

# British Standards Landscape: A mapping exercise

This report provides an overview of the standards landscape effective in the central and local government and administration of the United Kingdom (UK). It focuses on Westminster and Whitehall, local government, and functions that are governed by central agencies. It does not cover the standards regimes in the devolved administrations in Wales, Scotland and Northern Ireland. The report provides a snapshot of the standards regime 25 years after the establishment of the Committee on Standards in Public Life in 1994 and offers a vantage point from which to view its changing shape and form. The report takes as its main reference point David Hine and Gillian Peele's, *The Regulation of Standards in Public Life*,<sup>1</sup> and refers to a range of academic and publicly available sources to map the standards regime as of September 2019.<sup>2</sup>

The report was commissioned by the Committee on Standards in Public Life and written by Rebecca Dobson Phillips, Doctoral Researcher at the University of Sussex.

---

<sup>1</sup> Hine, D. and Peele, G. 2016. *The Regulation of Standards in Public Life: Doing the right thing?* Manchester: Manchester University Press.

<sup>2</sup> The Author would like to thank Professor Mark Philp and Professor David Hine for their kind advice and guidance on the preparation of this report, and also to thank the standards bodies for their useful and timely feedback on the first draft. Any errors that remain are her own.

# Table of Contents

<b>1. Introduction: The Committee on Standards in Public Life</b>	<b>4</b>
<b>2. The House of Commons</b>	<b>7</b>
2.1 Summary of standards	7
2.2 Institutions	8
2.2.1 Parliamentary Commissioner for Standards	8
2.2.2 Committee on Standards	13
2.2.3 Independent Parliamentary Standards Authority	15
<b>3. The House of Lords</b>	<b>17</b>
3.1 Summary of standards	17
3.2 Institutions	18
3.2.1 Commissioner for Standards in the House of Lords	18
3.2.2 Conduct Committee	20
<b>4. The Government</b>	<b>23</b>
4.1 Summary of standards	23
4.2 Institutions	24
4.2.1 Prime Minister (and the Cabinet Office)	24
4.2.2 Independent Adviser on Ministers' Interests	25
4.2.3 Advisory Committee on Business Appointments	26
4.2.4 House of Lords Appointments Commission	28
<b>5. The Civil Service</b>	<b>30</b>
5.1 Summary of standards	30
5.2 Institutions	33
5.2.1 Civil Service Commission	33
5.2.2 Parliamentary and Health Service Ombudsman	35
5.2.3 Advisory Committee on Business Appointments	35
5.2.4 Commissioner for Public Appointments	35
<b>6. The Judiciary</b>	<b>39</b>
6.1 Summary of standards	39
6.2 Institutions	41
6.2.1 Lord Chancellor and Lord Chief Justice	41
6.2.2 Judicial Conduct Investigations Office	42
6.2.3 Judicial Appointments Commission	43
6.2.4 Judicial Appointments and Conduct Ombudsman	43
<b>7. Local government</b>	<b>45</b>
7.1 Summary of Standards	45
7.2 Institutions	46
7.2.1 Local authorities and Councils	46
7.2.2 Local Government and Social Care Ombudsman	48

<b>8. Political Parties</b>	<b>49</b>
8.1 Summary of Standards	49
8.2 Institutions	52
8.2.1 The Electoral Commission	52
8.2.2 The Speaker's Committee	53
<b>9. Third-party actors</b>	<b>54</b>
9.1 Summary of standards	54
9.2 Lobbyists and campaigning organisations	55
9.2.1 Office of the Registrar of Consultant Lobbyists	55
9.3 Third party service providers	56
<b>10. Conclusions</b>	<b>59</b>

# 1. Introduction: The Committee on Standards in Public Life

The current standards regime largely originated with the establishment of the Committee on Standards in Public Life (CSPL) in October 1994. The Committee was set up by the then Prime Minister John Major to address increasing concerns about public standards, and was prompted in particular by the cash for questions scandal that engulfed Parliament following an investigation by *The Guardian* newspaper.<sup>3</sup>

The Committee's 1994 Terms of Reference were:

To examine current concerns about standards of conduct of all holders of public office, including arrangements relating to financial and commercial activities, and make recommendations as to any changes in present arrangements which might be required to ensure the highest standards of propriety in public life.<sup>4</sup>

The Committee's first report—the Nolan Report—was published in 1995, and its recommendations set the groundwork for a new standards regime underpinned by the Seven Principles of Public Life (the Nolan Principles): selflessness, integrity, objectivity, accountability, openness, honesty and leadership.<sup>5</sup> These Principles establish a “golden thread” weaving its way through the warp and weft of the UK standards regime, conferring on the system both character and coherence. So appealing is the pattern that the golden thread traces, that the Nolan Principles have gained international recognition and 25 years on remain central to our understanding of the role and responsibilities of individuals in public life.

Since 1994, the Committee has published 23 reports on a range of public standards issues and made recommendations for change across a whole range of institutions.<sup>6</sup> As a non-departmental public body sponsored by the Cabinet Office, the Committee's recommendations are advisory, but nevertheless have had a significant impact on both the structure and culture of the standards regime as it has evolved. The Committee's recommendations have led to reform in both Houses of Parliament, the formalisation of standards for the Civil Service and the establishment of the Electoral Commission. CSPL has also made headway in tackling lobbying, addressing governance in local government and considering standards for providers of public services.

The Committee's widening remit over the years demonstrates an increasing interest in groups that are not strictly public officials: in 1997 its Terms of Reference were expanded to consider funding to political parties, and in 2013 they were expanded again to examine ethical issues related to public services provided by private and voluntary sector organisations.<sup>7</sup> In 2016, the Committee published a report on the regulation of public regulators, which again demonstrated the increasing reach of the Committee and its interests.<sup>8</sup> This reflects wider concerns about standards of conduct in public life and the interaction of public officials and society more broadly. As demonstrated in the analysis that follows, a central concern of the standards regime is to manage these interactions and the conflicts that arise between public

---

<sup>3</sup> See: <https://www.theguardian.com/uk/1999/dec/22/hamiltonvalfayed>

<sup>4</sup> See: <https://www.gov.uk/government/organisations/the-committee-on-standards-in-public-life/about/terms-of-reference>

<sup>5</sup> Nolan Report: Standards in Public Life, First Report of the Committee on Standards in Public Life, May 1995, 14: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/336919/1stInquiryReport.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/336919/1stInquiryReport.pdf)

<sup>6</sup> See: <https://www.gov.uk/government/collections/cspl-reports>

<sup>7</sup> See: <https://www.gov.uk/government/organisations/the-committee-on-standards-in-public-life/about/terms-of-reference>

<sup>8</sup> Committee on Standards in Public Life, *Striking the Balance: Upholding the Seven Principles of Public Life in Regulation*, September 2016: <https://www.gov.uk/government/publications/striking-the-balance-upholding-the-7-principles-in-regulation>

officials' private interests—both financial and non-financial—and the need to ensure public propriety in the pursuit of the public interest and the delivery of public services.

The regulation of standards directly engages questions of proportionality and judgement. Hard and fast rules can be blunt instruments and decisions around public standards always involve matters of interpretation and political negotiation. The standards regime therefore relies primarily on a set of principles—the golden thread—that guides behaviour, but implementing these principles depends upon a range of mechanisms and actors working together. Political parties, the media and civil society each have a role to play in monitoring and holding to account behaviour that breaches the collectively agreed principles governing how individuals should behave in their public lives, and increasingly in their private lives too.

Balance is fundamental to a well-functioning system. Formal mechanisms, including increasing transparency and accountability, can assist informal controls on behaviour by providing information to the media, civil society watchdogs and the public. However, increased transparency in public life must be met with the skills, resources and “political will” to respond effectively to what is revealed. Formal measures also need to engage with the environments where they are enacted; in which politicians must have the freedom to negotiate and compromise to achieve their policy goals,<sup>9</sup> and where the judiciary must maintain its independence in the face of potentially dissenting public views or to protect minority groups.<sup>10</sup>

The task of striking this fine balance is all the more difficult as the context in which political decision-making and the implementation of public policy takes place becomes increasingly complex and adversarial. The standards regime has evolved a range of “institutional innovations”<sup>11</sup> to address the challenges brought about by this changing context. However, other challenges have arisen too: diminishing resources;<sup>12</sup> the new and largely uncharted challenges of tackling the growing prominence and agility of lobbyists; the increased pressures to deliver quality public services; and the potentially significant implications of the digital revolution for political campaigning. All of these areas need to be addressed and balanced proportionately to protect democratic rights and freedoms.

This report provides a starting point for considering the formal institutions that make up the standards regime in 2019 and how they have navigated the changing political landscape over the last 25 years. It is structured into eight sections, which describe the standards in each area and how they have evolved over time.

The report begins with considering the standards regime at the centre of the political system—including the *House of Commons*, the *House of Lords* and the *Government*—in which there have been profound changes to the institutional structure and approach. In recent times this has included acknowledgement of the urgent need to address cultures of bullying and harassment within its institutions; not only for the benefit and justice of the individuals concerned, but also to protect the functioning of the democratic system.<sup>13</sup>

---

<sup>9</sup> Philp, M. 2001. “Access, accountability and authority: Corruption and the Democratic Process”, *Crime Law and Social Change* 36: 357-377, 372.

<sup>10</sup> Shetreet, S. and Turenne, S. *Judges on Trial: The Independence and Accountability of the English Judiciary*. Cambridge: Cambridge University Press, 14.

<sup>11</sup> Hine and Peele 2016, 1.

<sup>12</sup> See the Report of the Triennial Review of the Committee on Standards in Public Life, 2013: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/80189/Triennial\\_Review\\_of\\_CSPL\\_Dec-2012.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/80189/Triennial_Review_of_CSPL_Dec-2012.pdf)

<sup>13</sup> See Statement by Committee on Standards, 24 October 2018, quoted by Kelly, R. Independent Complaints and Grievance Scheme, House of Commons Library Briefing Paper No. 08369, 16 July 2019, 34: <https://researchbriefings.parliament.uk/ResearchBriefing/Summary/CBP-8369>

The report moves on to consider the *Civil Service and the Judiciary*, and the on-going challenges of maintaining their independence and impartiality, particularly for the Civil Service where institutional culture and management changes have placed it under considerable strain. An analysis of *Local Government* follows, which illustrates a complex changing environment where in recent years the responsibility for ethical standards has been devolved to local authorities with the abolition of any formal independent regulatory authority.

