and public service is conducted it has been less successful in terms of building public confidence in politicians, political institutions and political processes. A number of major issues – such as party funding, reform of the House of Lords, the future of the civil service, the impact of devolution, the management of public expectations *vis-à-vis* public services, political recruitment at all levels, concerns regarding business appointments, etc – have not been resolved and to some extent many of these issues are not 'resolvable' in the simple sense but provide constant themes of debate that demand constant review and consideration. The work of the CSPL has therefore not been 'substantially completed' and this triennial review provides a useful opportunity to reflect on the past, present and future of the Committee.
  3. The core question, however, is not so much about workload but more about governance. Does the CSPL – as it is currently constituted – remain the most appropriate organisational device to examine a range of concerns regarding standards of conduct of all holders of public office? In this regard it would appear from an analysis of recent institutional reforms and organisational creations that the advisory NDPB model is not appropriate and the logic for this viewpoint highlights the issue of independence.
  4. Recent institutional reforms, not least the *Public Bodies Reform Agenda*, have emphasised the need to avoid waste and duplication in regulatory structures or delivery chains. To this end over four hundred NDPBs have been either reformed or abolished. With this in mind it is interesting to note that the constitutional landscape of ethical regulators has become increasingly congested in recent years as specific events or inquiries have tended to lead to the creation of yet another body (rather than increasing the role of an existing body). This terrain has been mapped-out in some detail by other commentators – not least by Dr Oonagh Gay – but the jungle of bodies includes the Electoral Commission, Independent Parliamentary Standards Authority, Office for the Commissioner for Public Appointments, Supreme Court Appointments Commission, Judicial Appointments Commission, (until recently) the NHS Appointments Commission, the House of Lords Appointments Commission and many others of varying organisational form and legal status.



5. And yet the high levels of statutory independence afforded to the Independent Parliamentary Standards Authority, Office of the Commissioner for Public Appointments and the Electoral Commission reflect the fact that constitutional monitoring (a category within which the CSPL would fit) or regulatory bodies are expected to be independent of those that they monitor or regulate. In this regard the role of the CSPL to ‘examine current concerns about standards of conduct of all holders of public office’ might be taken to require a higher level of organisational independence than is currently evident. To put the topic of this triennial review in a slightly different context, if the CSPL were being established today it is very unlikely that an advisory NDPB operating under the sponsorship of the Cabinet Office would have been viewed as an appropriate organisational form.
6. The fact, for example, that the CSPL is expected to select topics for inquiries ‘after consultation with the Prime Minister’, that it is dependent on the Cabinet Office for its funding and that its Chair is appointed by the Prime Minister (albeit now with a higher level of parliamentary scrutiny) is possibly problematic in terms of cultivating public confidence in the reach and capacity of the Committee. It is also worth noting that the CSPL is *de facto* a self-appointing body in the sense that (apart from the party political nominations) the members of the committee are appointed by a selection committee that consists of a small number of people including the Chairman and an official from the Cabinet Office. The social diversity represented on the CSPL has always been incredibly narrow (i.e. predominantly white, London-based, drawn from a very narrow age range, ‘insiders’ in terms of either holding or having held numerous other public appointments, etc.).
7. If the current organisational form is accepted as being not ‘fit for purpose’ then there are a number of options. The CSPL, for example, could be merged with the Advisory Committee on Business Appointments and given statutory independence. A more radical option would be to transfer the role and functions of the CSPL to the Electoral Commission to form a new Electoral and Ethics Commission with a demonstrably independent governance framework and a clear line of accountability to Parliament. Whatever happens in terms of organisational status it would be useful for the Committee to consider its standard operating procedures in order to inject a greater degree of organisational dynamism, social interaction and public visibility. This might involve the CSPL taking inspiration from the Liaison Committee’s recent decision to include public engagement and promoting the public understanding of politics as a ‘Core Task’ for all select committees.<sup>1</sup>
8. The CSPL is clearly not a select committee and its role, powers and resources are very different but its core focus on *standards in public life* demands some form of broader engagement with the public about expected standards of behaviour and the challenges of governing in the twenty-first century. The Committee might therefore focus slightly more on (proactively) engaging with the public about the challenges faced by politicians and policy-makers and slightly less on reactive broad inquiries. The current Chair’s term expires on the 31 December 2012 and this would seem to offer a clear ‘change opportunity’ going forward.

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<sup>1</sup> See HC 697 *Select Committee Effectiveness, Resources and Powers*, Second Report by the Liaison Committee of Session 2012-2013.

9. There is no need for the CSPL to commission its own research into public attitudes as data on this topic is already available from a number of reliable sources.

*Professor Matthew Flinders  
University of Sheffield  
November 2012*

To Peter Riddell

Dear Peter,

I am afraid I have only just seen your letter about the CPSL review (which went via UCL).

I realise the date has passed but I offer these quick thoughts:

1. Abolition of CSPL would be politically impossible (even if desirable, which it is not) so it is not like other NDPB reviews where this is an option.
2. But it is an opportunity to rethink the whole structure of ethical regulation along the lines suggested by the PASC report. This would mean integrating CSPL into a broader Public Standards Commission or Ethics Commission, with a clear funding and constitutional position to ensure independence. However it would also mean exploring which other ethical regulators would come under the Commission's umbrella.
3. A running issue about CSPL is its freedom of action, especially its belief that it can only investigate matters agreed with government. Its failure to examine parliamentary expenses years ago (I warned it in 2002 of impending scandal) is a lesson that needs to be learnt. Alastair Graham claims he was warned off. This needs to be remedied.

Hope you are well - and that we might catch up sometime.

Best regards,

Tony

Tony Wright

## **Committee on Standards in Public Life Triennial Review**

### **Responses by Professor Justin Fisher (Brunel University)**

***Q1: Does the UK still need a permanent ethics monitor and reviewer? Or, now that several regulators are in place (for example the Electoral Commission) are their other bodies that could effectively carry out this role?***

The UK does, in my view, require a permanent ethics monitor and reviewer. The CSPL has been largely successful, principally because its role has been to consider major issues and make considered and balanced recommendations, many of which have been implemented (Fisher, 2002). And, although it includes representatives from political parties, its judgements are widely regarded as been above partisan politics.

One important reason that bodies such as the Electoral Commission could not reasonably carry out the role is because its own role is principally one as a regulator, and regulation and the oversight of ethics are very different things (see Q7 below). The Electoral Commission has been primarily committed to this regulatory role (rather than reviewing issues such as the voting age) since the Committee's review of its activities (CSPL, 2007).

In addition, the Committee is free to examine any issue within its broad remit, whereas transferring its role to that of bodies such as the Electoral Commission would presume that such a body exists for every area of interest, which may in fact, not be the case. There is no dedicated body charged with reviewing lobbying, for example. Moreover, throughout the life of the CSPL to date, issues concerned with ethics and standards have arguably become more rather than less important.

In sum, the Committee continues to play an important role, is widely respected and is sufficiently flexible to consider a range of topics.

***Q2: The CSPL's current remit covers Scotland, Wales and Northern Ireland. Should it be looking at developments in the Devolved Administrations?***

Yes – in conjunction with those devolved bodies. This has the clear advantage of being above devolved politics, but requires 'buy-in' from the relevant devolved administrations

***Q.3: How well do you think the CSPL fulfils its role at present? What do you think it should do?***

For the reasons given above, I think the CSPL continues to fulfil its role well. Inevitably, a number of big questions have now been examined, so there may be a case for reduced activity. But that, in a sense, is a mark of the Committee's success. That said, some issues (such as party finance and lobbying) remain difficult to resolve, despite the Committee having reviewed them. And, of course, new developments may mean that the CSPL must return to issues previously examined.

***Q4: Is the CSPL the right body to do this work, in the light of what it is doing now?***

Yes – see above. But Government needs to treat the Committee with the respect that it was afforded when it was first established. The reaction to the most recent CSPL report on party

finance (CSPL, 2011) without proper consideration was wholly inappropriate – not least because to reject research in this way is a waste of public money (Fisher, 2011).

***Q5: If there is a need for a body to fulfil this role, should it be done by some other organisation?***

No – see above. Given the success of the CSPL, it would seem odd to pass the responsibility onto another body that might not do the job so well

***Q6: What other organizations might carry out the CSPL's role - another nondepartmental public body, or Parliament? Are there parts of the Committee's work, such as research into public attitudes, which could be done elsewhere?***

Some of the work that might more naturally fall under the banner of the CSPL has been taken on by select committees, such as the Public Administration and Political & Constitutional Reform Committees. However, while those committees have produced valuable work, inevitable issues of partisanship can arise, which has largely been avoided with the CSPL. On big issues, where potentially radical policy options are required, the CSPL remains the best option in my view. On public attitudes research, I don't see a problem with that continuing to be undertaken by the CSPL, unless there would be a considerable saving with it being done elsewhere. Fundamentally, the Committee requires good data to support its work.

***Q7: Should the CSPL's role as an ethics monitor and reviewer remain separate from the remit of specific regulators?***

Yes. Ethics and regulation are not the same thing. Regulation involves the implementation of rules and compliance, while ethics are concerned with trust. To conflate the two makes no logical sense. Indeed, if ethics were regarded as some form of regulatory exercise, there is a risk that standards in public life could decline, through the creation of a culture whereby compliance with standards is dictated primarily by a need to comply with rules rather than the integrity of desiring high standards. Rules can create 'perverse incentives' (Philp, 2000). Excessive regulation can lead people to interpret rules literally – doing no more or no less than is required.

***Q8: Should the CSPL have a more formal relationship with regulators, or is the current, informal, relationship the right one?***

From what I understand, the informal relationship that currently exists appears to be the most appropriate way of working, particularly as the CSPL and regulators perform different roles.

***Q9: Should the CSPL's remit be limited to systems and structures, as it is now, or should it look into particular complaints?***

Systems and Structures - Complaints are the business of regulators. However, a review of systems and structures could emerge from complaints.

***Q10: The Public Administration Select Committee recommended in its July 2012 Report: Business Appointments Rules that the Government consider merging the role of the CSPL into those of a statutory Conflict of Interest and Ethics Commissioner (based on the Canadian Commissioner of the same title). Should this idea be looked at in more detail?***

I see no reason why it shouldn't be examined, but I suspect that such a new office would lack the flexibility and resources to consider large and complex issues. I see the CSPL as being fundamentally different from a regulatory body or one that rules on specific conflicts of interest.

**Q11: How do other countries manage the work that CSPL does and are there any lessons to be learnt from how similar bodies in these countries operate, like the Canadian model (see above)? Could they work in the UK?**

No comment

**Q12: Membership – is the method of selecting the members of the Committee right? Should there be a change to the number of members of the Committee? Is the length of time Committee members serve, from 2012, fixed terms of five years right? Is the balance of members experience and background correct? Should an attempt be made to broaden the range of experience and background of members? Given the length of time it can take to appoint members, is the appointment process working as well as it should do? Or is it too time consuming? Should there be a smaller core of permanent members with the freedom to bring in expertise as necessary?**

I have little to say on this except to suggest that the composition of the Committee should probably feature more academics, given that they grapple with many of the issues examined by the Committee in their professional research lives. The presence of high profile journalists might also bring benefit.

**Q13: Resources – does the Committee have enough resources and expertise to fulfil its functions? Should the Committee continue to be funded by the Cabinet Office and housed on the Cabinet Office estate? Should the Committee Secretariat continue to be staffed by civil servants?**

Previous work I have done on the Committee suggests that it is very cost effective (Fisher, 2002). In respect of being funded, it makes good sense to maintain the link with the Cabinet office. The pursuit of high standards should not be unduly constrained by concerns over funding the Committee's inquiries or seeking out alternative premises.

**Q14: Work programme – should the Committee, as now, have to consult, though not seek the agreement of, the Prime Minister before beginning its Inquiries, or should it be free to investigate issues as it sees fit? How does the Committee decide on what to investigate? Are its methods appropriate and effective? Are there areas that the Committee should have investigated but has not, and vice versa? Are there now areas that should be left to the specific regulators rather than the Committee? The Committee has historically conducted its Inquiries by seeking written evidence and then holding oral hearings, both in London and around the UK, is this the most inclusive and efficient method? Its current Inquiry is using themed seminars with invited attendees. Is that sufficient to get a wide range of opinions?**

On balance, the system has worked well. The Committee cannot investigate everything and it makes sense for the Prime Minister to approve the inquiry if it is to be considered properly after the Committee reports (though note my concerns about the reaction to its most recent report on party funding). My understanding is that the topics for investigation are selected via 'horizon scanning' with a few independent advisors. This may have changed, but I suspect that it might be sensible to introduce a more systematic process for selecting topics if such a process does not yet exist. As for inclusiveness and efficiency, I think the balance is correct.

Seminars can be useful, though may not produce the same level of detail as more formal hearings.