Finally, the report considers the regulation of groups and individuals that are not strictly public officials—*Political Parties, Lobbyists and Providers of Public Services*. Each of these groups poses their own unique challenges to regulation, but their incorporation into the system of public standards indicates the increasing reach of the regime as it responds to contemporary Britain and the transformations taking place in its approaches to governance, management and the provision of public services.

With a few notable exceptions, the pattern of change over time is towards the codification and embedding of standards through the use of codes of conduct and guidance, transparency and accountability mechanisms, ethics training and the provision of tailored advice. Nonetheless there remains a considerable degree of discretion in the system, which is most evident in political and judicial institutions where there is a strong preference for self-regulation and case-by-case judgements. This demonstrates a tension in the system that on the one hand aims to ensure consistent application of standards of conduct expected by the public, and on the other maintains respect for the sovereignty of political decision-making in political institutions and the independence and impartiality of the judiciary.

## 2. The House of Commons

- Code of Conduct – principles and rules
- Guide to the Rules
- Parliamentary Commissioner for Standards
- Committee on Standards
- Independent Parliamentary Standards Authority

### 2.1 Summary of standards

As the elected chamber of the United Kingdom's Parliament, members of the House of Commons (MPs) come under the greatest public and institutional scrutiny. The regime governing MPs' standards of behaviour has changed profoundly since the 1990s, from one that relied mainly on self-regulation to one that is increasingly overseen by rules, regulations and a number of independent bodies and officers.<sup>14</sup>

The Committee on Standards in Public Life (CSPL) published its first report—the Nolan Report—in 1995, with 11 recommendations to address standards in the House of Commons. These included a restatement of the ban on paid advocacy, the introduction of a Code of Conduct, a more detailed disclosure of interests, expanded guidance on conflicts of interest, and the appointment of a Parliamentary Commissioner for Standards.<sup>15</sup> The recommendations were initially resisted by many MPs who were concerned to avoid outside regulation and viewed the report as an attack on the sovereignty of Parliament,<sup>16</sup> but in time all the recommendations made in 1995 were implemented.<sup>17</sup>

#### Code of Conduct

Since 1996, Members of Parliament (MPs) have been subject to a Code of Conduct (the Code), which outlines the duties of MPs, the general principles of conduct expected of them based on the Seven Principles of Public Life and the Rules of Conduct.<sup>18</sup> The Code places emphasis on serving the public interest and significantly it provides a clear rule on resolving any “conflicts of interest”:

Members shall base their conduct on a consideration of the public interest, avoid conflict between personal interest and the public interest and resolve any conflict between the two, at once, and in favour of the public interest (paragraph 11).

Managing conflicts of interest is the cornerstone of the public standards regime. A central feature of the work of politics is to negotiate between and reconcile competing interests in society. The subversion of that process by the pursuit of private or covert group interests seriously hampers its ability to perform its basic function.<sup>19</sup> This requires a careful balancing in the case of politicians, however, as the standard of impartiality in public office,<sup>20</sup> does not apply to them with the same force as it does to other public roles. In the British system, MPs

---

<sup>14</sup> See Hine and Peele 2016, 69.

<sup>15</sup> For a full list of House of Commons recommendations see: The Nolan Report 1995, 7-9.

<sup>16</sup> Oliver, D. 1997. “Regulating the conduct of MPs. The British experience of combating corruption”, *Political Studies* XLV: 539–558, 549.

<sup>17</sup> Oliver 1997, 549.

<sup>18</sup> House of Commons, Code of Conduct, August 2018: <https://publications.parliament.uk/pa/cm201719/cmcode/1474/1474.pdf>

<sup>19</sup> For a fuller discussion: Philp, M. 1997. “Defining political corruption”, *Political Studies* 45 (3): 436–462, 453.

<sup>20</sup> Rothstein, B. and Teorell, J. 2008. “What is quality of government? A theory of impartial government institutions”, *Governance* 21(2): 165–190.

have “a special duty to their constituents” (paragraph 6) and are also usually members of political parties. It is explicit in the political nature of the role of politicians that they will necessarily be called upon to make partial decisions,<sup>21</sup> and at times work directly to assist individual constituents.<sup>22</sup> Outright “paid advocacy” or the receipt of a bribe to influence an MP’s conduct is banned (paragraphs 12, 13), but the regulation of outside interests is primarily governed by the registration of interests and by declarations whenever they are relevant in debates or committee proceedings (paragraph 14).

Recommendations made by the CSPL in 2018 specifically addressed MPs’ outside interests, and included a recognition that the context in which MPs work has become increasingly complex.<sup>23</sup> It argued that while the majority of MPs do not have outside interests that could come into conflict with their public roles, a small number risked “undermining trust in Parliament and Parliamentarians”.<sup>24</sup> It recommended amendments to the Code of Conduct specifically aimed at clarifying the principles that “outside activity ... should not prevent [MPs] from carrying out their range of duties” (recommendation 1); and prohibiting acting as “political or Parliamentary consultants or advisers” (recommendation 10).<sup>25</sup>

### Guide to the Rules

A Guide to the Rules accompanies the Code, and this provides some clarity on the declaration of interests by MPs, which sets a high bar:

The test is whether those interests might reasonably be thought by others to influence his or her actions or words as a Member (paragraph 9).

It is not sufficient for MPs to be confident that any interests they have are not in conflict, they must make judgements based on the reasonable perceptions of others. The Committee on Standards addressed the interpretation of this test in 2015. Its deliberations found the MP concerned not in breach of the rules, but that “more clarity” should be provided in future.<sup>26</sup> The Guide further details the arrangements for the registration and declaration of financial interests, the thorny issue of lobbying and the procedures for inquiries when there are alleged breaches of the Code.<sup>27</sup>

The primary upholders of standards in the House of Commons are the **Parliamentary Commissioner for Standards**, overseen by the **Committee on Standards**, and the **Independent Parliamentary Standards Authority (IPSA)**, which regulates MPs’ salaries and expenses and is overseen by the **Speaker’s Committee**. The **Speaker** is directly responsible for conduct in the chamber.

## 2.2 Institutions

### 2.2.1 Parliamentary Commissioner for Standards (Office)

---

<sup>21</sup> Philp, M. 2017. “The corruption of politics.” *Social Philosophy and Policy*, 34, 8. Permanent WRAP URL: <http://wrap.warwick.ac.uk/90797>

<sup>22</sup> Committee on Standards, *The Standards System in the House of Commons*, 10 February 2015, 22: <https://publications.parliament.uk/pa/cm201415/cmselect/cmstandards/383/383.pdf>

<sup>23</sup> Committee on Standards in Public Life (CSPL), *MPs’ Outside Interests*, July 2018: <https://www.gov.uk/government/publications/mps-outside-interests>

<sup>24</sup> CSPL, July 2018, 8.

<sup>25</sup> CSPL, July 2018, 10-11.

<sup>26</sup> Committee on Standards, Mr Peter Lilley, *Fifth Report of Session 2014-15*: <https://publications.parliament.uk/pa/cm201415/cmselect/cmstandards/951/951.pdf>

<sup>27</sup> Guide to the Rules relating to the Conduct of Members, April 2015: <https://publications.parliament.uk/pa/cm201516/cmcode/1076/1076.pdf>



The Commissioner's Office was established in 1995 following the recommendations of the Nolan Report. The Commissioner is an independent officer in the House of Commons and is responsible for overseeing and updating the Code, keeping the registers of interests, including the Register of Members' Financial Interests, and conducting investigations into breaches of the Code.

The Commissioner is appointed from outside the House of Commons in an open competition.<sup>28</sup> The House of Commons appointed the current Commissioner on 1 January 2018 for a fixed non-renewable term of five years. In January 2019, changes were made to the Commissioner's remit and independence, including the removal of the requirement on the Commissioner to consult the Standards Committee before investigating historical allegations (over seven years old) or those relating to a former MP and also the need to consult the Committee prior to referring a matter to the police. The Commissioner has stated that this has "reinforced" her independence.<sup>29</sup>

### **Upholding and reviewing the Code and Guide to the Rules**

The Commissioner makes recommendations to the Committee on Standards (or previously the Committee on Standards and Privileges) about necessary revisions to the Code and Guide to the Rules, which are then presented to Parliament for approval. In 2002, the CSPL recommended that the Commissioner should conduct a review of the Code of Conduct once in every parliament.<sup>30</sup> While this recommendation has not been followed precisely—there was no review in 2005-10 Parliament—there have been regular reviews, often following public consultations.<sup>31</sup>

There was a major review of the Code in 2004, adding a conduct rule on allowances.<sup>32</sup> Amendments made in 2009 sought to ensure that the details of all external earnings of MPs were recorded in the register, removing the minimum threshold.<sup>33</sup> A review 18 months later found the changes onerous and the House of Commons accepted the Committee's recommendation that registration thresholds should be imposed.<sup>34</sup> Currently MPs must register individual payments over £100 or individual payments of £100 or less if these payments together from one source total over £300 (paragraph 6).<sup>35</sup>

In late 2011-2012, the Committee again recommended changes to the Code, based on proposals made by the Commissioner.<sup>36</sup> This included bringing within scope MPs' private lives when their personal conduct damages the integrity of the House as a whole:

---

<sup>28</sup> Committee on Standards, 10 February 2015, 17.

<sup>29</sup> Parliamentary Commissioner for Standards (PCS), Annual Report 2018-19, 25 July 2019, 7: <https://www.parliament.uk/documents/pcs/PCS-Annual-Report-2018-19.pdf>

<sup>30</sup> Committee on Standards in Public Life. Standards of Conduct in the House of Commons, November 2002, 1: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/336882/8thInquiry\\_Fullreport.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/336882/8thInquiry_Fullreport.pdf)

<sup>31</sup> Hine and Peele 2016, 84. The Commissioner has twice conducted public consultations on the Code (in 2011 and 2016) and the Guide (in 2012 and 2016), which have been used to inform reviews and recommendations for change; see: <https://www.parliament.uk/mps-lords-and-offices/standards-and-financial-interests/parliamentary-commissioner-for-standards/publications/press-notices/>; alterations of the Code and Guide to the Rules can be found here: <https://publications.parliament.uk/pa/cm/cmcode.htm>

<sup>32</sup> Gay, O. and Kelly, R., The Code of Conduct for Members—Recent Changes, Standard Note SN/PC/05127, House of Commons Library, 16 March 2015, 4: <https://researchbriefings.parliament.uk/ResearchBriefing/Summary/SN05127>

<sup>33</sup> PCS, Annual Report 2017-18, 26 June 2018, 17: <https://www.parliament.uk/documents/pcs/PCS-Annual-Report-2017-18.pdf>

<sup>34</sup> See: <https://publications.parliament.uk/pa/cm201011/cmselect/cmstnprv/749/74903.htm#a4>

<sup>35</sup> There are varying thresholds for the various categories of registration.

<sup>36</sup> Hine and Peele 2016, 84.

... we accept the Commissioner's recommendation that cases in which a Member's conduct in private or wider public life is so extreme that it damages the reputation of the House should fall within the Code.<sup>37</sup>

A revised Code was approved by Parliament in March 2012, with two notable changes, which proved controversial, raising concerns about MPs' privacy.<sup>38</sup> First, in order to clarify the public and private behaviours subject to the code, the wording was changed to:

The Code applies to a Member's conduct which relates in any way to their membership of the House. The Code does not seek to regulate the conduct of Members in their purely private and personal lives or in the conduct of their wider public lives unless such conduct significantly damages the reputation and integrity of the House of Commons as a whole or of its Members generally.<sup>39</sup>

The second change, inserted as an amendment during the debate on the Code,<sup>40</sup> limited the remit of the Commissioner to investigate specific matters relating only to the conduct of a Member in their private and personal lives (paragraph 17); although this would not limit the ability of the Commissioner to investigate matters in which personal and public lives intersected. In the 2015 revision of the Code, however, the wording changed again, now simply stating that "The Code applies to Members in all aspects of their public life. It does not seek to regulate what Members do in their purely private and personal lives."<sup>41</sup>

In July 2018, the CSPL issued a report on MPs' outside interests, which recognised the changing nature of MPs' working lives since the 1990s and regretted that recommendations made in 2009 had not been fully implemented.<sup>42</sup> It suggested a new package of reforms, including changes to the Code and the recommendation that MPs should not accept "any but the most insignificant or incidental gift, benefit or hospitality from lobbyists" (recommendation 7). The Committee on Standards (see below) is currently considering these proposals and recommendations previously made by the Commissioner in 2017.<sup>43</sup>

Since its latest iteration in August 2018, the Code of Conduct has also included reference to the Behaviour Code (paragraph 9) and a rule on the treatment of staff and others "with dignity, courtesy and respect" (paragraph 18).<sup>44</sup> This addition to the Code was agreed by parliament on 19 July 2018, in response to concerning reports of bullying, harassment and sexual harassment in the Houses of Parliament, and is part of an on-going process to deal with the problem through the Independent Complaints and Grievance Policy (see below).<sup>45</sup>

The Commissioner's Office ensures that MPs are offered a one-to-one briefing when they enter parliament for the first time to ensure they are aware of the Code and the Guide to the Rules. Of the 99 new MPs following the 2017 general election, 96 accepted the offer. Three Sinn Fein MPs declined, as they do not participate in parliamentary life in Westminster.<sup>46</sup>

---

<sup>37</sup> Committee on Standards and Privileges. Review of the Code of Conduct, 1 November 2011, 6.

<https://publications.parliament.uk/pa/cm201012/cmselect/cmstnprv/1579/1579.pdf>

<sup>38</sup> See Hine and Peele 2016, 84.

<sup>39</sup> See: <https://publications.parliament.uk/pa/cm201012/cmcode/1885/1885.pdf>

<sup>40</sup> Gay and Kelly, 16 March 2015, 12.

<sup>41</sup> See: <https://publications.parliament.uk/pa/cm201719/cmcode/1474/1474.pdf>

<sup>42</sup> Committee on Standards in Public Life. MPs' outside interests, 3 July 2018:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/721697/CSPL\\_MPs\\_outside\\_interests\\_-\\_full\\_report.PDF](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/721697/CSPL_MPs_outside_interests_-_full_report.PDF)

<sup>43</sup> Committee on Standards, Independent Complaints and Grievance Policy: Implementation, 13 July 2018, 5:

<https://publications.parliament.uk/pa/cm201719/cmselect/cmstandards/1396/1396.pdf>

<sup>44</sup> See: <https://www.parliament.uk/documents/UK%20Parliament%20Behaviour%20Code.pdf>

<sup>45</sup> See Kelly, 16 July 2019, 4.

<sup>46</sup> PCS, 26 June 2018, 5.

## Registers of Interests

The first register of member's interests was created in February 1974, but the level of detail required was increased considerably by the recommendations of the Nolan Report and updated regularly in revisions of the Code and Guide to the Rules.<sup>47</sup> The significance of these registers in demonstrating transparency in Parliament and providing public confidence in the management of MPs' interests cannot be underestimated. As well as registering their interests, MPs also have to make ad hoc disclosures, which cover a wider range of interests than those they are required to register.

The Commissioner's Office is now responsible for administering four registers: the Register of Financial Interests, Register of interests of Members' Secretaries and Research Assistants, Register of Journalists' interests, and Register of All-Party Parliamentary Groups (APPGs). The registers reflect the ways in which conflicts of interest might enter parliament. APPGs in particular have come under scrutiny for providing an access point for lobbyists to exert influence on policy processes.<sup>48</sup> Nevertheless, the primary emphasis in the regime is the careful consideration of MPs' financial interests.

The Guide to the Rules provides detail on the Registration of Members Financial Interests.<sup>49</sup> MPs are required to register financial and other registrable benefits received in the previous 12 months before their election, within one month of entering parliament; and thereafter to register any benefits within 28 days (paragraph 2). Any MP who has a registrable interest must inform the Commissioner before undertaking "any action, speech or proceeding of the House" (paragraph 3).

The Guide to the Rules provides details of the requirements for registration. These include registering employment and earnings, donations and other support for activities as members of parliament, gifts, benefits and hospitality (UK and overseas), visits abroad, land and property, shareholdings, miscellaneous, employment of family members and family members engaged in lobbying. MPs can also get confidential advice on the requirements of registration from the Registrar of Members interests.

The 2018 CSPL report on MPs' outside interests, while recognising that restrictions on MPs activities outside Parliament should remain reasonable, raised concerns about non-pecuniary interests and suggested that these should be registered on the same basis as pecuniary interests (recommendation 3).<sup>50</sup> It also highlighted the need for the Register to be more digitally accessible to the public and other MPs (recommendation 4).<sup>51</sup>

## Breaches of the Code

The Commissioner is responsible for responding to allegations of breaches of the Code of Conduct. The Commissioner:

- Considers complaints alleging that a Member of Parliament has breached the Code of Conduct and its associated rules
- If he or she thinks fit, investigates specific matters which have come to his or her attention relating to the conduct of a Member

---

<sup>47</sup> Hine and Peele 2016, 85.

<sup>48</sup> Hine and Peele 2016, 203.

<sup>49</sup> See: <https://publications.parliament.uk/pa/cm201516/cmcode/1076/1076.pdf>

<sup>50</sup> Currently the Guide to the Rules states: "The Miscellaneous category may also be used to register non-financial interests when the Member considers these meet the purpose of the register"; and "Members may also declare, if they think it appropriate, non-financial interests which are not registered but which they consider meet the test of relevance".

<sup>51</sup> Committee on Standards in Public Life, 3 July 2018.

- Exceptionally, enquires into a matter referred to the Commissioner by a Member in relation to his or her own conduct.<sup>52</sup>

An inquiry is opened if there is sufficient evidence provided; unsubstantiated allegations do not require the Commissioner to look for supporting evidence. Since May 2010, allegations in relation to parliamentary expenses are referred to the Independent Parliamentary Standards Authority (IPSA) (see below). However, where IPSA's Compliance Officer considers it justified, a case can be referred to the Commissioner, with the relevant evidence, for the Commissioner to decide whether to open an investigation.<sup>53</sup> Complaints must be submitted in writing, including as of January 2019 by email,<sup>54</sup> and complaints should also be copied to the MP concerned "as a basic courtesy".<sup>55</sup>

The Commissioner may conclude an inquiry in three ways: decide not to uphold the complaint; find a breach at the "less serious end of the spectrum", which can lead to a rectification procedure, if agreed to by the MP; or find a breach unsuitable for rectification or raising issues of wider concern. In the final case, the Commissioner reports to the Committee on Standards, which then reaches a conclusion on the breach of the rules and can recommend sanctions to the House (see below).<sup>56</sup>

Until July 2018, the Commissioner announced the commencement of an investigation publicly. This announcement of investigations ceased as one element of the new Independent Complaints and Grievance Scheme (ICGS), as it was considered appropriate to maintain the confidentiality of the individuals concerned until a decision had been confirmed.<sup>57</sup> There has been some consternation that the change has been applied to all categories of investigation and not limited to those with particular sensitivities.<sup>58</sup> The Commissioner has referred to the move as being "against the principles of openness and accountability".<sup>59</sup>

The number of formal complaints against named MPs fluctuate each year, and are reported in the Commissioner's Annual Report: in 2018-19 there were a total of 138 formal allegations, of which 18 resulted in an investigation.<sup>60</sup> Only three investigations were referred to the Committee on Standards on finding a serious breach of the rules, two of which involved the same individual,<sup>61</sup> suggesting that breaches are in general of a minor nature.

The Commissioner found in 2017-18 that 60% of the complaints received fell outside her remit.<sup>62</sup> In 2015, the Commissioner gave evidence that a large proportion of complaints (then 80%) were related to MPs' handling of individual cases and constituency issues.<sup>63</sup> MPs are held politically accountable for their constituency roles in elections every five years. To address this issue, the Committee recommended that the Commissioner should inform MPs about complaints received beyond the Commissioner's remit.<sup>64</sup>

### **Independent Complaints and Grievance Scheme**

<sup>52</sup> Guide to the Rules, Chapter 4, paragraph 2.

<sup>53</sup> Guide to the Rules, Chapter 4, paragraph 5.