**Q15: Governance – should the Committee continue to report to the Prime Minister? Or should it be accountable either wholly, or partly, to Parliament beyond a preappointment scrutiny by the Public Administration Select Committee? In order to reinforce its independence, should the Committee be put on a statutory basis? Should the Committee continue to be a standing committee, permanently active, monitoring, commenting on developments carrying out research etc, as it is now, or should it only be convened to carry out specific Inquiries?**

I think the current arrangements, whereby it reports to the Prime Minister are the most appropriate. The Committee is viewed as being independent and a link with a select committee would, in my view compromise that impression. And to remain effective, it must continue to be a standing committee. Indeed, the permanence of the CSPL has been one explanation for its success (Fisher, 2002). Unlike committees created for a specific purpose, the CSPL is able to review and justify its actions after it has reported. Thus, when the Committee makes recommendations, its permanent character means that it can continue to press for their implementation. It can also answer and clarify queries and review and assess the progress of its own recommendations. The recommendations of committees that are not permanent, in contrast, are more vulnerable to non-implementation because the committees cease to exist after reporting, which makes it more difficult to respond to criticisms or press governments for action.

Professor Justin Fisher  
Brunel University  
7<sup>th</sup> November 2012

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**Responses to the Issues and Questions Paper of the Cabinet Office Triennial Review of  
the Committee on Standards in Public Life, October, 2012.**

**David Hine**

**Christ Church**

**Oxford**

This note examines the case for a continuing role for the Committee on Standards in Public Life along present lines: that is, as a body that focuses on issues of principle, and makes recommendations about practice and procedure, but does not make judgments in particular cases, does not have direct regulatory responsibility in particular areas of public life, and does not act as conflict-of-interest regulator. It identifies what is distinctive about the Committee's role in comparison with ethics management arrangements in some other advanced democracies, and it considers what would be necessary to transfer the current role and structure into something else, and what the side-effects might be.

The case for or against the continued existence of the Committee in present form seems to depend firstly on whether ethics controversies requiring CSPL investigation are likely in the future and secondly on whether the broader political circumstances in which the Committee operates have changed since 1994, to call into question the continuing effectiveness of the model.

*The likelihood of continuing ethics controversies:*

The Quinquennial Review of the Committee in 2000 suggested that the basic survey work for the ethical environment had been largely completed, but that "there remain(ed) a continuing need to monitor the ethical environment and to respond to issues of concern which may arise."

This turned out to be prescient at the time and it seems still to apply, although the difference noted in the 2000 Review between exploring ethical territory in the first place, and revisiting



it later to see whether recommendations are working, is probably not as clear-cut as that statement implied.

For example the Committee looked at conduct in the House of Commons in 1995 and again in 2000, without, for perfectly understandable reasons, dealing with the explosive matter of expenses until the 12<sup>th</sup> Report in 2009. Similarly, the Committee's other recent Inquiry, the 13<sup>th</sup> Report on party funding, required it to revisit matters that were first considered in the 5<sup>th</sup> Report in 1998, and were not far away from those considered in the 11<sup>th</sup> report (on the Electoral Commission) in 2007. The territory had to be re-explored not just because the PPERA 2000 and the Electoral Commission were perceived to be not fully functional, but also, it could be argued, because the ethics agenda had moved on, and some of what was considered acceptable at one time seemed less acceptable later.

There have also been some instances of the Committee changing its mind about rather important details of particular arrangements. The 9<sup>th</sup> Report, on Ministers, Special Advisers, and relations with the permanent Civil Service, had a markedly different tone on a number of key points from the 1<sup>st</sup> Report in 1995. The relatively relaxed approach to some of the subject matter in 1995 (still evident in the 6<sup>th</sup> Report in 2000 – for example on the need for a prime-ministerial adviser on ministerial conduct and interests (see the 6<sup>th</sup> Report Summary, p. 2, para 11)) was replaced by much greater prescription in 2003. Indeed there was something of an attitudinal watershed evident in the Committee's work more broadly between 2000 and 2003.

None of this is to say the CSPL should not change its mind in the face of aroused public concern or new information. In any case, discussion about public standards has been enriched by a certain amount creative inter-action, even tension, between the CSPL and other public authorities which share similar tasks – notably the Public Administration Select Committee and latterly IPSA. These bodies can quite legitimately come to different conclusions and dialogue between the two is healthy if sometimes bumpy.

The point is simply that ethics controversy does not come to an end because the Committee has worked through all institutions once, and has set out the principles, codes, and enforcement mechanisms it thinks appropriate. Constructing an ethics infrastructure is an iterative process. What is thought to work may turn out not to work, and sometimes generates new controversy, sometimes over very important matters which have not previously been

understood. This is surely one of the great advantages of a meta-agency: not having always to defend existing delivery of regulation for which it is itself directly responsible, it is free to think about what works and what doesn't, even at the cost of implicitly acknowledging that what it had itself previously recommended is insufficient or needs changing. If the task of thinking broadly were combined with the task of hands-on regulation, it would be much more difficult for that role to be performed by a neutral, authoritative and independent body. It might have to be carried out by a body without the institutional memory of the Committee, and possibly (if rooted directly in Parliament) by one much closer to partisan politics).

To sum up these points: the difference between the high-profile Inquiry, and the more routine work of monitoring effectiveness, has turned out to have fewer implications than was suggested in 2000, when there was a worry that a Committee that only rarely undertook reviews would have resources lying idle, and might not attract the calibre of individual needed. It is for the OCPA and the Cabinet Office to advise whether that latter risk has materialised because the pace of full Inquiries slowed a little after 2000, but it seems unlikely.

Looking ahead, the potential for further controversy is considerable. One obvious area is lobbying. The PASC has visited this area once, and the CSPL has periodically skirted it when looking at party-funding, parliamentary behaviour, and the management of post-employment for public officials. The Committee did recently respond thoughtfully to a government consultation paper, but lobbying has not been the heart of a mainstream CPSL Inquiry. Yet there is endemic nervousness in political quarters about where the issue may explode next, and there is regular press coverage of alleged lobbying impropriety with the potential for corrosive impact on public trust. Lobbying is under-researched by the political science community because it is difficult to access evidence and generate meaningful propositions. It cries out for independent consideration and for an effort to relate basic ethical principles to regulatory standards. Even an authoritative mapping of the territory, without too many initial recommendations, would be of huge value.

Another area that looks ripe for examination is the growth of lightly-regulated entrepreneurship in the public-services – the NHS, universities and big science in particular. The CSPL visited this area very early on (1<sup>st</sup> and 4<sup>th</sup> Reports), with beneficial effects, but circumstances have changed greatly since then, and only the first of the two Inquiries made recommendations, which were largely concentrated on the matter of senior and supervisory

public appointments. It is lower down the tree – primary care trusts, university departments etc – that new conflicts of interest have emerged as a result of significant changes to public policy. Some of these may more properly fall into the category of the perverse incentives of public policy, rather than ethics and propriety, but at least some do not, and the Committee may well have a potentially important role to play in looking at the issues.

Beyond this, there are areas which the CSPL has visited, but where the ethical issues remain unresolved, and where there seems to be a strong case for further independent investigation. The abolition of the Standards Board for England raises important issues about future regulation of local-government ethics, and since it has also widened the gap between ethics regulation of English local government and that in the devolved regions, there may be significant lessons to be learned from the differences that are emerging.

*Have the changing conditions in which the Committee operates made its task more difficult?*

Clearly the political and social circumstances in which the Committee now operates are very different from those in the early and mid-1990s:

- Ethical controversy when the CSPL was established seemed to focus on MPs, and on individual cases of impropriety. One consequence of the CSPL's long march through the institutions is that ethics issues are now perceived to arise much more broadly, and standards seem to need closer and tighter definition because there is much greater public scrutiny of, and scepticism about, the motives of public office-holders.
- There is now a very broad range of direct ethics regulators with various types of enforcement power (the Electoral Commission, public-service regulators, local-government regulators, the Commissioner for Parliamentary Standards, IPSA and so on). The CSPL therefore now has alongside it agencies with much more hands-on expertise in sectoral ethics than the Committee itself, with its very limited resources, can possibly have.
- The work of the Committee has clearly changed and broadened, and it is more frequently in response mode in controversies or in public consultation exercises, especially where new legislation will alter outcomes the Committee itself once had a hand in bringing about.
- Related to this, the Committee, or at least its chair, seems to be more visible in public life. This seemed to coincide with the transition from Lord Neil to Sir Nigel Wicks,

and to grow further under Sir Alastair Graham. The latter two, and especially Sir Alastair, seemed to offer more frequent comment about topical ethical issues, and at times seemed to redefine the boundary between individual allegations of misconduct (which the Committee's 2012-15 Strategic Plan continues to stress are not within remit) and "general lessons that can be learned from individual instances" (which are). But beyond the personal perspective of any particular chair, it seems that the Committee has been drawn into a more public role on a permanent basis. It would be difficult for the chair today to occupy the remote and lofty perches on which the first two holders seemed to sit. Even if members of the public might struggle, unprompted, to say anything about the role of the CSPL, the media, and the political elite, are extremely well aware of it, and reach for its views quite readily.

- Some of the certainties about ethics regulation in the 1990s have dissolved, and with them the confidence about the best way of securing high ethical standards. When John Major established the Committee in 1994, there was an almost touching naivety in the remit to secure a better definition of acceptable boundaries of behaviour. The Committee's long existence has helped establish that things are not that simple. More ethics rules may raise standards but perversely they can at the same time feed public perceptions that standards have fallen. Moreover, we still do not know how to get the right balance between the inculcation of ethical standards through socialisation and self-regulation, and the formal/legal enforcement of ethics through tough rules and independent enforcers. Not only can the tough and formal approach bring potential reputational damage to public office-holders; it can generate high compliance costs, and worse, the moral hazard inherent in out-sourcing of moral judgements to formal compliance.

Have these changes made it significantly more difficult for the Committee to do its job?

There is clearly a view among some in politics that there is now a damaging excess of scrutiny and regulation, including ethical regulation, and that the tide needs to be turned for the sake, indeed, of public trust. The argument cannot be dismissed as self-interest. It raises sensible and respectable questions and indeed the Committee itself, in recently setting up its own review of what drives best practice in ethics regulation generally, recognises that there are some big issues of principle and practice to be faced. At the margin, these sorts of debates are likely to lead to some questioning not just of the Committee's individual recommendations or judgments, but to some erosion of its status and authority. It does not

appear to me, however, that we have reached the point where the Committee's standing has been seriously compromised for erring on the side of excessive prescription and regulation. The debate has a long way to go to reach that point.

*The Committee's past performance and the case for doing things differently*

In its early years it does seem, as implied above, that the Committee was not sufficiently sceptical about standards. It may have been still partly captured by a British self-narrative that, compared to most democracies, the UK had fairly high standards, and that for the most part these could go on being sustained by self-regulation, overlain only by light-touch ethical rules. Things just needed to be clarified, and all would be right. This may be linked to the more mundane matter of the Committee not having the resources to do much independent investigation of its own. It operated on an extremely tight budget with very limited resources – understandably given that it would have hugely damaged the Committee's credibility to be seen as wasting public resources. But this may have made for a certain minimalism of operation and analysis: a civilised and thoughtful armchair ethics seminar punctuated by the submissions and sometimes the presence of expert witnesses, and a large amount of consultation with sectoral ethics regulators. As in the work of Commons select committees, this approach may lead to some variation in performance and effectiveness, depending on what help can be assembled where and when. It may not always be easy for the Committee to judge who, among those coming forward, has the strongest evidence-based arguments. The peer-reviewing sometimes therefore seemed to take place after publication, (to use an academic analogy) not before it.

Overall, however, it is difficult to take this evaluation very far. It would take a lot more research to show the Committee got it wrong in any particular context at any particular moment. It is a neutral and independent agency, but it necessarily has political representatives present, and has to work within obvious, if unspoken, political constraints. Things can only be moved forward in the right circumstances and at the right pace. It would be naive not to recognise that the judgment of the chair especially, but of all members of the Committee, about the art of the possible in ethics management, is not a key variable in getting this balance right. Retrospective criticism is rather easy.

Moreover, on the other side of the balance is a hugely impressive achievement. The Committee has become the UK's institutional memory on ethics and propriety, even on the meagre resources it disposes of. The collective evidence presented to it over nearly two decades and thirteen Inquiries covering much of the UK's ethics territory, along with reviews and various other exercises, sits in well-organised order in the public domain. Reasoned arguments about the recommendations the Committee arrived at are there for future members of the Committee, direct regulators, members of the legislature, and the government to consult. It is difficult to find a similar resource in any other advanced democracy. In particular, it is difficult to find a resource that looks in such detail at what can be described as the "standards, values and principles" dimension of public ethics, as opposed to the hard-law-of-corruption dimension. Even Canada, which because of its closeness to the UK on various scales is often held up as a model of a significantly different, more formal, and more integrated model of ethics management, cannot yet begin to approach the intellectual legacy the Committee has created.

#### *Another model?*

The case for the existing approach does however depend on more than institutional memory and intellectual legacy. Clearly the current Review does need to ask whether, in future, a different model would work better. To address this, we need to make a short detour into how the UK differs from some other advanced democracies in ethics regulation.

Before the mid-1990s, the UK had few of the ethics regulators that exist today, and even where there were codes (*Questions of procedure for Ministers*, the Civil Service management code, the voluntary register of interests in the House of Commons, the 1974 national code of local government conduct etc) they operated largely out of public view, if not, as in the case of *Questions*, secretly. Several public agencies had a tangential role upholding the "standards" side of public ethics (as opposed to the hard law of corruption) but they did not of course have responsibility for systemic overview of all aspects of public life. Before the CPSL, there was in the UK no organic strategy for managing ethics and propriety – or indeed anti-corruption activity – that went right across public life and across all public officials. The hard-law anti-corruption dimension has been a less important aspect of the CSPL's work, and the law on corruption in public office in the UK is in fact still fragmented between various

rather dated statutes and the common law. There is no organic or omni-purpose public-service legislation (such as is found in the codified continental public-law tradition) or since 2006 in Canada's federal-level Conflict of Interest Act.

We might deduce from this that if the UK had adopted a different model in 1994, or if it is thinking of doing so now, it might combine the following tasks:

- Considering, as now, on an ongoing basis, gaps or weaknesses in ethics regulation, both for “standards” and for criminal law, right across public life
- Serving as the supervisory regulator (of sectoral regulators like IPSA or the Electoral Commission) for all enforcement in the “standards” area not dealt with by the courts and prosecutorial services
- Serving directly as the regulator for *procedural* (as opposed to criminal) failings that arose from any explicit conflict-of-interest measure similar to that in Canada.

So the model would involve (a) a continuing role in examining and reviewing ethics issues in the “standards” area (the key current task of the CSPL) (b) similar meta-supervisory responsibility for the working of conflict-of-interest and anti-corruption legislation (c) a direct-regulator role for procedural violation of conflict of interest legislation and probably also (d) a meta-management role for sectoral regulators. This seems a completely impractical model for a hitherto lightly-regulated political system like the UK. It would certainly have been impossible to move to it directly in 1994, but the complexity of the task even today, in a much better structured ethics environment, still seems to make it difficult.

It is important to make these distinctions because they are key to understanding why other democracies do not offer clear-cut alternative models. Several jurisdictions seem to have different and superficially more rational frameworks, but they do not combine all the above roles and it is misleading to think they do.

Most continental European democracies, for example, have generic public-office corruption laws (though, actually, unlike the US and Canada, few explicit conflict-of-interest laws). However, they do not have any over-arching regulator with a responsibility for both enforcing ethics and thinking about the development of ethics infra-structure generally, and certainly not for thinking about the “standards” issues which are the key remit of the CSPL. By and large ethics enforcement in continental Europe is either hard anti-corruption law (the responsibility of the police and prosecutorial judiciary) or, in matters we might regard as

“standards” material, it involves internally-enforced codes of conduct for individual agencies (legislature, local government, civil service etc). So enforcement is fragmented, as in the UK on the “standards” side, and there is no intellectual “overseer” role as performed in the UK by the CSPL. Nor, by and large, do parliamentary-committee substitutes play such a role. The criticism that the CSPL is insufficiently integrated with direct regulators of ethics in different areas of public life does not therefore arise in most other jurisdictions because the equivalent of the CSPL’s role does not exist.

In north America, Canada’s independent Officer of Parliament – “responsible for helping appointed and elected officials prevent and avoid conflicts between their public duties and private interests” – looks at first sight as if it does play such a role. But its work is primarily concentrated in the 2006 Conflict of Interest Act. This steers ethics management away from what the CSPL has been seeking to achieve and is strongly influenced by the US approach to ethics management, which is driven by an explicit law-based conflict-of-interest approach. In Canada, the emphasis is admittedly a little different from that in the US, because the concern is more with *publicly-sourced* than with *privately-sourced* conflicts of interest, but it still has a very different feel from what is being delivered by the work of the Committee on Standards in Public Life. To take the CSPL down the Canadian route would imply a much wider change in the whole framework of ethics management in the UK.

If Canadian arrangements were transposed to the United Kingdom, we might have what would look like a more logical and centrally-managed approach, but it would be likely to change the current role of the CSPL very significantly. It would be likely to make it bigger, more bureaucratic, and potentially more politically-contested. It would raise complex questions about the relationship between the existing sectoral regulators and the central supervisory body. This extension of roles would almost certainly compromise the Committee’s capacity for reflection and analysis, which is its greatest asset at present.

This seems to me to be the key argument for the existing form of the CSPL: it enables it to focus on the systemic health of public ethics, and to inform recommendations in any given area with its understanding of all the others. A change in a more formal direction would also, of course, require statutory underpinning, and here we come to the most complex argument of all. Superficially, a statutory basis for the Committee looks highly attractive, giving it at least some protection against short-term political whim. In practice that may not be the case, as we shall see in the next section.



*Governance issues, including closer relations with sectoral ethics regulators*

The key governance requirements for the Committee is that it be independent, accountable, and trusted by the public and key institutional actors: primarily government and parliament. The trust element for any independent regulatory agency demands a hinterland of institutional support. It does not mean agreement about every individual decision, but it does demand a fairly strong consensus across the authorities that the agency has the right to take the actions taken, and that they are being taken in good faith in pursuit of the objectives set for the regulator by its sponsor or creator.

“Independence in regulation” is often laid out as a principle as if its contents were self-evident, and as if it depended primarily on the institutional rules. The PASC in its 2007 Report on ethics regulators saw an independent regulator as one which cannot easily be abolished, one appointed by parliamentary resolution for a fixed term (ideally - according to the Committee - for a non-renewable term) and one only removable on address from both chambers. It had to have adequate resources that were beyond the control of the executive, with its own staffing, accommodation and access to the facilities necessary for its operation, and with *operational* independence.

These institutional conditions certainly seem to apply to hands-on regulators which have the role of making judgments and possibly handing down sanctions about real-world behaviour, such as the Electoral Commission or IPSA, both of which have a strong statutory basis, and which act in either a quasi-judicial or an administrative capacity. Whether these conditions are suited to a Committee whose role is to make recommendations but not to make rules directly, or administer them directly, is more questionable. To give the Committee on Standards in Public Life the level of formal institutional independence accorded to some other ethics regulators could complicate the issue of its accountability, which might in turn compromise its substantive independence. Judges and regulators are made independent of executive and legislature for a good reason, rooted in the principles of the separation of powers. The role of the CSPL is not judicial or regulatory. Nor indeed is its remit even comparable with that of a public inquiry under the 2005 Inquiries Act, under which a Minister sets up an inquiry with a very precise remit. The Minister (and Parliament) retain

the right not to act on the eventual recommendations of the Inquiry, but the Inquiry Report is likely to be exhaustive, detailed, focused, and authoritative, precisely because the investigation has been based on processes which are more detailed and better-resourced than CSPL investigations through, for example, the power to summon witnesses to get at detailed historical reconstructions of events, seem to require a statutory base, which further changes their nature compared with CSPL reviews.

In the case of the CSPL, the nature of the recommendation process is much looser and more discursive. It can be argued that this is desirable precisely because the Committee is often working in areas that have extreme constitutional sensitivity. Whatever view is taken, for example, of the desirability of some degree of independent regulation of the legislature (through IPSA, or through the Commissioner for Parliamentary Standards) there is no doubt that such regulation, when adopted, has constitutional implications. The same is true of the relationship between Ministers, special advisers and civil servants. Each is an area where the CSPL has had a significant influence on institutional changes in recent years, but clearly, when legislation or other forms of rule-change are introduced, they have to be approved by Parliament, and, given the nature of UK politics, probably also via the leadership of the governing majority. That there has also been serious and authoritative examination of the matter by the CSPL may add a good deal to the quality of deliberation that leads up to these decisions, and to its public credibility. But it would not be desirable, where the outcome involved has such delicate implications, to go beyond that. We saw something of the risks involved in doing so in the case of the parliamentary-expenses affair, where the government legislated (in the Parliamentary Standards Act, 2009) and then seemed to commit itself to the outcome of a new CSPL investigation which would cover some of the same territory already subject to the new legislation. The result was considerable confusion: the Constitutional Reform and Governance Act 2010 had to unpick some of the PSA 2009, and at the same time, some of the CSPL's recommendations were themselves ignored (quite legitimately, by IPSA's own expenses scheme, given the latter's statutory role).

Something, it might be argued, would depend on whether, through statutory underpinning of the CSPL, the Committee enjoyed the autonomy to decide on its own investigations. At present, it has that autonomy. It is required to consult with, though not seek the absolute agreement of, the Prime Minister before starting work. But ironically, for the sort of role the CSPL plays, that autonomy may actually be more effective under a non-statutory regime. To

return to the Public Inquiry comparison, public inquiries under the 2005 Act do not have to come to conclusions comforting to Ministers, and do not always do so, but we cannot imagine a state of affairs in which unattached inquiry-panels cast around for subjects to investigate and report on, unprompted by politicians. The 2005 Act gives the Minister the key element of control, and indeed has been much criticised for precisely that. If the CSPL were given a statutory basis, and yet retained formal autonomy to go where it wished (even subject to a requirement to consult the government), there would quickly follow a much closer political focus on controlling its autonomy through appointment, or through making the Committee formally accountable to Parliament.

Formal accountability to Parliament might seem the obvious solution. The CSPL chair would then enjoy “Officer of Parliament” status similar to the Comptroller and Auditor General, the Ombudsman, the Commissioner for Parliamentary Standards, the Electoral Commission and the Information Commissioner. But none of these agents of Parliament plays a role similar to that of the CSPL. They have much more focused remits. Certainly, they are agents of the legislature in scrutinising the government and holding it to account, and will in some circumstances also make recommendations about matters with immediate political implications. But their remit is largely that of applying rules or laws to past behaviour. This is not the case with the CSPL. Moreover, while the Electoral Commission has some of the board-like properties of the CSPL, all the others are headed by single-officers. If the chair of the CSPL were to be raised from a consensus-seeking role within a wider board to a status similar to that of the other single-figure officers of Parliament, who run organisations, but bear the main public-accountability role personally, it would be likely to put too much weight on one individual’s capacity to deliver independent, authoritative and non-partisan recommendations.

This conclusion – that the current non-statutory position is about right, or at least is about as good as can be devised – might sound complacent. At worst, it suggests there was an element of inspired genius in the original design, when in fact the reality was probably that the government of the day thought that opting for NDPB status gave it a convenient degree of freedom throughout the Committee’s (in all probability) brief but necessary existence. At best, it implies that the Committee, on minimal resources and lacking any power but the authority which came from public and parliamentary support, and good leadership and judgment, overcame its initial vulnerability and carved out an institutional space from which

it cannot now be dislodged, and which is sufficient to the tasks it faces. That is almost certainly too complacent a view. Lacking in much public recognition, the Committee does remain vulnerable to a government (whether now or in the future) that finds the Committee's work an irritation. It is also complacent because the conditions in which the Committee has had to operate have not always been optimal. It lacks the resources for intensive investigation or research, so it relies heavily on voluntary witnesses and its own deliberative capacities, which are likely to vary over time and according to subject matter. Some rethinking of its modes of operation are therefore probably in order. I do not touch on them here, or on the question of the size of the Committee or the backgrounds from which members are recruited, or the level of resources which are appropriate, because these issues probably require hands-on experience of how the Committee has worked which I do not have. The main point seems to me to be the quasi-constitutional one: is there a better model than we have at present? On that, reluctantly, I doubt there is. Protecting the Committee from political attack is more likely to be achieved through sustained good performance than through statutory underpinning. If to justify the Committee's continued existence the performance has to be improved (of which I am unconvinced, though I accept that the jury is still out), that may be best done by looking further at resources and intellectual and research input than through constitutional adjustment.

## Committee on Standards in Public Life Triennial Review: Issues and Questions

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### Part One

Q16. The work of the CSPL has changed the ethical framework and there is now much new machinery as a result of the various CSPL reports. Processes and decision-making throughout the public sector are now more transparent than they were in 1994 and there is a framework of rules and codes to guide decision-makers. But putting this framework in place is only in a sense a part of the role of the CSPL. There has to be frequent revisiting of areas in an effort to pre-empt problems and to educate both the actors and the general public of appropriate values and standards in public life. It is not a linear process with an end-point. The regulation of ethics is thus a continuing challenge for at least two reasons. First, the public expectations of what is acceptable or not changes, sometimes in response to a particular episode but often as a result of other factors. Changing “the culture” (perhaps more accurately changing sub-cultures) is an important part of the role of the CSPL. This task is by no means straightforward but is an on-going process of review and adjustment to ensure that the areas of risk are identified, poor practices improved or eliminated and high standards are promoted. Flexibility is key. There are always going to be new problem areas or a resurgence of old problems in new guises. The work of the CSPL could surely not be said to be concluded in relation to lobbying and local government or relationships inside the executive, including the role of special advisers but also relationships between ministers and civil servants. New problem areas are on the horizon: to take but two there is (i) a new role for the 41 elected Police and Crime Commissioners, and (ii) GP clinical commissioning opens up a large new area where conflict of interest issues may arise. At a very general level I wonder whether the remit of the CSPL should be rethought with a view to broadening what counts as “public life”. What I have in mind

here is the whether the CSPL should be able to inquire into such areas as the BBC in the light of the Jimmy Saville affair or the press in the light of Levenson .Obviously the CSPL would not want to duplicate existing inquiries or be a direct regulator for the press or the BBC ; but it could play a role following up inquiries and reviewing experience.