<sup>54</sup> Committee on Standards, Implications of the Dame Laura Cox Report for the House's Standards System: Initial proposals, 10 December 2018: <https://publications.parliament.uk/pa/cm201719/cmselect/cmstandards/1726/1726.pdf>

<sup>55</sup> Guide to the Rules, Chapter 4, paragraph 7.

<sup>56</sup> See: <https://www.parliament.uk/mps-lords-and-offices/standards-and-financial-interests/parliamentary-commissioner-for-standards/complaints-and-investigations/>

<sup>57</sup> Committee on Standards, The Committee's Role in ICGS Appeals, 13 March 2019, 12:

<https://publications.parliament.uk/pa/cm201719/cmselect/cmstandards/1976/1976.pdf>

<sup>58</sup> See comments in Committee on Standards, 13 March 2019, 12-13.

<sup>59</sup> PCS, 25 July 2019, 3.

<sup>60</sup> PCS, 25 July 2019, 13.

<sup>61</sup> PCS, 25 July 2019, 15.

<sup>62</sup> PCS, 26 June 2018, 9.

<sup>63</sup> Committee on Standards, 10 February 2015, 42.

<sup>64</sup> Committee on Standards, 10 February 2015, 44.

Reports of bullying and harassment of staff and Members in Parliament came to light in November 2017 and set in motion initiatives to tackle the problem and institute an Independent Complaints and Grievance Scheme (ICGS). Dame Laura Cox's report into the bullying and harassment of House of Commons staff, published in October 2018, emphasised the need for "broad cultural change" to address the problems.<sup>65</sup> A further report by Gemma White QC, published in July 2019, examined the "unacceptable risk of bullying and harassment" faced by the staff of MPs, concluding that the problem was "sufficiently widespread to require an urgent collective response".<sup>66</sup>

The ICGS has been in operation since 19 July 2018, and has initially provided the Commissioner with additional remit to deal with breaches of the new Behaviour Code, and enabled the Commissioner to determine complaints about bullying, harassment and sexual harassment.<sup>67</sup> The process has involved the creation of specialised helplines for those seeking advice and guidance, with follow up investigations being conducted by independent case managers under the supervision of the Commissioner. The Commissioner makes a determination in each case, but serious cases are referred to a Sub-Committee of the Committee on Standards for the consideration of sanctions, and the Sub-Committee is always comprised of three lay members and two MPs to ensure a lay majority. The Sub-Committee is also able to hear appeals on the Commissioner's decisions (see below).<sup>68</sup>

At the time of writing, the implementation of the ICGS is still in progress. The six-month review of the ICGS identified an underestimation of the "procedural complexity" of the initiative and as a consequence the insufficient allocation of resources.<sup>69</sup> In response the review made five recommendations to effectively identify accountabilities of senior leaders, create a fully resourced bicameral ICGS team, a new dedicated approach to communication of the ICGS, proactive use of the Behaviour Code and training for all members of the Parliamentary community.<sup>70</sup> In 2018-19, the Commissioner dealt with fewer than 10 cases brought during the first year of the scheme. The Commissioner was also able to identify some challenges with the system, however, including that it had been slow to gain the confidence of users, had been difficult to keep cases confidential, despite not releasing any information about on-going cases itself, and that certain cases appeared to overlap with performance management procedures.<sup>71</sup>

## 2.2.2 Committee on Standards

The Committee on Standards comprises seven MPs and seven lay members, following a recommendation made in 2015 to expand and rebalance the membership— there were previously 10 MPs and three lay members.<sup>72</sup> The Chair of the Committee is a senior

---

<sup>65</sup> Cox, L., The Bullying and Harassment of House of Commons Staff: Independent Inquiry Report, 15 October 2018, 5: <https://www.parliament.uk/documents/Conduct%20in%20Parliament/dame-laura-cox-independent-inquiry-report.pdf>

<sup>66</sup> White, G., Bullying and Harassment of MPs' Parliamentary Staff: Independent Inquiry Report, 11 July 2019, 3: [https://www.parliament.uk/documents/Conduct%20in%20Parliament/GWQC%20Inquiry%20Report%2011%20July%202019\\_.pdf](https://www.parliament.uk/documents/Conduct%20in%20Parliament/GWQC%20Inquiry%20Report%2011%20July%202019_.pdf)

<sup>67</sup> PCS, 25 July 2019, 3.

<sup>68</sup> PCS, 25 July 2019, 11.

<sup>69</sup> Stanley, A. Independent 6-month Review: UK Parliament Independent Complaints and Grievance Scheme, 31 May 2019, 9: <https://www.parliament.uk/documents/Conduct%20in%20Parliament/ICGS%20six-month%20review%20-%20FINAL%20REPORT.pdf>

<sup>70</sup> Stanley, 31 May 2019, 9-10.

<sup>71</sup> PCS, 25 July 2019, 18.

<sup>72</sup> Committee on Standards, 10 February 2015, 39.

opposition MP; the members are appointed rather than elected by the House and there is no government majority in its make-up.<sup>73</sup>

Until January 2019, lay members did not have a vote,<sup>74</sup> but their voting rights were extended in order to ensure that interim procedures for deciding on cases related to bullying, harassment and sexual harassment were not solely handled and controlled by MPs. Nevertheless, they had considerable powers including the right to participate fully in discussions and to append opinions to Committee reports. The Committee cannot meet without the presence of a lay member, so they have the option to withdraw their presence and prevent the continuation of the Committee deliberations and decision-making.<sup>75</sup>

The Committee on Standards was established in December 2012, following its separation from the former Committee on Standards and Privileges. Its role involves:

- Overseeing the work of the Parliamentary Commissioner for Standards
- Examining the arrangements proposed by the Commissioner for the compilation, maintenance and accessibility of the registers, and reviewing their form and content
- Considering complaints referred to it by the Commissioner relating to the register of interests of other breaches of the Code
- Recommending modifications to the Code as necessary.<sup>76</sup>

### **Resolution of inquiries**

The Committee can consider any matter relating to the conduct of MPs, including specific allegations brought to its attention by the Commissioner. It can compel members to appear before it and require specific documents to be submitted to it by MPs.<sup>77</sup>

Where the Commissioner has determined that there has been a breach of the rules and the Committee agrees, sanctions can be recommended, including: a written apology, an apology on the floor of the House by means of a point of order or personal statement; the withdrawal of Parliamentary passes for non-Members, either temporarily or permanently; and suspension from the service of the House for a specified number of sitting days. It also has the power to recommend expulsion for the most serious cases.<sup>78</sup> The process does not include a right to appeal.<sup>79</sup> On 3 May 2019, the Committee launched an inquiry into possible reforms to the system of sanctions for the breach of the Code of Conduct.<sup>80</sup>

The Committee can also make reports to the House of Commons on other matters referred to it by the Commissioner.<sup>81</sup> The Committee publishes its reports on inquiries and other matters on its website.<sup>82</sup>

Since July 2018, it has also had an interim role in considering appeals related to bullying, harassment and sexual harassment.<sup>83</sup> The Committee delegates these appeals, and cases escalated by the Commissioner, to an Appeals Sub-Committee. On an application for an appeal, the Sub-Committee first decides whether there are grounds—in which case there should be procedural flaw in the investigation or decision-making, or the availability of

---

<sup>73</sup> See: <https://www.parliament.uk/business/committees/committees-a-z/commons-select/standards/membership/>

<sup>74</sup> Committee on Standards, 13 March 2019, 3.

<sup>75</sup> Committee on Standards, 10 February 2015, 37.

<sup>76</sup> See: <https://www.parliament.uk/business/committees/committees-a-z/commons-select/standards/role/>

<sup>77</sup> Guide to the Rules, Chapter 4, paragraph 19.

<sup>78</sup> Guide to the Rules, Chapter 4, paragraph 20.

<sup>79</sup> Hine and Peele 2016, 139.

<sup>80</sup> See: <https://www.parliament.uk/business/committees/committees-a-z/commons-select/standards/inquiries/parliament-2017/sanctions-inquiry-17-19/>

<sup>81</sup> Guide to the Rules, Chapter 4, paragraph 21.

<sup>82</sup> See: <https://www.parliament.uk/business/committees/committees-a-z/commons-select/standards/publications/>

<sup>83</sup> Committee on Standards, 13 March 2019, 4.

significant new evidence.<sup>84</sup> The Sub-Committee can require that an investigation is re-opened or reconsider any sanctions imposed by the Commissioner and in most cases considerations would be made by reference to documents, rather than requiring the complainant or respondent appear before the Committee.<sup>85</sup>

### 2.2.3 Independent Parliamentary Standards Authority

The 2009 scandal on parliamentary expenses led to the creation of an “independent extra-parliamentary body”<sup>86</sup>—the Independent Parliamentary Standards Authority (IPSA)—to regulate MPs’ salaries, pensions, business costs and expenses.<sup>87</sup>

The establishment of this authority was a major departure from the previously held principle of self-regulation in the House of Commons,<sup>88</sup> which led to some controversy and “sustained and intensive scrutiny” in its first few years.<sup>89</sup> On the whole, however, its establishment has tackled the problem of abuses that led to the 2009 scandal.<sup>90</sup> In 2017-18, IPSA found high levels of compliance by MPs, with only 0.4% of claims assessed as being outside the scheme.<sup>91</sup>

IPSA was established in May 2010 to:

- Regulate MPs’ business costs and expenses
- Determine MPs’ pay and pension arrangements
- Provide financial support to MPs in carrying out their parliamentary functions.<sup>92</sup>

IPSA is independent, but also accountable to the House of Commons, and subject to a high level of scrutiny in its consultation processes. It is required to consult with nine different institutions in the preparation of its expenses scheme.<sup>93</sup> It has to lay before the House its scheme for expenses (and any revisions); has to produce an annual report and annual estimates for a parliamentary vote; and its annual accounts go to the National Audit Office.<sup>94</sup>

It is generally accountable to the Speaker’s Committee for the Independent Parliamentary Standards Authority (see below); but other relevant committees include the Public Accounts Committee for oversight of its value for money, and the Members’ Estimates Committee.<sup>95</sup>

IPSA produces an annual report, which includes the report of its Compliance Officer (see below), which is presented to Parliament by the Speaker.