Q17 My opinion is that the key functions of monitoring and reviewing big emerging questions continues to be necessary. There are a number of more specialist regulators (e.g. the Parliamentary Commissioner for Standards ) or the Electoral Commission or IPSA or ACOBA; but their remit is specialist and limited and often (as with the Parliamentary Commissioner for Standards ) the context in which they operate is constrained and constraining. The CSPL has the legitimacy to focus on what has become known as among academics and practitioners as “integrity systems”. An integrity system focusses on the polity as a whole and take account of the relationship between its several parts. This means not merely being able to raise big issues, but to see the various parts of the system in the round and to reflect on impact and effectiveness as well as the disadvantages of regulation in some areas. Of course you could change the institution of the CSPL ; but it takes time to establish reputation, staff, working relationships and institutional memory as well as legitimacy. These are all important elements in the equation –not easy to build but easy to lose.

18.1. Yes see above

18.2 It should be looking at the devolved administrations as a whole though not with the purpose of imposing uniformity. Each jurisdiction has developed piecemeal and incrementally and there have been many changes at all levels. Some changes have been very recent or are still in process. There is variable practice and structure and NIA, NWA and Scotland’s Parliament’s would benefit from an overview.

18.3 It performs its role reasonably well but there are variations and problems of timing as well as impact. Some problems e.g. party funding are harder to resolve than others. It is not entirely clear that the initial authority/ impact of the CSPL's has been maintained.) I mentioned earlier there might be a debate about what we mean by public life not least because public attitudes and concerns stretch broadly and beyond the boundaries of the government and public sector as traditionally defined.

18.4 It seems to me that the size of the CSPL is about right as long as it can bring in /reach out to other sources of expertise for particular purposes. Too large a group( e.g. the old BBCs General Advisory Council ) would be in danger of becoming a talking shop; too small a group might find it difficult to accommodate enough perspectives.

18.5 The point of the CSPL is that it has a general responsibility to survey the whole waterfront of standards or ethical issues in public life. No other body could have that dedicated mandate.

18.6 There is no point in creating another NDPB. (Though there is a strong argument for giving it statutory security) The argument in PASC's Ethics and Standards Inquiry that ethical regulators needed to be more firmly grounded in Parliament is not entirely persuasive given that Parliament may also have its own interests and priorities . (It is not clear what we would mean by Parliament here:surely one lesson from the expenses scandal is how marked is the diffusion of ethical leadership in Parliament . PASC has in the past been a powerful player in developing the ethics and standards agenda. But inevitably its perspective will change with the chairmanship of the Committee and the evolving climate.

18. 7 Yes the CSPL's role should remain separate from that of individual regulators. Its purpose is to promote good practice across British public life , to see the big picture and to reassure the public. Dealing with the media is an essential part of its operations. And there must be an emphasis on transparency and debate. Other regulators necessarily have their own constituency of stakeholders

and may operate in areas where confidentiality is important and where access to the media much less important.

18.8 This is a difficult area : informal networks have worked well in the past but they are very dependent on the leadership, personality and judgment of the regulators including the chairman of the CSPL. PASC's Ethics and Standards Inquiry was very favourably disposed towards a collegial model and one can think of areas (e.g. in relation to devolved administrations where some linkage occurs now but it is not public). My recommendation would be to set up a Collegial structure with 2 or 3 working sub-groups based around themes such as devolved areas. Plenary sessions would be perhaps quarterly.

18.9 It would be very difficult for the CSPL to look into particular complaints without duplicating the work of other bodies. Individual complaints would clog the channels of the CSPL and require extra resources. Limiting the remit to systems and structures seems right although the CSPL could possibly (though of course there would be resource implications) be a one-stop shop gateway for forwarding some complaints to other bodies. .

18.10 The Canadian Conflict of Interest and Ethics Commissioner model would be a very radical change for the UK since it combines administrative and parliamentary regulation. The post in this form dates from 2006, I think, and as yet there has not been very much academic literature on it. There is a strong case for creating a single ethics commissioner to administer post-employment/revolving door rules for former ministers, civil servants and other officials especially military personnel as the ACOBA rules seem no longer to command confidence. But that should be an independent regulator and there is no need to merge with the CSPL



18.11 . There are very few bodies analogous to the CSPL although the Westminster derived systems have all developed a good deal ethical experiment ( especially Canada Australia and Ireland ) and have interesting ethical regulators. Robert Kaye and I wrote a World Bank funded - survey – now in need of updating - on conflict of interest regulation across the world and I could send a xerox. (see Gillian Peele and Robert Kaye, “Regulating Conflicts of Interest:Securing Accountability in the Modern State “in Irma Erendira Sandoval, ed., *Contemporary Debates on Corruption and Transparency:Rethinking State , Market Society* (Washington DC :World Bank and National Autonomous University of Mexico , 2011)

## **PART TWO**

Q12 A 5 year non-renewable term seems about right to secure independence. A small core membership should be able to add resources as appropriate.initially membership seemed a bit confined to the “great and the good” and/or to draw on a small group of insiders. There is a trade off between finding people familiar with the spheres of operation and blunting the independent perspective.

Q.13 This is an important area where it seems likely that the CSPL’s effectiveness could be blunted by very subtle shifts of staffing and resources. The secretariat should mainly be staffed by a mix of civil servants ,parliamentary clerks and some others recruited directly by the CSPL.

Q14 The CSPL should be free to select its subjects as it sees fit not so much because of any real restraint on its operation but because the need for consultation may seem to inhibit or impede its independence . I doubt the need for consultation has precluded areas of inquiry altogether but may have affected their timing. The focus on written evidence is important but the oral hearings seem to delay matters and could be shortened. (There is a clear need to be able to conduct shorter

inquiries) Themed seminars are a good idea although they can be in danger of becoming incestuous.

Q.15 On governance more generally I would place the CSPL on a statutory basis and I would require a report to Parliament and to the PM. I am sceptical about the value of pre-appointment hearings for CSPL members although the Chairman should probably have such a hearing. I think given the inevitable political shifts likely to affect PASC, the CSPL should be a body regularly consulted by PASC but I would want to emphasise CSPL independence rather than accountability.

CSPL should remain a standing body permanently active rather than being raised like Lazarus for particular inquiries.

**Gillian Peele**

## **CSPL: Triennial Review 2012**

### **Submission by Sir Philip Mawer**

- 1) This is my response to the Issues and Questions paper published in connection with this review. As requested, I begin by addressing the question whether the functions of monitoring and reviewing the big questions relating to conduct in public life performed by the Committee on Standards in Public Life (CSPL) continue to be necessary and, if so, whether they need to be done by the Committee (Part 1). This is the focus of my submission. I then offer a few reflections on some aspects of the control and governance of the CSPL, in the event that it is decided to continue the Committee in being (Part 2).

#### **Part 1**

- 2) As regards the first question, I put forward four propositions as follows.

##### Proposition 1

- 3) The CSPL has undertaken a very important role as monitor-in-chief of standards of conduct in UK public life and has many achievements to its credit. That there is a continuing need for some form of machinery capable of undertaking such a monitoring and review function cannot be in doubt. Experience shows that public institutions, however grand or (in theory)publically accountable , cannot always be relied upon to police their own standards of conduct effectively and in the public interest. There is, however, a question as to whether the CSPL in its current form is, looking forward, the appropriate mechanism for continuing to fulfil that vital role.

##### Proposition 2

- 4) Any new machinery must be clearly independent of those it is there to police. The CSPL should not be abolished unless and until an alternative arrangement with the necessary degree of independence is put in place. At the same time, any new mechanism must not only be independent but accountable, including to Parliament. However, a single line of accountability from any new mechanism to Parliament might mean that it would not be seen to have the necessary degree of independence if, for example, it were called upon to examine a grave issue relating to Parliament itself. Similarly, a body with a sole line of accountability to the Prime Minister would not necessarily be seen to be sufficiently independent if examining a matter in relation to Government. A new arrangement with a dual line of accountability – to Parliament and to the Executive – is needed.

##### Proposition 3

- 5) Partly thanks to the work of the CSPL, there is now a cadre of regulators in public life who have shown their readiness to act robustly and independently. Their existence means that there is no longer a need for a standing body like the CSPL provided, as I have earlier indicated is crucial, the independence of those regulators is supported and publicly demonstrated. There is also a need to rationalise and reduce the number of public regulators, while clarifying their remits.

#### Proposition 4

- 6) Recognising these arguments, the Public Administration Select Committee (PASC) has proposed in its Third Report of Session 2012-13 (HC 404) merging the CSPL's functions into those of a Government ethics regulator. There is a case for establishing an Office of Government Ethics which would pull together a number of functions in this area. (Parliamentary matters would continue to be handled separately.) I develop this concept below. However, I do not agree with the Committee that the Ministerial Adviser (re-named Commissioner) could also subsume all the functions of the CSPL. Some thematic reviews are capable of being undertaken by individual regulators. However, there is a difference in kind between such reviews and the business of advising on conflicts of interest and investigating complaints of breaches of the Ministerial Code on the one hand and conducting broad reviews of ethical issues of current public concern on the other. I conclude that a mixed economy – a variety of different approaches depending on the nature of the task in hand – is necessary, although they could and should all be serviced from the same base, which the Adviser could head.

#### Proposal

- 7) In an address to a Constitutional Law Group seminar on 1 June 2009, I proposed the setting up of a single regulatory focus in relation to Government, an Office of Government Ethics. I said:

“This would sit at one remove from the Cabinet Office and report jointly to the Prime Minister and to Parliament (through PASC). Its funding would be protected by a special Parliamentary vote and its functions would include:

- Reviewing the Ministerial Code of Conduct at regular intervals and advising the Prime Minister on possible changes. The Prime Minister would remain responsible for promulgating the Code and accounting to Parliament for the conduct of his Ministers;
- Overseeing the arrangements for avoiding conflicts of interest between Ministers' private interests and their ministerial responsibilities, and advising as necessary in individual cases how to avoid such conflicts;
- Conducting investigations into alleged breaches of the Ministerial Code of Conduct;
- Providing the secretariat of and advice to the Advisory Committee on Business Appointments.”

- 8) I went on to say:

“It would be for discussion whether it should also embrace the currently separate staffs of the Committee on Standards in Public Life, the Civil Service Commissioners and the Commissioner for Public Appointments.

“In short, it would assume the current responsibilities of the Independent Adviser and a number of others as well. I see such a development as the natural and sensible endpoint of a journey which ...we have already begun.”

- 9) Building on this proposal, my suggestion is that, if an Office of Government Ethics were created – sitting at one remove from the Cabinet Office - its head would assume the function of consulting both PASC and the Prime Minister on the form of any inquiry which should be mounted into a matter of public concern of the sort which the CSPL has hitherto investigated. This could be expected to vary from subject to subject. Sometimes the PASC might itself take the lead in investigating a matter, but this would not always be appropriate. If an inquiry independent of Parliament and Government were to be necessary, it would be formed ad hoc with specific terms of reference, so avoiding the need for a standing body like the CSPL to continue in being. The Office of Government Ethics would provide the secretariat for any such inquiry.
- 10) I should make clear again that I would not abolish the CSPL unless and until a sufficiently independent body of the sort I have briefly described is established. I should be happy to elaborate orally on this suggestion.

#### Answers to Specific Questions in Part 1

Q1: It needs a permanent capability but, subject to satisfactory alternative and sufficiently independent arrangements to provide this being put in place, it is not necessary for the CSPL to continue in existence.

Q2: No comment.

Q3: Overall, it has functioned very well.

Q4 – 6: See my specific proposal above.

Q7: Not necessarily. It is perfectly possible for other regulators to undertake thematic reviews, for example, subject to observance of the essential principle that no regulator should investigate themselves.

Q8: The current informal role of the CSPL in relation to regulators is valuable. It is important that it be recognised and provided for in any new arrangement.

Q9: The CSPL should not examine individual complaints.

Q10: See above.

Q11: No comment.

#### **Part 2**

- 11) I do not have a sufficiently detailed knowledge of the operation of the CSPL to address this part of the review in depth. I therefore wish only to comment on the following questions:

Q12: I favour fixed term appointments of five years for core members of the CSPL. A more flexible approach – distinguishing “core” from other members brought in as the need arises – would seem sensible.

Q13: The proposal I have made above would mean that the functions currently performed by the CSPL would no longer be serviced by Cabinet Office civil servants.

Q15: I favour a dual line of accountability to Parliament and the Prime Minister (see my proposal above).

### **Conclusion**

12) As I only received the Issues and Questions paper relatively late, I have not had the opportunity to polish this submission as I would have wished. Nonetheless I hope that it is a useful contribution to the review. I should be happy to expand upon any of the points I have made if this would be helpful to the reviewer.

**Sir Philip Mawer**

26 October 2012

## **Triennial review of the Committee on Standards in Public Life.**

I am responding to the request from Peter Riddell set out in his letter of 4 October 2012 to comment on the Issues and Questions paper he attached to his letter. I am sorry this reply will be sent just after the date of the 31<sup>st</sup> October, which was the deadline for responses.

I am dealing with the questions in the order they are listed in the document:

1. Yes the UK does still need a permanent ethics monitor and reviewer.

The Government has abolished the Standards Board for England which had responsibilities for ethical issues in local government, which it could be argued faces the greatest threat of corruption given its key responsibility for planning matters. Ethical issues in public life regularly dominate the headlines. The recent resignation of Denis McShane and the issue of MPs expenses relating to renting of properties in London are just two recent examples which have caused public disquiet.

The abolition of the Committee would give exactly the wrong signal about how much the UK cares about standards in public life.

2. Ethical issues regularly arise in Scotland, Wales and Northern Ireland. The CSPL has been reluctant to carry out investigations in the devolved areas because of an uncertainty about its role. It would be helpful to have its UK wide role re-asserted.
3. As an ex-Chairman of the Committee it is difficult to comment on this question. I believe that since the committee was set up in 1994 it has fulfilled a valuable public function and it has established a body of substantial reports. The vast majority of the recommendations of the Committee have been implemented, which is one test of its success.
4. The CSPL has the advantage of being an independent standing committee which has established national respect and authority. It works closely with other bodies such as the House of Commons Select Committee for Public Administration but it would not be appropriate to

hand over its functions to a Parliamentary committee as many of the issues which need attention touch on the work of Parliament.

5. No.
6. Undoubtedly the research work carried out by the CSPL could be done by another body. However having established a regular survey of public attitudes about standards in public life it makes sense for the CSPL to retain this function; it is a key underpinning of its more general work and attracts useful publicity for the work of the Committee.
7. Yes, one of the key attractions of the work of the CSPL is that it has an overarching role across all areas of publicly funded activity.
8. The present informal relationship appears to work well.
9. The current remit concentrates on system and structures, and given its overarching role this seems appropriate. I do not believe the Committee should be involved in investigating individual complaints though I do see a role for the Committee in reviewing the lessons learnt from handling complaints. For example it would be useful if the Committee could consider how the recent changes to investigating complaints the Ministerial Code of Conduct has been breached have operated and whether there are lessons to be learnt about how future complaints could be handled. It would also be useful for the CSPL to review the standards regime in local government since the abolition of the Standards Board for England.
10. There would be some advantage in the CSPL having a substantive permanent role. Whether the proposed merger by the Select Committee is the right role is very debateable. I would have preferred the CSPL to have a permanent role in determining the pay and conditions of MPs and members of the House of Lords as the creation of the Independent Parliamentary Standards Authority was an expensive and over heavy solution to the expenses scandal.
11. As Chairman of the CSPL from 2004 to 2007 I made a number of visits to European countries to lecture about the work of the CSPL. I did not see a better or more effective system for monitoring ethical standards.
12. The current membership is about right. The Cabinet Office can be dilatory in recruiting new members. The length of time it took to start the recruitment process for my successor as Chairman was scandalous,



despite many early reminders to the cabinet secretary of the need to press ahead with this responsibility, prior to my term of office running out.

13. The resources of the Committee have been pared back year after year and there is no further scope for a reduction in its spending if it is to remain an effective public body.

The current arrangement where it is funded by the Cabinet Office works well, as does its staffing. During my term of office I had civil servants of the highest calibre to act as secretary to the Committee together with other support staff of excellent quality.

14. The Committee should be freed of the imposition to consult the Prime Minister (normally through the Cabinet Office)

After I left office as Chairman the Committee it was seriously expected that the Committee would consider looking into the issue of MPs expenses and I know from personal discussion with Gordon Brown that he was in favour of the Committee doing this. As I understand it, though I do not have documentary proof of this, there was opposition from a senior cabinet minister which blocked this investigation which, in hindsight, was unfortunate.

15. The current provision where the Committee reports to the Prime Minister enhances the standing and authority of the Committee. It would be helpful if there was a convention that the Chairman and secretary of the Committee met on a regular basis to exchange views on standard issues.

Alistair Graham

## TRIENNIAL REVIEW OF THE COMMITTEE ON STANDARDS IN PUBLIC LIFE

### Part one of the review – the functions and form of the CSPL

16. Rather than being complete, the task is on-going and there is still a need (perhaps greater than ever) to monitor the ethical environment and look at particular issues of concern as they arise.

17. Yes.

18. Q1. Not really. Some of these, like the Electoral Commission itself, were established on the recommendation of the CSPL and are intended to look at specific areas of public life. No other body scans the waterfront like CSPL or has developed the expertise to do so.

Q2. Yes. It works quite well in the context of inquiries – and, again, nobody else does it. If Scotland opts for independence that would clearly present us with a different situation.

Q3. Very well. It is robust in its analysis and support of standards in all areas of public life and clear in its recommendations for change if it believes this is necessary to ensure propriety.

Q4. Yes. There is currently no other body doing the same work and no other body, as currently constituted, that could.

Q5. No

Q6. Most other NDPBs are specific in their remits and would not comfortably carry out the Committee's role. Parliament is often *parti pris* (e.g. Funding of Political Parties; MPs' Expenses). Research into public attitudes could be done elsewhere but it fits well with the Committee's work and its concern with trust in politics and politicians.

Q7. Other regulators cover specific areas (e.g. elections, local government etc) but no other organisation monitors and reviews the whole.

Q8. The current relationship is probably right.

Q9. No. Particular complaints are looked at by other bodies (e.g. Ombudsmen, Parliamentary Commissioner for Standards etc.). It would change the focus of the CSPL's work if it had to pursue particular complaints.

Q10. One would have to be quite careful not to lose the specific remit of the CSPL in relation to standards in getting into wider issues of conflict of interest never mind "ethics". It is also unlikely that a structure that may work in one jurisdiction could simply be translated successfully into another.

## Part two – the control and governance of the CSPL

Q12. Membership - Fixed five year terms seems about right, providing there is staggering of the terms so that the Committee is NOT entirely composed of new members every five years. Having fixed terms, so that members' departure dates are known from the start, will allow the appointments process to begin well in advance so that there is no gap in membership or need for members to stay on because their replacements have not been found – both of which have happened in the past. As far as balance of membership is concerned, it is arguable that it is unnecessary to have party political members but they do provide a healthy "reality test" in some situations because of their practical political experience.

Q13. The Committee has always used its limited resources carefully. It is not expensive to run given the importance of its role.

Q14. The Committee's work has credibility and its recommendations are accounted partly because it has agreed the importance of a particular area of inquiry with the Prime Minister. This is more a matter of ensuring that the Committee's reports are treated with political respect than any sense that its inquiries are at the instigation of the administration. The Committee does, at any one time, have a number of areas which it is aware it might investigate. It is always a matter of judgment and priorities where it decides to put its efforts at any particular time. Whether the inquiry method, with oral hearings, is the most effective method is probably questionable, depending on what outcomes are sought. (There is interesting work being done at the moment by CEDR – the Centre for Effective Dispute Resolution – which, declaring an interest, I chair, on an Inquiry into Inquiries, led by Dr Karl Mackie and Lord Woolf, which asks just such questions. They might be worth approaching).

Q15. The Committee's reporting line to the PM is important in making sure that its Reports and recommendations are taken account of. It is significant that most of these (with the exception of the last, on Party Funding, which has yet to get a detailed response) have been taken very seriously and most recommendations accepted. Standing Committee status is important as it allows the members to get to know and trust each other and develop appropriate expertise, rather than simply coming together in an ad hoc way. And if the Committee were merely ad hoc it would lose its ability to review, in a continuing way, the wider political standards scene.

Elizabeth Vallance

29/10/12



## Committee on Standards and Privileges

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From Rt hon Kevin Barron MP, Chair of the Committee

The Rt Hon Peter Riddell CBE  
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6 November 2012

Dear Peter

Thank you for the invitation to contribute to the triennial review of the Committee on Standards in Public Life. Although this is a personal response, I have consulted colleagues on the Committee on Standards and Privileges before offering it.

First, there has been great value in having a body able to look at ethical issues across all aspects of public life. This is not a role which could be taken by individual regulatory bodies, such as the Electoral Commission, whose remit is more specialised. The CSPL has done valuable work.

The question then arises whether there is a continuing need for such a standing ethical scrutineer, particularly as individual regulatory bodies have been strengthened. Here, the matter is more finely balanced. Not only are there official regulatory bodies, but non-governmental organisations, such as the Institute for Government or constitutional think tanks that are active in drawing problems to public attention. Moreover, the Commons select committee system contains two Committees with a standing interest in such matters: the Public Administration Select Committee and the Political and Constitutional Reform Committee.

There seems no compelling rationale for establishing such an advisory body by statute. Unless the CSPL is funded by a trust, there will always be apparent problems with governance: the choices are to base it and fund it through Whitehall or Parliament: it is expected to scrutinise both. In reality, the Committee has a deserved reputation for independence, which it maintains through its actions. The choice of governance depends not on what would give it independence, but who is the customer for its work.

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If there is a continuing need for such a body, it seems sensible that there should be mechanisms to ensure its recommendations command respect and have at least some chance of being acted upon. A body entirely separate from the Government or Parliament would be independent, but might well pay for its independence by becoming ineffectual. The current inclusion of politicians in its membership and the requirement that it should consult with the Prime Minister on subjects of inquiry ensures that the CSPL is likely to be influential. It would be possible to substitute a requirement to consult a relevant select committee for the requirement to consult the Prime Minister, but there should be some way of ensuring that the CSPL remains relevant.

If maintained, the CSPL should not take on investigatory functions or look at individual cases; there are already adequate mechanisms for that. We note in passing that the CSPL has been least effective when it has been tempted into ready comment on press stories.

There is no need for the CSPL to be bound to costly evidence taking methods. The seminar methods used recently are potentially as or more effective since they both inform the Committee and making the participants think afresh by bringing larger groups together.

  
Kevin Bawn  
CHAIR

Rt Hon Peter Riddell  
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29 October 2012

Dear Peter

Thank you for your letter inviting me to contribute my views to the triennial review of the Committee on Standards in Public Life. My response is written in a personal capacity and should not be taken to reflect the views of the Political and Constitutional Reform Committee.

The UK does still need a permanent ethics monitor. Your issues and questions paper mentions that, since the Committee on Standards in Public Life was established, a new ethical framework has been introduced and various other regulators have been tasked with enforcing it. In my view, this does not negate the need for the Committee. Instead, it enables it to focus on performing an oversight role as an ethics monitor. If required, it could still respond to specific emerging issues. However, its principal function could be to assess the overall framework in which ethics are defined, codified and enforced. The Committee could consider, for example:

- the extent to which the executive is self-regulating in relation to ethical matters through the production of documents such as the Ministerial Code and the Cabinet Manual, and whether this arrangement is appropriate;
- the relationship between the legislature and the executive when it comes to the production and enforcement of codes setting out ethical standards for the executive;
- the relationship with the judiciary in terms enforcing regulatory codes intended to maintain the ethical standards of the executive;
- the role that the public may play in determining and enforcing ethical standards in public life.

Overall, I believe that the Committee has done good work since it was set up in 1994, although I think there is scope for the Committee to develop a better understanding of the work of Members of Parliament, and the role they play in ensuring that we have a functioning democracy.

Yours sincerely




Graham Allen MP



## Public Administration Select Committee (PASC)

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 October 2012



Thank you for inviting PASC to contribute to the triennial review of the Committee on Standards in Public Life. I am responding in a personal capacity, but I have discussed this response with the Committee and the views set out in it are shared by a majority of PASC's members.

We believe that there is a clear continuing need for an ethical regulator. Recent events have indicated a worrying lack of awareness of, or willingness to abide by, the Nolan principles amongst civil servants, Ministers and special advisers. If public confidence in public servants and office holders is to be maintained, there needs to be a clear and trusted voice at the heart of public life, which has the independence and authority to advise, and rule upon, ethical matters.

As you acknowledge in your issues and questions paper, PASC recently recommended the creation of a statutory conflicts of interest and ethics commissioner, based on the Canadian model. Such a regulator would primarily replace the existing Advisory Committee on Business Appointments, but if given the power to provide advice public servants on the handling of their private interests, would be well placed also to take on the functions of the CSPL in investigating and reporting on general questions of ethical conduct in public life, as well as those of the Prime Minister's Adviser on Ministers' Interests.<sup>1</sup>

Although there should be no prohibition on a statutory ethics regulator undertaking investigations at the request of the Prime Minister, it is axiomatic that a statutory regulator should be independent of government and, as we recommended in our report on the Prime Minister's Adviser on Ministers' Interests, should have the power to determine his or her own work, including the power to initiate investigations as he or she sees fit.<sup>2</sup>

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<sup>1</sup> PASC, Third Report of Session 2012–13, *Business Appointment Rules*, paras 85–86

<sup>2</sup> PASC, Twenty-Second Report of Session 2010–12, *The Prime Minister's adviser on Ministers' interests: independent or not?*, para. 44

Given the scale of the reforms that we recommend, I have not addressed your questions regarding the suitability of the current appointment, funding and governance arrangements of the CSPL or its successor. If our recommendation for a statutory ethical regulator is accepted, these are matters better dealt with during the passage of the necessary legislation.