#### Compliance Officer

The Compliance Officer for IPSA is an independent statutory office holder, established by the Parliamentary Standards Act 2009, as amended by the Constitutional Reform and Governance Act 2010. The Officer is appointed by IPSA for a fixed term of five years and IPSA provides the Compliance Officer with adequate resources and staffing.<sup>96</sup>

---

<sup>84</sup> Committee on Standards, 13 March 2019, 6.

<sup>85</sup> Committee on Standards, 13 March 2019, 6

<sup>86</sup> Hine and Peele 2016, 104.

<sup>87</sup> See: <http://www.theipsa.org.uk/>

<sup>88</sup> Hine and Peele 2016, 108.

<sup>89</sup> Hine and Peele 2016, 115.

<sup>90</sup> Hine and Peele 2016, 118.

<sup>91</sup> Independent Parliamentary Standards Authority Annual Report and Accounts 2017-18, 13: <http://www.theipsa.org.uk/media/184891/annual-report-and-accounts-2017-2018.pdf>

<sup>92</sup> See: <http://www.theipsa.org.uk/about-us/who-we-are/>

<sup>93</sup> Parliamentary Standards Act 2009.

<sup>94</sup> Hine and Peele 2016, 113.

<sup>95</sup> Hine and Peele 2016, 114. See: <https://www.parliament.uk/members-expenses-committee>

<sup>96</sup> Parliamentary Standards Act 2009, Schedule 2.

The Compliance Officer's remit is to:

- Conduct an investigation if he or she has reason to believe that a member of the House of Commons may have been paid an amount under the MP's allowances scheme that should not have been allowed
- Review a determination made by IPSA to refuse reimbursement for an expense in whole or in part, at the request of an MP.<sup>97</sup>

The Procedures for the Investigations by the Compliance Officer for IPSA, which was last updated in 2015, guide the investigations.<sup>98</sup> The Compliance Officer can receive complaints in writing, including reasons and evidence, and can request further information from any source before deciding whether to initiate an investigation.<sup>99</sup>

If an investigation is initiated, the Officer can make formal requests for information and must also enable both the MP concerned and IPSA to make representations, prior to and following the report of the provisional findings.<sup>100</sup> The final Statement of Findings is then sent to the complainant, the MP concerned and IPSA with conclusions, recommendations and any Repayment Direction.<sup>101</sup> For transparency, the findings of investigations are published on the Compliance Officer's website.<sup>102</sup>

### **Oversight by the Speaker's Committee**

The Speaker's Committee is made up of 11 members, which form a body to oversee and hold IPSA accountable.<sup>103</sup> The Speaker, Leader of the House and the Chair of the Standards Committee are members, with five further MPs and three lay members appointed by the Committee.<sup>104</sup>

The Committee meets every few months and considers the candidates for the posts of Chair and members of IPSA, as well as approving IPSA's annual estimate of resources. The Speaker proposes the candidates to the Committee following a fair and open competition.<sup>105</sup> The Committee's reports are published on its website.<sup>106</sup>

---

<sup>97</sup> Parliamentary Standards Act 2009. See also: <http://www.parliamentarycompliance.org.uk/Pages/default.aspx>

<sup>98</sup> Procedures for the Investigations by the Compliance Officer for IPSA, Third Edition, January 2015: [http://www.parliamentarycompliance.org.uk/transparency/Documents/Procedures%20for%20Investigations%20of%20the%20Compliance%20Officer%20for%20IPSA%20\(3rd%20Edition\).pdf](http://www.parliamentarycompliance.org.uk/transparency/Documents/Procedures%20for%20Investigations%20of%20the%20Compliance%20Officer%20for%20IPSA%20(3rd%20Edition).pdf)

<sup>99</sup> Procedures for the Investigations by the Compliance Officer for IPSA, 2.

<sup>100</sup> Procedures for the Investigations by the Compliance Officer for IPSA, 3.

<sup>101</sup> Procedures for the Investigations by the Compliance Officer for IPSA, 5.

<sup>102</sup> See: <http://www.parliamentarycompliance.org.uk/transparency/Pages/default.aspx>; Complaints relating to expenses prior to the establishment of IPSA in 2010 are referred to the Parliamentary Commissioner for Standards (see above).

<sup>103</sup> See: <https://www.parliament.uk/business/committees/committees-a-z/other-committees/speakers-committee-for-the-independent-parliamentary-standards-authority/membership/>

<sup>104</sup> See: <https://www.parliament.uk/business/committees/committees-a-z/other-committees/speakers-committee-for-the-independent-parliamentary-standards-authority/>

<sup>105</sup> See: <https://www.parliament.uk/business/committees/committees-a-z/other-committees/speakers-committee-for-the-independent-parliamentary-standards-authority/>

<sup>106</sup> See: <https://www.parliament.uk/business/committees/committees-a-z/other-committees/speakers-committee-for-the-independent-parliamentary-standards-authority/publications/>



## 3. The House of Lords

- Code of Conduct
- Guide to the Code of Conduct
- Commissioner for Standards in the House of Lords
- Conduct Committee

### 3.1 Summary of standards

The House of Lords is the unelected chamber of Parliament and as such is subject to a very different set of challenges and opportunities for maintaining standards than the House of Commons. The House of Lords Act 1999 reduced the number of hereditary peers from 750 to 92, so that life peers now form the majority number, accompanied by 26 Bishops of the Church of England.

Members of the Lords are not held politically accountable through elections and for a long time the primary mechanism of accountability was the institution's strong code of personal honour, which, while undefined,<sup>107</sup> places emphasis on voluntarism, unpaid public service, courtesy and mutual respect.<sup>108</sup> There have been reforms to the standards regime in recent years—a process that Hine and Peele (2016) have described as “reluctant” and resulting from the effects of institutional change elsewhere and internal scandals.<sup>109</sup>

#### Code of Conduct

Since 2002, in response to the recommendations of the 2000 CSPL report,<sup>110</sup> Members have been subject to a Code of Conduct, which they are required to sign up to as part of the ceremony of taking the oath upon introduction and at the start of each Parliament. In its current form the Code incorporates the centuries old personal honour as a guiding principle for the conduct of Members, and includes rules on the registration and declaration of interests and codes of behaviour.<sup>111</sup>

The Code, in line with the House of Commons's Code of Conduct, also provides clarity on resolving conflicts of interest in “favour of the public interest” (paragraph 7); includes the Seven Principles of Public Life (paragraph 9) and in a recent amendment includes the principles set out in the Parliamentary Behaviour Code (paragraph 10). The Code includes the Rules of Conduct, which cover the declaration and registration of interests, and acting in accordance with rules on allowances. The test for the relevance of interests is similar to that imposed in the Commons and includes both financial and non-financial interests:

The test of relevant interest is whether the interest might be thought by a reasonable member of the public to influence the way in which a member of the House of Lords discharges his or her parliamentary duties (paragraph 12).

As in the Commons, there is a prohibition against paid advocacy and Members must declare their interests in any proceeding where they “possess relevant interests” (paragraphs 15, 16).

<sup>107</sup> The Guide to the Code of Conduct provides section on the Personal Honour expected of Members: <https://www.parliament.uk/documents/lords-commissioner-for-standards/HL-Code-of-Conduct.pdf>

<sup>108</sup> Hine and Peele 2016, 128.

<sup>109</sup> Hine and Peele 2016, 129.

<sup>110</sup> Committee on Standards in Public Life, Standards of Conduct in the House of Lords, 1 November 2000: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/336876/7thFull\\_Report.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/336876/7thFull_Report.pdf)

<sup>111</sup> Code of Conduct and Guide to the Code of Conduct: <https://www.parliament.uk/documents/lords-commissioner-for-standards/HL-Code-of-Conduct.pdf>

In a departure from the Commons Code of Conduct, there is explicit reference to sanctions imposed following criminal convictions (paragraphs 18, 19, also see below).

### **Guide to the Code of Conduct**

The Guide to the Code of Conduct (the Guide) provides general guidance on the declaration and registration of interests, financial support, use of facilities, bullying and harassment and enforcement of the Code. The general guidance describes personal honour, citing an explanation from the Committee for Privileges in which personal honour is described as “... a matter for individual members, subject to the sense and culture of the House as a whole” (paragraph 7). In keeping with the ethos of the Lords more generally, “personal honour” therefore remains based on personal judgement and the norms of the institution rather than being explicitly codified and defined.

The Guide clarifies that although members are free to engage in business of the House that relates to their personal interests, they are subject to bans on paid advocacy, must register and declare their interests and resolve any conflict in favour of the public (paragraph 12). The Guide also provides clear guidelines for engagements with lobbyists, which is an issue that has come under increasing scrutiny in recent years.<sup>112</sup> Since amendments made in 2014,<sup>113</sup> the Guide places particular emphasis on “public perceptions” (paragraph 32), is explicit that “representations should be given such weight as they deserve based on their intrinsic merit” and significantly that:

Members should decline all but the most insignificant or incidental hospitality, benefit or gift offered by a lobbyist (paragraph 33).

There are two characteristics of Members that affect the ability of the House of Lords to regulate them. First, they usually sit for a lifetime and are not held accountable through elections.<sup>114</sup> Indeed, one of the greatest challenges in the system, even after 2002, has been that of how to sanction Members for unethical behaviour. In 2014 the House of Lords Reform Act made provisions for the resignation of peers, the termination of their membership if they fail to attend for an entire session of Parliament, and their expulsion if convicted of a serious offence—more than one year in prison.<sup>115</sup> Second, Members of the Lords, unlike their counterparts in the Commons are not remunerated for their participation in the political process, but are entitled to allowances, which are set by the House of Lords Commission (see below).

The primary upholders of standards in the House of Lords are the **Commissioner for Standards in the House of Lords**, overseen by the **Conduct Committee**.

## **3.2 Institutions**

### **3.2.1 Commissioner for Standards in the House of Lords**

The Commissioner for Standards was created in 2010, following the recommendations of the 2009 Leaders Group Report, to investigate breaches of the Code of Conduct and is appointed

---

<sup>112</sup> Hine and Peele 2016, 125.