I would of course be happy to meet with you to discuss these matters further.

*Your ever  
Bernard*

**Bernard Jenkin MP**  
**Chairman of PASC**



Dear Peter

I am so sorry that the deadline for responding to your letter dated 4 October about the triennial review of the CSPL has passed without my noticing! In case it is still of any use, here are one or two thoughts from a House of Lords perspective. I must emphasise that they are entirely my own and not submitted on behalf of the House or even of its Administration.

If you are planning to refer in your report to the previous chairmen of the Committee, you might like to note that Patrick Neill's title is Lord Neill of Bladen, and that Sir Alistair Graham is spelt thus and not as in paragraph 10 of your note!

Q1: It is worth noting that the setting up of the Committee on Standards in Public Life in 1994 had a significant impact on the House of Lords. It led to the setting up of a sub-committee of the Procedure Committee, chaired by the former law lord Lord Griffiths, on the "Declaration and Registration of Interests". That led to the institution of a House of Lords register of interests for the first time. By agreement with Lord Nolan, that happened before his Committee looked at the House of Lords – in effect, the House had a chance to put its own House in order before being scrutinised! Since then the arrangements have been revised and extended twice. The first revision was in 2001, a response to the CSPL's report on the House of Lords, which had in the event been deferred until 2000. Paragraph 1.8 of the CSPL report notes that its decision to look at the House of Lords was controversial in the House:

1.8 When on 13 March 2000 an announcement was made to the House of Lords as to our

forthcoming inquiry the Rt Hon Viscount Cranborne questioned the power of the Committee to

undertake any such inquiry. Shortly afterwards, on 10 April, Lord Rees-Mogg published an

article in The Times that also challenged the authority of the Committee.  
Correspondence

followed. Lord Rees-Mogg then tabled a motion in the following terms: "To move to resolve, That

the House asserts its responsibility for the conduct of its own affairs and that the Sub-Committee

of the Committee for Privileges should investigate the effectiveness of the House of Lords'

Register of Interests” . To the foregoing motion the Rt Hon Lord Archer of Sandwell tabled an

amendment. The motion as amended read as follows: “That the House welcomes the enquiry

into Standards of Conduct in the House of Lords by the Committee on Standards in Public Life,

and asserts the House’s ultimate responsibility for the conduct of its own affairs.” After a debate

in the House on 10 May 2000 the House passed the amended form of the Motion.

The amendment to the motion was carried by 111 votes to 3. So I think it may be assumed that there was widespread acceptance of the appropriateness of independent scrutiny of the House’s arrangements.

The second expansion and extension of the House’s arrangements came in 2010, in the wake of the 2009 furore over members’ expenses (initially in the House of Commons). A key part of that revision was the appointment of a Commissioner to introduce an investigation into complaints of breach of the Code by someone other than members and staff of the House (though appointed by the House).

My own view (reflected in the House’s decision on 10 May 2000) is that it is quite helpful for there to be a body outside the House to provide some sort of audit of our internal arrangements. Whether a body appointed by the Prime Minister is the right body is a question which I leave to you – from first principles it might seem not to be, but in practice the CSPL seems to have been quite effective and well-regarded.

Q5 and Q6: Another body of which you ought to be aware is GRECO, the Council of Europe’s “Group of States against corruption” – see [http://www.coe.int/t/dghl/monitoring/greco/default\\_en.asp](http://www.coe.int/t/dghl/monitoring/greco/default_en.asp). In 2012 GRECO has been reviewing the “Prevention of corruption in respect of members of Parliament, judges and prosecutors”, under the following headings:

ethical principles and rules of conduct

conflict of interest

prohibition or restriction of certain activities

declaration of assets, income, liabilities and interests

enforcement of the rules regarding conflicts of interest

awareness

Last month GRECO held hearings in Strasbourg at which UK representatives (including the House of Lords Registrar of Lords' Interests) were examined. GRECO's evaluation of the UK is shown on the website as complete but confidential ([http://www.coe.int/t/dghl/monitoring/greco/evaluations/round4/ReportsRound4\\_en.asp](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round4/ReportsRound4_en.asp)) – I look forward to seeing it when it becomes public (which I presume is a matter for Her Majesty's Government). While it may well be a useful review, I doubt whether GRECO would be regarded by many as an adequate alternative to the CSPL in overseeing standards in UK public life, the more so as it has 49 member states to review!

I don't think I have any particular comments on your other questions, but do let me know if you think I can help on any aspect of your review.

Best wishes

David

David Beamish

Clerk of the Parliaments

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# HOUSE OF COMMONS

22 October 2012

The Rt Hon Peter Riddell CBE  
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*Dear Mr. Riddell,*

## **TRIENNIAL REVIEW OF THE COMMITTEE ON STANDARDS IN PUBLIC LIFE**

Thank you for your letter of 11 October inviting my response to your issues and questions paper on the Committee on Standards in Public Life.

Your paper has a range of questions and asks for responses in the next two weeks. Given the timescale, I hope it will be acceptable if I address the issues on which I feel I may be able to make a contribution to the work of your review without recasting them as responses to particular numbered questions.

As you will know, I write from my position as the Parliamentary Commissioner for Standards. I have held this office for nearly five years and will hand over to my successor at the end of December 2012. I have myself given evidence to the Committee on Standards in Public Life in respect of its inquiry into MPs' expenses and allowances; I have benefited from the Committee's responses to consultations I have undertaken on the Code of Conduct for Members of Parliament and the Guide to the Rules relating to that conduct; I have attended and participated in the Committee's annual meeting; and I have participated in a seminar held by the Committee on the Nolan Principles. I have also had occasional informal meetings with the Chair of the Committee.

I consider that the Committee on Standards in Public Life has provided a necessary and valuable benefit to standards in our public life since it was first established. It is in my view right that there should be a body which is able to take a strategic and principled view across all aspects of the nation's public affairs. It needs to be a body which monitors conduct (or at

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least the public perception of that conduct), which takes evidence on standards-related matters, and which gives authoritative advice on what public standards should be and how they should be maintained.

Standards of conduct need to reflect both the current range and challenge of public life and the overall ethical framework in which it is conducted. Ethical principles are likely to be unchanging. But the context in which they need to be exercised will change. In this sense, I do not see the Committee's work as ever done. It is properly there to review ethical principles and, in particular, to review their application to the current exercise of our public life.

The Committee's approach should be strategic. I do not believe that it should get engaged in matters other than those of continuing public and national importance. It should not get embroiled in the detailed rules which underpin standards in any part of public life. Nor should it be expected to launch inquiries as a direct response to some particular scandal or crisis. It needs to be a body which stands back from the day to day ebb and flow of political and public activity: a body which can examine trends and give advice which has authority and status because it is well researched, well considered, well principled and far seeing.

A body of this sort should not, in my view, engage in examination of alleged individual breaches or misdemeanours. It should not engage in the detailed regulation of any part of the public sector. It should not itself be the regulator. But it should satisfy itself that regulation in the public sector is in place to underpin and uphold what it sees as the necessary standards of conduct in public life.

I therefore see the Committee as a separate and higher level body than the sort of statutory Conflict of Interest and Ethics Commissioner based on the Canadian model. The Committee cannot be expected to take a properly strategic overview of standards in public life if it is also seeking to be a regulator on the Canadian model; and it cannot have the breadth of vision required if it is also focused on a particular sector of public life—Ministers and their officials. It follows that I am not attracted to the notion of subsuming the work of the Committee in this way in the establishment of a standards regulator on the Canadian model.

The independence of the Committee is in my view paramount. There is a risk that, as presently constituted, it will be seen to be part of the government structure. I believe that the Committee would have a greater degree of independence—and perceived independence—if it were accountable to Parliament rather than to the government of the day. It should be accountable for the resources allocated to it by Parliament, but it should not agree with Parliament—as it should not need to agree with the Government—its programme of work. That should be a matter solely for the Committee. I well understand why Members of one or other House of Parliament from the main political parties were initially given places on the Committee, but I would hope that for the future a parliamentary nominations board could take applications from all quarters (without the need for “reserved” places) and recommend to the House a Committee based only on the merits of its individual members and the balance of opinion and expertise which is required.

I would hope that the approach as set out in this response would establish a Committee on Standards in Public Life which was strategic in its approach, independent in its identification

and consideration of the issues, and authoritative in its conclusions and recommendations. To be fully effective, the Committee needs to be seen as a body of wisdom and judgment whose conclusions are rarely turned aside. To achieve that depends both on the quality of the Committee's work and on the willingness of those affected by its reports to respect and implement its conclusions.

*Yours sincerely,  
John Lyon*

**John Lyon CB**  
*Parliamentary Commissioner for Standards*

---

Dear Mr Riddell,

Your invitation to contribute to the above review was forwarded to me in my capacity as the House of Lords' Commissioner for Standards.

I am happy to contribute but have confined my responses to questions on which I have strong views and/or specific insight/experience. My response is not limited to my current role but rather draws on my wider experience, not least over thirty years as a police officer.

16. I would respectfully suggest that events have demonstrated that that judgement was premature and inaccurate.

17. I would respectfully suggest that if the UK is to have a body such as the CSPL, it should be specifically mandated to review any area of public life which gives rise to public concern. Its current terms of reference ['holders of public office'] appear to have limited its remit to those holding elected office. Recent widespread concerns in relation to police integrity were left to a review by HMIC. In some cases I would suggest that major issues of organisational culture and integrity, require external investigation by a body such as the CSPL. I am not suggesting that the CSPL investigate allegations against individuals but rather that they provide a high powered capability, which could be deployed when any public institution gave rise to serious disquiet with regard to standards of behaviour.

Specific questions:

Q1. See above. I think there is still a need for an over-arching standards body, if it were to be properly employed.

Q2. No, there is a need for a UK wide body which is not subject to the narrower devolved perspective. I have conducted an investigation in a small polity within the British Isles and the concept of independence was incredibly hard to identify, given that all the major players knew each other. I would be concerned that this problem would, to a greater or lesser extent, bedevil any standards regime which was fully entrusted to the devolved administrations.

Q5. This only applies if there is political will to create a standing standards' watchdog with better terms of reference.

Q10. There might well be merit in this suggested course of action. The current regime on business appointments is limited and does not in my opinion, enjoy public confidence or, indeed, demonstrate any true independence.

Part two questions:

Q12. In relation to Q2, I suggest that the CSPL be required to include members with knowledge of and residency in Northern Ireland, Scotland and Wales.

I note that responses were invited by 31/10/12 but trust that this slightly delayed contribution will still be of some use.

Yours sincerely,

Paul Kernaghan



The Rt Hon Peter Riddell CBE  
70 Whitehall  
London,  
SW1A 2AS

1 November 2012

Dear Mr Riddell,

### **Triennial Review of the Committee on Standards in Public Life**

Thank you for your letter dated 11<sup>th</sup> October 2012 asking for the Local Government Association (LGA) to respond to the Triennial Review of the Committee on Standards in Public Life (CSPL).

As you are aware, the LGA is committed to ensuring high standards in local government; ensuring probity and honesty by holders of public office and ensuring confidence that those who govern will act in the interests of citizens and for the long-term public good. In its first report the CSPL defined the Seven Principles of Public Life as; selflessness, integrity, objectivity, accountability, openness, honesty and leadership. The LGA supports these principles which we have also adopted for our draft code of conduct for councillors.

The following summarises the LGA response to the CSPL Review;

1. The LGA recognises that the CSPL has performed and continues to perform a valuable oversight function in its eighteen years and we support the continuing need of the Committee to shape and inform ethical practice and standards of public life and, when necessary, look in detail at specific issues in an independent capacity.
2. The CSPL has recently focussed more on Parliamentary matters, however, the LGA would be very interested to hear what part the CSPL may play in ensuring the effectiveness of the new local government standards regime in the future. Wherever possible, we would also be keen to be involved in such work. However, we would be against the introduction of a central monitoring framework being imposed on our members.
3. In future, we would welcome further clarity on who is consulted in the course of a CSPL inquiry and, in the case of local government, clarity on what input that the local government sector had had into any relevant inquiry. Furthermore, as representatives of the sector, we recommend that the LGA should always be consulted in any relevant inquiry affecting Local Government. The LGA may be able to offer local government expertise to sit on the CSPL.

4. The LGA recognises that the CSPL provides an overall high level independent and impartial view on the standards of public service, in particular ethical practice, public perception, standards and good practice; however we do not support any extension of the powers or function of the CSPL.
5. We continue to support the key functions and remit of the CSPL as outlined in the current CSPL Code of Practice, namely that the Committees terms of reference are 'to review concerns about standards of conduct of public office holders and the funding of political parties and to recommend improvements where necessary'.
6. The CSPL biennial 'Survey of Public Attitudes of Public Life' is a useful benchmark of current attitudes; however we note that the last survey in 2010 did not have any specific question on the views of the public on local authorities or local authority officers or members, it would be useful to have such a question included.
7. Current governance arrangements of the CSPL are fair and clearly defined. The LGA does not believe that the CSPL should be put on a statutory basis as it has proved effective and influential under its current governance arrangements. It should continue as an active standing committee, whose role is to monitor research and comment rather than being convened to carry out specific inquiries.
8. The LGA believes that it is important that written evidence and oral hearings in London and around the UK are maintained by the Committee.

To conclude the LGA believes that the CSPL provides an overall high level independent and impartial view on the standards of public service. The LGA feels that its governance is effective and appropriate and recommends that it continues to perform its important role as a non-departmental public body.

Please do not hesitate to contact me if you have any queries regarding this letter.

Yours Sincerely



Carolyn Downs  
Chief Executive

# The Electoral Commission

The Rt Hon Peter Riddell CBE  
Cabinet Office  
Room 208  
70 Whitehall  
London  
SW1A 2AS

30 October 2012

Dear Mr Riddell,

## **Triennial review of the Committee on Standards in Public Life**

Thank you for your letter regarding the triennial review of the Committee on Standards in Public Life (CSPL). The Issues and Questions Paper raises a number of issues on which the Commission does not take a view. However we do have some observations to make, in our role as the regulator of party and election finance, which I hope you will find useful for your review.

### **Question 1: Does the UK still need a permanent ethics monitor and reviewer? Or, now that several regulators are in place (for example the Electoral Commission) are there other bodies that could effectively carry out this role?**

The Electoral Commission does not take a view on whether there should be a permanent ethics monitor or reviewer, however we make a number of observations relating to the Commission and CSPL's respective roles and issues concerning resourcing. CSPL has a significantly broader remit than that of the Electoral Commission. There is a limited overlap in our responsibilities in the area of party and election finance: the Commission regulates party finance but CSPL has a wider remit, which includes responsibility for reviewing the overall framework of rules relating to party finance. There are also many other areas of CSPL's work which are outside of the Commission's remit altogether, including MPs expenses and the review of Ethics and Best Practice, for example. We have commented only on the relationship between CSPL's work and ours in the party finance sphere.

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Democracy matters

An independent body established by Act of the UK Parliament



CSPL played an important role in developing the UK model for regulating party and election finance via its 5<sup>th</sup> Report, and in reviewing the case for changes to the model in its 13<sup>th</sup> Report, following the current Government's decision to seek reform. This major policy review role could conceivably be taken on in future by the Commission or another body.

However, the Commission ceased to assign resources to the development of proposals for the regulatory regime after CSPL's 11<sup>th</sup> Report and therefore is not currently resourced to take on the sort of wide-ranging policy reviews that CSPL has carried out in its 5<sup>th</sup> and 11<sup>th</sup> Reports. We do maintain a policy capacity in order to develop our regulatory effectiveness and to respond to proposals for new rules and for changes to the current rules, taking into account both workability issues and the Commission's principles. However, our Board would want to consider carefully the implications of any proposal that the Commission should expand its remit in the ways you suggest. For instance, given the inherently political and sometimes contentious nature of regulating political finance, it could well be argued that fundamental policy reviews should not be carried out by a body which is responsible for the day-to-day operation of the rules.

CSPL has also taken on responsibility for monitoring the Commission's own regulatory effectiveness (most notably in its 11<sup>th</sup> Report) and to some extent this role does appear to overlap with the work of other existing bodies. The Commission is formally accountable to the Speaker's Committee of the UK Parliament, and also to the Scottish Parliament for certain aspects of what we do (in respect of Scottish local council elections and the forthcoming Scottish referendum, for example). In addition, we give evidence to Parliamentary Select Committees, in particular the Political and Constitutional Reform (PCR) Committee. We are pleased that there is a dedicated Committee that scrutinises both the policy areas of interest to the Commission and the work of the Commission itself; this is something we hope to see develop further. In addition, we are of course subject to a statutory annual study of our effectiveness and efficiency by the National Audit Office.

**Q 2: The CSPL's current remit covers Scotland, Wales and Northern Ireland. Should it be looking at developments in the Devolved Administrations?**

CSPL has played an important role in Northern Ireland over the last decade, particularly during periods of 'direct rule' when the institutions were suspended due to the political situation at the time. More recently it has taken an active interest in the transparency of political donations and 'double-jobbing', where MLAs were also elected to the UK

Parliament and/or local councils. Although the Northern Ireland Assembly has recently appointed a Standards Commissioner, his remit is restricted to the conduct of MLAs in their capacity as elected representatives. There is currently no other body which oversees wider public standards issues in Northern Ireland (for example, reviewing how the Nolan Principles are working in practice). As the work of the Northern Ireland Assembly evolves further this may change but in the meantime CSPL plays an important role.

Historically CSPL has had a lesser profile in Scotland and Wales. There are a number of standards bodies in Scotland and Wales which cover the legislatures, local government and some, though not all, public bodies. The presence and remit of these existing bodies should be taken into consideration when looking at whether CSPL should look at developments in the devolved administrations.

**Q13: Resources – does the Committee have enough resources and expertise to fulfil its functions? Should the Committee continue to be funded by the Cabinet Office and house on the Cabinet Office estate? Should the Committee Secretariat continue to be staffed by civil servants?**

It is important that CSPL is properly resourced for the work it is expected to undertake. For example, the review which led to its 13<sup>th</sup> Report was a significant piece of work, which took the small secretariat over a year from the start of the review to final publication. This underlines the need to provide adequate resources for major reviews.

**Q15: Governance – should the Committee continue to report to the Prime Minister? Or should it be accountable either wholly, or partly, to Parliament beyond a pre-appointment scrutiny by the Public Administration Select Committee? In order to reinforce its independence, should the Committee be put on a statutory basis? Should the Committee continue to be a standing committee, permanently active, monitoring, commenting on developments, carrying out research etc, as it is now, or should it only be convened to carry out specific Inquiries?**

We do not take any particular view on CSPL's control and governance. It is clearly important, however, that any organisation taking on the role of developing proposals in politically sensitive areas is both independent of Government and well informed about the views of the UK's political parties and the challenges they face. This challenge applies both to the Electoral Commission and to CSPL, and it notable that, since the

# The Electoral Commission

changes to the Commission Board in 2009-10, we share a similar governance model, with an independently appointed Board or Committee including a minority of people nominated by the larger political parties.

If you have any questions about any of the issues raised, please do not hesitate to get in touch.

Yours sincerely,



**Jenny Watson** Approved by the Chair and electronically signed in her absence  
**Chair**



Full Fact  
4 Dyer's Buildings  
London EC1N 2JT

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The Rt. Hon. Peter Riddell CBE  
BY EMAIL: [cspreview@cabinet-office.x.gsi.gov.uk](mailto:cspreview@cabinet-office.x.gsi.gov.uk)

31 October 2012

Dear Mr Riddell

I am writing to you as Director of Full Fact, a non-partisan factchecking organisation which aims to promote accuracy in public debate, in response to your Issues and Questions Paper for the Triennial Review of the Committee for Standards in Public Life. I note that you have taken on the review as a voluntary service, for which many thanks.

### **The continuing need for the CSPL**

The CSPL does valuable work and should continue to carry out this work for the foreseeable future. There are current concerns that some areas of public standards may have fallen far below what is appropriate, and some important standards mechanisms are in flux. Examples include the House of Lords suspending four of its members even against the advice of the Attorney General; apparent lobbying improprieties involving senior military figures raising doubt about the business appointment rules, which might have been thought a relatively settled aspect of standards in public life; and the impending Leveson Report, with consequences for the press, the police, and the relationship between the press and politicians.

### **The worth of the Public Attitude Surveys series**

The Public Attitude Surveys are invaluable in telling us where efforts should be focused in improving standards in public life. They are deeper and more informative than private surveys in the same area and reports so far offer the beginnings of a potentially important time series. (We are concerned therefore that the Economic and Social Data Service only seems to hold full data for the 2003/04 and 2005/06 surveys: this should be rectified for the benefit of serious researchers).

### **The importance of 'truthfulness'**

'Truthfulness' and 'basic honesty' are among the public's principal concerns about standards in public life, as shown by the survey reports:

- In 2004, “should tell the truth” was found to be respondents’ **single most important attribute** for national politicians. (page 6, box 4)
- In 2006: “**Truthfulness is highly prized.** Three-quarters of the public think it is ‘extremely important’ that MPs and government ministers should tell the truth – only the requirement that they should not take bribes is rated as important by more of the public.” (page 12)
- In 2008, with a more nuanced survey, still “most respondents (76%) considered it ‘extremely important’ for government ministers to tell the truth, but only a small proportion felt that all or most government ministers did tell the truth (resulting in a net rating of -21%). It is therefore a **high priority for improvement.**” (page 35)
- In 2011, “**the public places particular emphasis on basic honesty.**” (page 9)

It is anomalous that the Committee itself has done very little in this area, when its own research has so consistently identified truthfulness as a principal concern for the public. The Committee should undertake further research and an inquiry to establish what are the causes of public concern, what effects it has (for example, whether it is a cause of public disengagement from electoral politics), and what can be done about it.

We believe that such an inquiry would find that there is much that could be done constructively in terms of processes and information dissemination to help address public concern in this area.

I would be happy to discuss any of this in more detail.

Yours sincerely

Will Moy  
Director



Permanent Secretary  
Sir Peter Housden KCB



The Rt Hon Peter Riddell CBE  
Cabinet Office  
Room 208  
70 Whitehall  
LONDON  
SW1A 2AS

5 November 2012

#### **TRIENNIAL REVIEW OF THE COMMITTEE ON STANDARDS IN PUBLIC LIFE**

Thank you for your letter of 4 October inviting comments on the 'issues and questions' paper which you sent to me as part of the triennial review of the Committee on Standards in Public Life. I am grateful for the opportunity to comment. You also wrote to the First Minister and the Minister for Parliamentary Business on the same date and I am replying on our collective behalf.

It might be helpful if I outline the current arrangements in Scotland, which have changed considerably since the Committee was first established in 1994 (which of course preceded devolution). Since then the Scottish Parliament has legislated to establish a separate statutory regime in Scotland, set out in the Ethical Standards in Public Life etc (Scotland) Act 2000, the Scottish Parliament Standards Commissioner Act 2002 and the Scottish Parliamentary Commissions and Commissioners etc. Act 2010.

The 2000 Act introduced a statutory framework for ethical standards in public life in Scotland. It provided for the introduction of new codes of conduct for local authority councillors and members of relevant public bodies and established a new Standards Commission for Scotland to maintain and enforce ethical standards. The 2002 Act also made provision for the investigation of complaints against members of the Scottish Parliament by reference to, amongst other things, a separate code of conduct for Members.

Subsequently, the 2010 Act established a Commission for Ethical Standards in Public Life in Scotland comprising two members: a Public Standards Commissioner for Scotland and a Public Appointments Commissioner for Scotland, both of whom are appointed by the Scottish Parliamentary Corporate Body with the agreement of the Parliament. The functions of the two Commissioners are also set out in the 2010 Act.

Most recently, Scottish Ministers have agreed to a request from the Scottish Parliamentary Corporate Body to bring forward an order simplifying these arrangements by abolishing the

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[www.scotland.gov.uk](http://www.scotland.gov.uk)



Commission for Ethical Standards in Public Life and transferring the functions of the two Commissioners to a new 'singleton' Commissioner for Ethical Standards in Public Life in Scotland. Subject to public consultation and the approval of the Scottish Parliament, the intention is that these new arrangements should be put in place by next summer.

Q2 in the 'issues and questions' paper indicates that the Committee's current remit covers Scotland, Wales and Northern Ireland, and asks whether it should be looking at developments in the devolved administrations.

While the Civil Service is a reserved matter, civil servants employed by the Scottish Government are accountable to Scottish Ministers; and as I have explained there is now a very different statutory regime in place in Scotland governing ethical standards in public life. On that basis, it seems to me that it is not appropriate for the Committee on Standards in Public Life, an advisory NDPB sponsored by Cabinet Office, to consider and report to UK Ministers and the UK Parliament on devolved matters which are the responsibility of Scottish Ministers and the Scottish Parliament. Having said that, I should add that we find the Committee's reports and recommendations useful in helping us to assess the effectiveness of our own arrangements.

I would be happy to provide any further information on the arrangements now in place in Scotland which might assist you in carrying out your review.

*all good wme*

*Pere*

Our ref: A4363958

St Andrew's House, Regent Road, Edinburgh EH1 3DG  
[www.scotland.gov.uk](http://www.scotland.gov.uk)



Y Gwir Anrh/Rt Hon Carwyn Jones AC/AM  
Prif Weinidog Cymru/First Minister of Wales



Llywodraeth Cymru  
Welsh Government

Ein cyf/Our ref: FM/06270/12

Rt Hon Peter Riddell CBE  
Cabinet Office  
Room 208  
70 Whitehall  
London  
SW1A 2AS

12 November 2012

Dear Peter,

**TRIENNIAL REVIEW OF THE COMMITTEE ON STANDARDS IN PUBLIC LIFE**

I am writing in response to your letter of 11 October asking for a response to the issues raised in your paper about the triennial review of the Committee on Standards in Public Life.