<sup>113</sup> Committee for Privileges and Conduct, Amendments to the Code of Conduct and the Guide to the Code, 27 January 2014: <https://publications.parliament.uk/pa/ld201314/ldselect/ldprivi/123/123.pdf>

<sup>114</sup> For a list of active peers in the House of Lords, see: <https://www.parliament.uk/mps-lords-and-offices/lords/composition-of-the-lords/>

<sup>115</sup> See: <http://www.legislation.gov.uk/ukpga/2014/24/contents>

by the House as an independent officer.<sup>116</sup> The current Commissioner was appointed for a five-year term on 1 June 2016.<sup>117</sup>

The Commissioner is responsible for investigating complaints made about Members in relation to the Code of Conduct in an impartial and independent manner.<sup>118</sup> This includes complaints related to the financial support received by Members in carrying out their Parliamentary duties, the use of facilities, and their treatment of others, including matters related to bullying and harassment.<sup>119</sup>

There are relatively few complaints made to the Commissioner, particularly when compared to complaints made relating to MPs' conduct. The Commissioner's 2017-18 Annual Report recorded 19 complaints, only one of which was investigated, at the request of the Member concerned.<sup>120</sup>

### **Breaches of the Code**

The House of Lords is self-regulating and the Guide suggests that any suspected breaches should be brought to the attention of the Member first, except in cases of bullying or harassment, where this might not be appropriate.<sup>121</sup> Usually the basis of an investigation is a complaint made by a third-party, but exceptionally the Commissioner can conduct an investigation, with the agreement of the Conduct Committee, at the request of the Member concerned or where the Commissioner becomes aware of evidence that establishes a prima facie case that the Code has been breached.<sup>122</sup>

A complaint can be made by email or in writing;<sup>123</sup> but if relating to bullying there are also independent helplines established in each of the Houses.<sup>124</sup> The Guide also makes clear that "in the interests of natural justice", allegations should not be aired publicly until the complaint has been finally determined.<sup>125</sup> The Commissioner conducts a preliminary assessment of any complaint to establish whether it is within the Commissioner's remit and whether there is evidence sufficient to establish a prima facie case.<sup>126</sup> If a decision is taken to dismiss the complaint, then the complainant is provided with a brief explanation.<sup>127</sup>

Following investigation of complaints, the Commissioner writes a report indicating whether a breach has been found and remedial actions that have been agreed, which is then published on the Commissioner's website. The Commissioner also has discretion to submit the report to the Conduct Committee and if remedial action is not appropriate or not agreed with the Member concerned, a report is submitted to the Committee for consideration. The Committee reviews the reports and Members also have the right to appeal the findings and recommendations to the Committee.<sup>128</sup> On receipt of the report, consideration of the findings and following any appeals, the Committee submits a report to the House.

---

<sup>116</sup> Guide to the Code, paragraph 4.

<sup>117</sup> See: <https://www.parliament.uk/mps-lords-and-offices/standards-and-financial-interests/house-of-lords-commissioner-for-standards-/house-of-lords-commissioner-for-standards-/>

<sup>118</sup> See: <https://www.parliament.uk/mps-lords-and-offices/standards-and-financial-interests/house-of-lords-commissioner-for-standards-/house-of-lords-commissioner-for-standards-/>

<sup>119</sup> The most recent edition of the Code, published in July 2019, includes the Parliamentary Behaviour Code as an Appendix.

<sup>120</sup> House of Lords Commissioner for Standards, Annual Report 2017-18, 31 October 2018:

<https://www.parliament.uk/documents/lords-commissioner-for-standards/HoL-Commissioners-Annual-Report-2017-18.pdf>

<sup>121</sup> Guide to the Code, paragraph 112.

<sup>122</sup> Guide to the Code, paragraph 113.

<sup>123</sup> Guide to the Code, paragraph 115.

<sup>124</sup> Guide to the Code, paragraph 114.

<sup>125</sup> Guide to the Code, paragraph 117.

<sup>126</sup> Guide to the Code, paragraphs 119-120.

<sup>127</sup> Guide to the Code, paragraph 126.

<sup>128</sup> Code of Conduct, paragraph 21.

## Independent Complaints and Grievance Scheme

In July 2018, Naomi Ellenbogen QC published the findings of her inquiry into bullying and harassment in the House of Lords.<sup>129</sup> She found the culture in the House not conducive to ensuring dignity and respect for all those working there, and that there were examples of bullying and harassment between staff and also of staff by Members.<sup>130</sup>

A new system for dealing with complaints of bullying, harassment and sexual harassment is in the process of being implemented across Parliament. This has included incorporating the Behaviour Code into the Code of Conduct (see above) and giving the Commissioner the responsibility of investigating complaints against Members, with the assistance of independent investigators appointed by Parliament.<sup>131</sup>

### Allowances and expenses

Members are entitled to receive a daily allowance and the reimbursement of expenses,<sup>132</sup> to cover the costs of attending the House of Lords. The House of Lords Commission sets the levels and the Finance Director runs the scheme and offers advice.<sup>133</sup> However, any breaches of the rules are referred to the Commissioner for Standards, as they also constitute a breach of the Code (paragraph 11c).<sup>134</sup>

Following an expenses scandal in 2009, a new scheme was set up in 2010, which is simpler and more transparent, with only full day and part-day allowances that can be claimed by unsalaried Members.<sup>135</sup> There have been few formal complaints made to the Commissioner for Standards, but critical media coverage of Lords expenses continues; in 2019 *The Guardian* reported on peers claiming expenses “despite never speaking or asking any written questions”.<sup>136</sup>

## 3.2.2 Conduct Committee

Until May 2019, the House of Lords Committee for Privileges and Conduct oversaw the Code of Conduct and the Commissioner for Standards and largely delegated its functions relating to conduct to the Sub-Committee on Conduct.<sup>137</sup> A new Conduct Committee was appointed on 9 May 2019 to take over this role; it currently includes five peers and is in the process of appointing four lay members, who will also have full voting rights.<sup>138</sup>

The Conduct Committee has taken on the role of reviewing the Code of Conduct, Guide to the Code, Code of Conduct for Members’ Staff and overseeing the work of the Commissioner for Standards and the Register of Interests.<sup>139</sup>

### Reviews of the Code

---

<sup>129</sup> Ellenbogen, N. An Independent Inquiry into Bullying and Harassment in the House of Lords, 10 July 2019: <https://www.parliament.uk/documents/lords-committees/house-of-lords-commission/2017-19/ellenbogen-report.pdf>

<sup>130</sup> Ellenbogen, 10 July 2019, 7.

<sup>131</sup> Ellenbogen, 10 July 2019, 32.

<sup>132</sup> Guide to the Code of Conduct, paragraph 106.

<sup>133</sup> See the Guide to Financial Support for Members, April 2019: <https://www.parliament.uk/documents/lords-finance-office/members-guide-Apr2019.pdf>

<sup>134</sup> See Guide to the Code of Conduct, paragraph 106.

<sup>135</sup> Hine and Peele 2016, 144.

<sup>136</sup> Duncan, P. and Pegg, D. “Peer who never spoke in Lords last year claims £50,000 expenses”, *The Guardian*, 30 May 2019: <https://www.theguardian.com/politics/2019/may/30/labour-peer-never-spoke-house-of-lords-claims-50000-expenses>

<sup>137</sup> See: <https://www.parliament.uk/business/committees/committees-a-z/lords-select/privileges-committee-for-privileges/role/>

<sup>138</sup> See: <https://www.parliament.uk/business/committees/committees-a-z/lords-select/conduct-committee/membership1/>; see also Ellenbogen, 10 July 2019, 32.

<sup>139</sup> See: <https://www.parliament.uk/business/committees/committees-a-z/lords-select/conduct-committee/>

The Committee has made regular amendments to the Code of Conduct; the current Code agreed on 18 July is the eighth edition. In 2009, the Leaders Group Review, which was chaired by Lord Eames, made extensive recommendations.<sup>140</sup> The review was informed by a submission from the CSPL,<sup>141</sup> which emphasised that the public interest as well as personal honour should guide the conduct of Members. The CSPL also recommended the appointment of a Commissioner for Standards and the introduction of sanctions for both minor and major breaches of the Code, as well as clarifying and simplifying the Register of Interests. According to Hine and Peele (2016), the Eames Report “represented a major change in the Lords’ approach to regulation”.<sup>142</sup>

In 2014, the Committee made further major amendments to the Code of Conduct,<sup>143</sup> including recommendations to incorporate the Seven Principles of Public Life. Following a number of press sting operations in which Members expressed a “willingness” to break the Code, the Committee also clarified that a willingness to breach the Code, even if that breach was not actually followed through, “demonstrates a failure to act on his or her personal honour” and therefore constitutes a breach of the Code.<sup>144</sup> Following a GRECO report and the 2013 CSPL report on lobbying,<sup>145</sup> the Committee also provided further guidance on how to deal with lobbyists. It also reduced thresholds and clarified rules for various forms of registration and ensured that all staff had to register any employment outside the House.<sup>146</sup>

In a further report later that same year, the Committee recommended a closer link between the system of financial support for Members and their requirement to behave in line with their personal honour; the establishment of a Code of Conduct for Members’ staff; and a procedure for dealing with Members who had been imprisoned, but for a shorter term than one year (see summary of standards above).<sup>147</sup>

The current Code enshrines the powers of the new Conduct Committee, which was established following the recommendations of the May 2019 review by the Privileges and Conduct Committee, as described above.

### **Resolution of inquiries**

The Conduct Committee receives reports from the Commissioner on complaints made under the Code of Conduct, including those relating to bullying, harassment and sexual harassment.<sup>148</sup> These reports are submitted at the Commissioner’s discretion and where a breach is found and remedial action has not been agreed between the Commissioner and the Member, a report is submitted to the Committee with recommendations. The Member also has the right to appeal the findings and the sanctions recommended by the Commissioner. In relation to bullying, harassment and sexual harassment findings, the complainant has the right to appeal to the Committee.<sup>149</sup> On hearing an appeal, the Committee is required to report

---

<sup>140</sup> Gay, O., Regulation of Standards of Conduct in the House of Lords, Standards Note SN/PC/04950, House of Commons Library, 7 April 2010, 10: <https://researchbriefings.parliament.uk/ResearchBriefing/Summary/SN04950>; see also, Leaders Group on the Code of Conduct – Report, 28 October 2009: <https://publications.parliament.uk/pa/ld200809/ldselect/ldlead/171/17102.htm>

<sup>141</sup> Leaders Group on the Code of Conduct, Appendix 3, submitted May 2009.