I think that there continues to be a role for the Committee, or a successor body, to act as an independent advisor to Government on standards, so I would support retaining the function even if there are to be changes to the mechanism. I met some of the Commissioners recently in Cardiff as part of their fact-finding tour and we had an interesting and useful wide-ranging discussion. I was pleased that they had come to Wales to hear our views first-hand on how best use can be made of the Nolan principles. In practice we do not need to refer to work of the Committee very often in Wales but I think that it is important that in the background they are considering and making recommendations on some of the big issues in public life which emerge, many of which have a read-across to Wales. I do think, though, that there is the possibility of an inherent tension in the present remit of the Committee covering the devolved countries as well, as it does at the moment, but with (as I understand it) the Committee being accountable solely to the Prime Minister and with no mechanism for the Welsh Government or the political parties in Wales to have a say in the composition of the Committee or its work programme. I appreciate that the Committee operates in an advisory capacity only but I would hope that one outcome of this review would be a greater clarification of how the Committee can relate to the devolved countries.

If you would like to discuss this in more detail then please get in touch with the Welsh Government's Director of Governance, David Richards on 02920 825177 or at [david.richards@wales.gsi.gov.uk](mailto:david.richards@wales.gsi.gov.uk).

Yours sincerely

A handwritten signature in black ink, appearing to read 'Carwyn Jones', written in a cursive style.

**CARWYN JONES**

Bae Caerdydd • Cardiff Bay  
Caerdydd • Cardiff  
CF99 1NA

English Enquiry Line 0845 010 3300  
Llinell Ymholiadau Cymraeg 0845 010 4400  
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**Triennial Review of the Committee on Standards in Public Life  
- Response by the Public Services Ombudsman for Wales**

1. As Public Services Ombudsman for Wales, I investigate complaints that members of local authorities (county/county borough councils and community councils) have broken their authority's code of conduct. I do so under the provisions of Part III of the Local Government Act 2000 and also relevant Orders made by the National Assembly for Wales under that Act. I also, under the Public Services Ombudsman (Wales) Act 2005, investigate complaints made by members of the public who believe they have suffered hardship or injustice through maladministration or service failure on the part of a body in my jurisdiction. As such, I have a unique perspective on the governance of local authorities in Wales and it is in this context that I am responding to the triennial review. My comments on the points raised in the 'issues and questions' paper are set out below.
2. In the past there were grave concerns about standards in public life and the lack of impartial decision making as a consequence of undue influence, financial or other. Since the introduction of the Seven Principles of Public Life by Lord Nolan, the general perception of standards is that they are better. However, there is still evidence of an ongoing need – as demonstrated in my work and more widely, for example, the MPs' expenses scandal.
3. My own work in local government standards in Wales shows that in general standards are good, but there remain individual instances which fall well short of what the public would require. Simply relying on the ballot box is an inadequate response to poor standards where circumstances are such that the conduct complained of would not meet criteria for criminal action but yet clearly call for some kind of action to be taken. Waiting until the next election can leave matters unremedied for several years. Further, it has been demonstrated in the case of the banks and the Leveson inquiry that self-regulation does not work.
4. It is clear from the above that I do consider that the functions of the CSPL continue to be necessary. However, this does not mean that I consider that the existing body as currently designed is the right one going forward. In particular, it is my view that any body concerned about the general standards in public life should be independent of Government and instead accountable to Parliament. This could mean: repositioning the current Committee on Standards in Public Life; creating a replacement body; or extending the remit of another body already in existence to include responsibilities in respect of standards in public life. Devolution however does make these considerations more difficult. Parliaments and Assemblies have their own separate standards arrangements. It may be, therefore, that the CSPL's role should be one of consideration of general standards, with its influence principally confined to the non-devolved UK Parliament.

5. Currently, trust in politicians is not high. The negative media attention in recent years to standards of conduct by elected politicians will undoubtedly affect public perception for some time to come. Removing a function which monitors the ethical environment and responds to issues of concern may not be timely.

**Public Services Ombudsman for Wales**  
**October 2012**

\*\*\*\*\*



**Andrew RT Davies**  
**AM/AC**

Leader of the Opposition  
*Arweinydd yr Wrthblaid*

Cynulliad  
Cenedlaethol  
Cymru

National  
Assembly for  
Wales



Please reply to:

The Rt Hon Peter Riddell CBE  
Cabinet Office  
Room 208  
70 Whitehall  
London  
SW1A 2AS

Ein cyf/Our Ref: **AD/HEM**  
Eich cyf/ Your Ref:

Thursday 8<sup>th</sup> November 2012

Dear Peter,

Thank you for your letter regarding the Triennial Review of the Committee on Standards in Public Life (CSPL), inviting me to provide a submission to the review.

I would like to take this opportunity to highlight the recent experience in Wales where standards of public bodies and individuals have fallen below public expectations, with potentially long term and damaging consequences for us all in the public sphere.

Given the events surrounding the well documented cases of a Communities First project in Wrexham, where public funds ended up in private hands, and with the All Wales Ethnic Minority Association and the actions of its Chief Executive resulting in the supervisory board reneging on its key function, the need for a system of public appointments which is both robust and that carries the full confidence of the public is ever more pressing.

Although the current system affords cross-party representation on the selection panel for example, for the appointments of Commissioners in Wales, the recent political history in Wales means that the differentiation between the National Assembly for Wales as the legislature and the Welsh Government as the executive is often blurred in the minds of the electorate.

The resulting perception in the mind-set of the public is a lack of distance between those responsible for administering public funds and those charged with the responsibility of supervising those individuals or organisations.

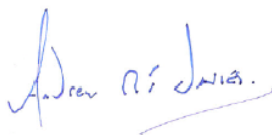
This perception is further exacerbated when the oversight mechanisms of organisations are complimented by inherently weak appointments within the organisations themselves creating a 'perfect storm' of doubt and uncertainty in the strength and competence of the body and those charged with ensuring its accountability.

The notion of transparency and accountability applies as much to Ministers and Assembly Members as it does to public appointments. The recent debacle surrounding GCSEs in Wales highlighted the potential conflict of interest that exists when a Minister is responsible for both setting and regulating policy. Moreover, Welsh Ministers currently enjoy the unique position of policing their own code of conduct and are answerable only to the First Minister. Whilst the old adage follows that they are ultimately answerable to the electorate, I do not think that sufficiently address the need for timely and independent redress where serious breaches of the Ministerial Code have taken place.

Therefore, there is a strong case in a Welsh Context for a body that would provide robust scrutiny of public office in all forms and offer the public the transparency and subsequent confidence that they seek and indeed merit.

I look forward to reading the recommendations of the Triennial Review in due course and thank you for considering my submission.

Yours sincerely,

A handwritten signature in blue ink that reads "Andrew RT Davies".

**Andrew RT Davies AM**  
Leader of the Opposition  
*Arweinydd yr Wrthblaid*

The Rt Hon Peter Riddell CBE  
Cabinet Office  
70 Whitehall  
London  
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30 October 2012

Dear Mr Riddell

### **TRIENNIAL REVIEW OF THE COMMITTEE ON STANDARDS IN PUBLIC LIFE**

Thank you very much for your letter of 11 October bringing my attention to consultation on the review of the Committee on Standards in Public Life.

I can only respond to you in so far as the work of that Committee relates to the standards of conduct regime of the National Assembly for Wales. The Assembly has its own specific arrangements in place, and we would not have a particular view on the future of the Committee on Standards in Public Life. However, I can say that the value placed on the Committee's past work is reflected in the fact that the 'Nolan Principles' form a central element of the Code of Conduct for Assembly Members. You can find the Code at:

<http://www.assemblywales.org/memhome/pay-expenses-financial-interests-standards/mem-commissioner-standards/cod-yommygiad.htm>.

You can find information about our Standards of Conduct Committee at:  
<http://www.senedd.assemblywales.org/mgCommitteeDetails.aspx?ID=231>

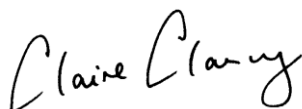


The Committee on Standards in Public Life recently visited Cardiff as part of its current review of ethics and practice, and members of the Assembly's Standards of Conduct Committee, and the Assembly's Commissioner for Standards, welcomed the opportunity to meet informally with the Committee and contribute to its work.

The Assembly's statutory Commissioner for Standards, Gerard Elias QC, is responsible for promoting, encouraging and safeguarding high standards of conduct in the public office of Assembly Members. I therefore brought your consultation to his attention, in case he wishes to comment separately. He is, in fact, currently conducting a review of arrangements in Wales, including the Code of Conduct for Assembly Members. The review is considering issues of personal conduct, lobbying, use of Assembly resources, staff-Member relations, salaries and expenses and related matters, the relationship of Members with the Commissioner; and questions of confidentiality. Following a wide consultation to identify any problems and issues, the Commissioner is expected to provide a report to the Standards of Conduct Committee by next March.

I look forward with interest to seeing the conclusions of your review in due course.

Yours sincerely

A handwritten signature in black ink that reads "Claire Clancy". The signature is written in a cursive style with a large initial 'C'.

**Claire Clancy**  
**Prif Weithredwr a Chlerc/Chief Executive and Clerk**  
**Cynulliad Cenedlaethol Cymru/National Assembly for Wales**



Clerk to the Assembly/Director General  
Parliament Buildings, Ballymiscaw, Stormont  
Belfast BT4 3XX

The Right Honourable Peter Riddell  
Cabinet Office  
70 Whitehall  
London  
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9 November 2012

Dear Peter

**TRIENNIAL REVIEW OF THE COMMITTEE ON STANDARDS IN PUBLIC LIFE  
(CSPL)**

Thank you for your letter of 4 October 2012 inviting me to respond to the Triennial Review of the Committee on Standards in Public Life (CSPL). I am pleased to have the opportunity to do so and I appreciate the additional time made available to prepare the response during a very busy period at the Northern Ireland Assembly.

You have very helpfully raised a number of questions for consideration covering functions, control and governance. It is important to point out that any views expressed will be personal and not reflective of the views of the political membership of the Assembly.

At the outset I would acknowledge that the CSPL has made welcome and useful contributions to the development of a number of policies and practices at the Assembly. These include in relation to the creation of the Independent Financial Review Panel and the Northern Ireland Assembly Commissioner for Standards.

I believe there is a strong case for maintaining an overarching independent body to continue to monitor the ethical environment and respond to issues of concern which may arise. It should identify and challenge systemic weaknesses in public standards and promote best practice across public life in the UK. It should draw from lessons learned within the UK and internationally, and ensure that these lessons are shared across the wider public sector.

I acknowledge that there is a perception that standards in public life have become less favourable in recent years. However, I am at times sceptical about the existence of evidence to support (or refute) this perception but, against this backdrop, there remains the need for an independent body to promote ethical standards, attitudes and behaviours across the public service both for elected representatives and public officials.

Consideration might usefully be given to the range of bodies currently operating in this field across the UK and exploring opportunities for better linkages and the potential for some degree of rationalisation. There seems to me to be merit in examining how national and devolved frameworks for standards, public complaints (Ombudsman roles) and remuneration setting for elected representatives might evolve into a more coherent and efficient model.

In Part 2 of the consultation you have raised a number of issues in relation to the governance and control of CSPL. I do not feel that I am in a position to comment on the detail of the questions raised. However, on a general point I consider it to be vital that any public body with a UK wide remit has representation on its board from Northern Ireland and is seen to be active in issues relating partially or wholly to Northern Ireland.

I look forward to the findings of this consultation and the further development of a robust framework which supports the continued promotion of high standards in public life in Northern Ireland.

Yours, sincerely



**TREVOR REANEY**  
Clerk to the Assembly/Director General

I wish to make just two points; I feel they both fall within Q3 but am happy for them to be 're-assigned'  
(Q.3 How well do you think the CSPL fulfils its role at present? What do you think it should do?)

1. The intrusiveness of the statutory Register of Member's Interests that have to be made by members of any public body (even for unpaid community councillors) far outweighs any conceivable gain to the public from the information revealed. This area could itself be the subject of a fresh consultation as to reasonableness, weight being given to the reward/absence of reward to the Member.

2. The Seven Principles of Public Life enunciated by the Nolan Committee are silent on diligence. A Member could be a poor attender at meetings, and dilatory in his/her duties with constituents (e.g. ignoring correspondence) and yet not fall foul of the Principles. I suggest it is time for some broad statement of expectations about how to acquit him/herself in the job that is consistent and reasonable with the reward – e.g. an unpaid Member perhaps has less 'duty' than someone in receipt of a significant allowance and perhaps special responsibility allowance as well.

Personal background

Over the years I have been variously;- College governor; Housing Association Board member; lay member of an LA Standards Committee ; Police Authority independent member; lay member of an LA Audit committee.

CHRIS  
(Mr.) Chris. W Drew