<sup>142</sup> Hine and Peele 2016, 139.

<sup>143</sup> Committee for Privileges and Conduct, Amendments to the Code of Conduct and the Guide to the Code, 27 January 2014: <https://publications.parliament.uk/pa/ld201314/ldselect/ldpriv/123/123.pdf>

<sup>144</sup> Committee for Privileges and Conduct, 27 January 2014, 5.

<sup>145</sup> Committee on Standards in Public Life, Strengthening Transparency Around Lobbying, 5 November 2013: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/407530/2901376\\_LobbyingStandards\\_WEB.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/407530/2901376_LobbyingStandards_WEB.pdf)

<sup>146</sup> Committee for Privileges and Conduct, 27 January 2014.

<sup>147</sup> Committee for Privileges and Conduct, Further Amendments to the Code of Conduct and to the Guide to the Code of Conduct, 6 May 2014: <https://publications.parliament.uk/pa/ld201314/ldselect/ldpriv/182/182.pdf>

<sup>148</sup> See: <https://www.parliament.uk/business/committees/committees-a-z/lords-select/conduct-committee/>

<sup>149</sup> Guide to the Code of Conduct, paragraph 21.

to the House of Lords, where the final decision-making power rests.<sup>150</sup> The House votes on the report and any resolution relating to sanction without debate.<sup>151</sup>

### **Register of Lords' Interests**

The Register was instituted in 1995; prior to this Lords had been required to make declarations of interests whenever they arose, but they had not had to register interests publicly. The Conduct Committee oversees the Register, which is maintained by the Registrar of Lords' Interests.<sup>152</sup> The Registrar can also advise Members on the requirements to register interests, but the final judgement remains with the Member.<sup>153</sup>

In 1994, the House of Lords set up a Sub-Committee to the Procedure Committee to consider the declaration and registration of interests. Its recommendations, published in the Griffiths Report, suggested a voluntary register of interests coupled with limits on lobbying.<sup>154</sup> The resulting register was more modest than the Commons' register, but two of the three categories for registration—consultancies for providing parliamentary services and financial interests in businesses involved in lobbying—were made mandatory, with the third category of other interests left to the discretion of Members.<sup>155</sup>

With the introduction of the new Code of Conduct in 2009 (see above), Members were required to register all relevant interests and to register new interests within one month.<sup>156</sup> The current Code outlines 10 categories of registrable interest, which include both financial and non-financial interests.<sup>157</sup> Members are not able to take any action in Parliament to which the interest might be relevant until the interest has been registered, or in the case of a vote they must register the interest within 24 hours of the division.<sup>158</sup> Members should also declare their interest at the time of taking part in proceedings. The financial thresholds for registering interests are higher than those in the House of Commons: all single benefits above £500 should be registered, or over £300 if the gifts relate substantially to Membership of the House, as well as all those that originate from the same source but add up to £500 in a single year should be registered.<sup>159</sup>

---

<sup>150</sup> Guide to the Code of Conduct, paragraph 22.

<sup>151</sup> Code of Conduct, paragraph 22.

<sup>152</sup> Code of Conduct, paragraph 26.

<sup>153</sup> Guide to the Code of Conduct, paragraph 14.

<sup>154</sup> Hine and Peele 2016, 133.

<sup>155</sup> Hine and Peele 2016, 133.

<sup>156</sup> Hine and Peele 2016, 143.

<sup>157</sup> Guide to the Code of Conduct, paragraphs 35, 36.

<sup>158</sup> Guide to the Code of Conduct, paragraph 39.

<sup>159</sup> Guide to the Code of Conduct, paragraph 45.

## 4. The Government

- Ministerial Code
- The Prime Minister and Cabinet Office
- Independent Adviser on Ministers' Interests
- Advisory Committee on Business Appointments
- House of Lords Appointments Commission

### 4.1 Summary of standards

The executive forms the centre of government, with the Prime Minister at its head. Ministers are formally accountable to the legislature and ultimately to voters. However, informally Ministers answer to the Prime Minister who appoints them. Ministers generally come from the pool of MPs elected to the government's party, although during the coalition government of 2010-15, the Cabinet was made up of Ministers from the two coalition parties. Cabinet Ministers can also be appointed from the House of Lords; and in these cases are salaried in the same way as others. Ministers remain subject to the Codes of Conduct in their respective Houses and also must comply with the Independent Parliamentary Standards Authority.<sup>160</sup>

The Ministerial Code guides Ministers' behaviour, but it is not a rulebook and the Prime Minister has the final say in determining how it is applied, as long as the Minister concerned has not broken the law.<sup>161</sup> The Code is non-statutory and while there was some debate—including a 2012 recommendation from the Public Administration Select Committee—that the Code should be owned and controlled by Parliament, government resisted the change.<sup>162</sup> The Code's dependence on the judgement and will of the Prime Minister has been the subject of criticism.<sup>163</sup>

The Cabinet Office and a range of committees, including the Committee on Standards in Public Life (CSPL), guide the Prime Minister, supported by the Cabinet, in decision-making. One area over which the government has considerable influence is in appointments made to the House of Lords and various public bodies. These appointments pose considerable risks for impropriety, with opportunities for Ministers to use these powers for reward or to curry favour.

#### Ministerial Code

The Code provides standards against which Ministerial conduct can be judged. Although there is only one instance in the Code that is explicit about when Ministers would be expected to resign—"Ministers who knowingly mislead Parliament" (paragraph 1.3(c))—the Code has increasingly clarified expected behaviour since it was first published in 1992 as the Questions of Procedure for Ministers.

As in the Codes for the Commons and Lords, Ministers are referred to the Seven Principles of Public Life. The Code also addresses conflicts of interests, stating that Ministers should "ensure no conflict arises" (paragraph 1.3(f)), and should decline gifts or hospitality, "which might, or might reasonably appear to, compromise their judgement or place them under an

<sup>160</sup> Ministerial Code, paragraph 1.7.

<sup>161</sup> Hine and Peele 2016, 157.

<sup>162</sup> Maer, L. and Ryan-White, G. The Ministerial Code and the Independent Adviser on Ministerial Interests, House of Commons Library Briefing Paper No.03750, 17 January 2018, 15:

<https://researchbriefings.parliament.uk/ResearchBriefing/Summary/SN03750>

<sup>163</sup> Hine and Peele 2016, 154.

improper obligation” (paragraph 1.3(g)). In recognition of the additional responsibilities and roles Ministers are required to carry out, they are required to maintain the “principle of collective responsibility” (paragraph 1.3(a)), and keep separate their work as a Minister from their constituency work (paragraph 1.3(h)). Ministers also have a responsibility to uphold the political impartiality of the Civil Service, and so should not ask civil servants to do anything that would conflict with the Civil Service Code (paragraph 1.3(j)). Cabinet Ministers are also responsible for the management and conduct of their Special Advisers, including discipline (paragraph 3.3).

Ministers are held to higher levels of disclosure of interests than MPs, with bans on outside appointments and tight monitoring of their behaviour while in office.<sup>164</sup> In meetings with external organisations, for example, Ministers must have a Private Secretary or public official present, and departments should publish the details of these meetings quarterly (paragraph 8.14). Ministers should also give up any other public offices they hold (paragraph 7.11), and on leaving office Ministers are prohibited from lobbying government for two years and must also seek advice from the Independent Advisory Committee on Business Appointments (ACoBA) in relation to any employment they wish to take up within two years of leaving office (paragraph 7.25). The Code is also clear on the avoidance of conflicts involving financial interests in particular—both in terms of any actual or perceived conflicts—and that it should either be disposed of or alternative steps should be taken to prevent it (paragraph 7.7). In extreme cases, where conflicts cannot be avoided, the Minister might even be required to relinquish office (paragraph 7.9).

The primary upholders of standards in government are the **Prime Minister**, with the support of the **Cabinet Office**, the **Independent Adviser on Ministers’ Interests** and the **Advisory Committee on Business Appointments**. In addition, the **House of Lords Appointments Commission** recommends appointments and vets party nominations for propriety for the House of Lords.

## 4.2 Institutions

### 4.2.1 The Prime Minister (and the Cabinet Office)

The Prime Minister, with the support of the Cabinet Office, has final say over the implementation of the Ministerial Code. The Ministerial Code is published at the beginning of a new administration and has been subject to a number of reviews and amendments over the years.<sup>165</sup> The Prime Minister also oversees and approves the appointment of Ministers’ Special Advisers,<sup>166</sup> who are temporary civil servants, but their appointments are political and therefore not subject to the same merit-based recruitment requirements as permanent civil servants.<sup>167</sup>

#### Reviews of the Ministerial Code

The latest version of the Code was issued on 23 August 2019 but made no major changes to the previous version,<sup>168</sup> which had been amended in January 2018 following three forced Cabinet resignations in late 2017. These changes to the Code focused primarily on the issues

---

<sup>164</sup> Hine and Peele 2016, 155.

<sup>165</sup> Maer and Ryan-White, 17 January 2018, 4.

<sup>166</sup> Ministerial Code, paragraph 3.2.

<sup>167</sup> Code of Conduct for Special Advisers, paragraph 8.

<sup>168</sup> Ministerial Code, 23 August 2019:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/826920/August-2019-MINISTERIAL-CODE-FINAL-FORMATTED-2.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/826920/August-2019-MINISTERIAL-CODE-FINAL-FORMATTED-2.pdf)



raised by these resignations: sexual harassment, improper behaviour and undisclosed meetings.<sup>169</sup> This was the last in a series of reviews since the 1990s.<sup>170</sup>

In 1995, the Code included for the first time a statement on “not knowingly misleading parliament”, and the terms of Ministerial accountability were outlined in 1997.<sup>171</sup> In 2001, following a 1995 recommendation from the CSPL, the Code clarified the Prime Minister as the ultimate judge of the Code; it also incorporated the Seven Principles of Public Life and amended paragraphs on Special Advisers, confidentiality and the treatment of special interests. In 2005, additions also clarified that Ministers must also comply with the Codes of Conduct of the Houses to which they are also Members.<sup>172</sup>

Significant changes were made to the Code in 2010, which increased transparency, and included amendments on complying with IPSA, on Special Advisers and rules on publishing details of hospitality and travel among others.<sup>173</sup> A 2011 addendum incorporated into the 2015 Code increased government transparency regarding links with the media.<sup>174</sup> In 2016, further amendments included the removal of provisions on Extended Ministerial Offices.<sup>175</sup>

One of the main tensions surrounding the Code has been in regard to its ownership: <sup>176</sup> in 2001, the Public Administration Select Committee recommended that Parliament should have a voice in the formulation of the Code,<sup>177</sup> which was rejected by the government to the Committee’s regret.<sup>178</sup> The Committee raised the issue again in 2012, and in response to the Committee’s report of the same year on the independence of investigations,<sup>179</sup> the government stated that parliamentary ownership of the Code “would lead to an unacceptable blurring of the lines between the Executive and Parliament”.<sup>180</sup>

#### 4.2.2 Independent Adviser on Ministers’ Interests

The first Independent Adviser on Ministers’ Interests was appointed in 2006, three years after the CSPL had recommended the creation of the role.<sup>181</sup> However, both the CSPL and the Public Administration Select Committee (PASC) raised concerns about the Adviser’s independence, many of which continue to this day (see below).<sup>182</sup> In 2007, the role was clarified and changes introduced the duty of the Adviser to publish an Annual Report and List of Ministers’ Interests. After further revision in 2010, the Adviser now issues a statement on interests twice a year, including publishing meetings with external organisations.<sup>183</sup>

On taking up office, Ministers must provide their Permanent Secretaries with a list of all interests that might give rise to a conflict, including interests of spouses, family members or

---

<sup>169</sup> Maer and Ryan-White, 17 January 2018, 3.

<sup>170</sup> See Maer and Ryan-White, 17 January 2018, for a full history of changes to the Code.

<sup>171</sup> Maer and Ryan-White, 17 January 2018, 20.

<sup>172</sup> Maer and Ryan-White, 17 January 2018, 21; see also Nolan Report 1995, recommendation 12.

<sup>173</sup> Maer and Ryan-White, 17 January 2018, 13.

<sup>174</sup> Maer and Ryan-White, 17 January 2018, 13.

<sup>175</sup> Maer and Ryan-White, 17 January 2018, 10.

<sup>176</sup> Hine and Peele 2016, 160.

<sup>177</sup> Maer and Ryan-White, 17 January 2018, 23; see also Public Administration Select Committee, Ministerial Code: Improving the Rule Book, Third Report of Session 2000-01.

<sup>178</sup> See: <https://publications.parliament.uk/pa/cm200102/cmselect/cmpubadm/439/43903.htm>

<sup>179</sup> Public Administration Select Committee, The Prime Minister’s adviser on Ministers’ Interests: independent or not?, 17 March 2012: <https://publications.parliament.uk/pa/cm201012/cmselect/cmpubadm/1761/1761.pdf>

<sup>180</sup> See: <https://publications.parliament.uk/pa/cm201213/cmselect/cmpubadm/976/97604.htm>

<sup>181</sup> Committee on Standards in Public Life, Defining the Boundaries within the Executive: Ministers, Special Advisers and the permanent Civil Service, 8 April 2003, recommendation 3: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/336889/9th\\_report.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/336889/9th_report.pdf)

<sup>182</sup> Maer and Ryan-White, 17 January 2018, 17.

<sup>183</sup> Maer and Ryan-White, 17 January 2018, 18, 19.

partners.<sup>184</sup> The Minister must then decide and record what actions should be taken to avoid conflicts of interest, where appropriate in consultation with the Permanent Secretary and the Independent Adviser on Ministers' Interests.<sup>185</sup> The personal detail of the disclosures remains confidential.<sup>186</sup>

The Adviser has responsibility for investigating breaches of the Code, but can only do so at the request of the Prime Minister following consultation with the Cabinet Secretary.<sup>187</sup> The inability of the Adviser to initiate investigations has been criticised by the Public Administration Select Committee (PASC) as a departure from the powers available to other regulators.<sup>188</sup> In a 2012 PASC report on the independence of the Adviser,<sup>189</sup> the Committee considered the role and the lessons that could be learnt from recent breaches of the Code where the Adviser had not been consulted. It concluded that, "the title of 'independent adviser' is a misnomer",<sup>190</sup> and recommended that, "the independent adviser should be empowered to instigate his own investigations".<sup>191</sup> The government response to the PASC's report rejected this recommendation.<sup>192</sup>

The PASC has also criticised the appointment process for the Independent Adviser as undermining its independence—effectively arguing that the "post is in the Prime Minister's gift", that there had been a closed recruitment, and that the appointment of Advisers formerly with senior civil service roles put the independence of the Adviser in doubt.<sup>193</sup> Again the government rejected recommendations to improve the process.<sup>194</sup>

#### **4.2.3 Advisory Committee on Business Appointments (ACoBA)<sup>195</sup>**

The Advisory Committee considers applications about new employment for former Ministers, Senior Civil Servants and other Crown servants. The Ministerial Code prohibits former Ministers from lobbying government for up to two years after leaving office, and they must also seek advice from ACoBA about any appointments or employment they wish to take up within this time frame.<sup>196</sup> The Business Appointment Rules, drafted and owned by the Cabinet Office, govern the process by which this advice is sought and provided.<sup>197</sup> The Committee is non-statutory and so its deliberations are advisory.

The Committee Chair is subject to a pre-appointment hearing with the Public Administration and Constitutional Affairs Select Committee. ACoBA is currently comprised of three members nominated by three political parties, one of whom is currently the Chair after being appointed through a fair and open competition, and six independent members, who are appointed for five years.<sup>198</sup>

---

<sup>184</sup> Ministerial Code, paragraph 7.3.

<sup>185</sup> Ministerial Code, paragraph 7.4.

<sup>186</sup> Ministerial Code, paragraph 7.5.

<sup>187</sup> Maer and Ryan-White, 17 January 2018, 16.

<sup>188</sup> Maer and Ryan-White, 17 January 2018, 16.

<sup>189</sup> Public Administration Select Committee, 17 March 2012.

<sup>190</sup> Public Administration Select Committee, 17 March 2012, paragraph 63.

<sup>191</sup> Public Administration Select Committee 17 March 2012, paragraph 44.

<sup>192</sup> See: <https://publications.parliament.uk/pa/cm201213/cmselect/cmpubadm/976/97604.htm>

<sup>193</sup> Public Administration Select Committee 17 March 2012, paragraph 58.

<sup>194</sup> See: <https://publications.parliament.uk/pa/cm201213/cmselect/cmpubadm/976/97604.htm>

<sup>195</sup> Also see Section 5 below on details of ACoBA in relation to Senior Civil Servants.

<sup>196</sup> Ministerial Code, paragraph 7.25.

<sup>197</sup> Strickland and Maer, 11 April 2019, 4.

<sup>198</sup> Advisory Committee on Business Appointments, Nineteenth Annual Report 2017-18, 17 July 2018, 6-7: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/726312/2017\\_to\\_2018\\_-\\_ACoBA\\_Annual\\_Report.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/726312/2017_to_2018_-_ACoBA_Annual_Report.pdf); see also Strickland, P. and Maer, L., The Business Appointment Rules, House of Commons Library Briefing Paper No. CBP03745, 11 April 2019, 9-10: <https://researchbriefings.parliament.uk/ResearchBriefing/Summary/SN03745>.

The Committee and the Rules aim to ensure that former Ministers and officials are not influenced in anticipation of future rewards, and cannot profit from their knowledge and contacts or provide improper advantages to subsequent employers.<sup>199</sup> Stringent enforcement of restrictions could, however, have the effect of reducing the recruitment of politicians and civil servants and unfairly restricting their future opportunities and earnings. This means that the Committee's operation has been far from uncontroversial with different actors taking different views on the powers the Committee should hold.<sup>200</sup>

The CSPL's first report—the Nolan Report—recommended that Ministers and Special Advisers should be subject to similar rules to those applied to Senior Civil Servants on seeking employment on resigning from public office.<sup>201</sup> Since 1995, Ministers (but not Special Advisers, until 2010) had to seek the advice of the Committee when taking up roles within two years of leaving office. This was strengthened in 2007, with the inclusion in the Ministerial Code of an expectation that Ministers were to abide by the advice;<sup>202</sup> and strengthened again in the 2018 Ministerial Code to clarify that, "Former Ministers must ensure that no new appointments are announced, or taken up, before the Committee has been able to provide its advice" (paragraph 7.25).

The Committee's 2017-18 Annual Report referred to a recent report of the Public Administration and Constitutional Affairs Committee (PACAC), which highlighted the "escalating" problem of "increased numbers of public servants moving between the public and private sectors", and made recommendations for reform of the system, indicating that failures to improve the system "will lead to an even greater decline in public trust in our democracy and our Government".<sup>203</sup> The recommendations were extensive, including revisiting the question of creating a statutory scheme for overseeing business appointments, with effective powers to impose sanctions for non-compliance.<sup>204</sup> In ACoBA's evidence to the inquiry that led to the report, it recommended a cost-benefit analysis of a statutory scheme.<sup>205</sup> The PACAC published a further report in January 2018,<sup>206</sup> which found that although the government agreed with some of its recommendations, its response had been "inadequate". The government had raised the express concern that an "overly rigid approach will deter the people from coming into the Civil Service" (see below).<sup>207</sup>

### **Business Appointment Rules**

Any former Ministers intending to take up an appointment or employment within two years of leaving office must submit an application form to ACoBA, and the Committee then considers the case.<sup>208</sup> In most cases ACoBA recommends restrictions on the activity. There have been no cases in recent years where restrictions or conditions have not been imposed and these

---

<sup>199</sup> Business Appointment Rules for Former Ministers, paragraph 1: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/579754/Business\\_appointment\\_rules\\_for\\_former\\_ministers.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/579754/Business_appointment_rules_for_former_ministers.pdf); see also Hine and Peele 2016, 184; Strickland and Maer, 11 April 2019, 3.

<sup>200</sup> For details see Hine and Peele, 188-189.

<sup>201</sup> Nolan Report 1995, 5.

<sup>202</sup> Hine and Peele 2016, 187.

<sup>203</sup> Public Administration and Constitutional Affairs Committee, Managing Ministers' and officials' conflicts of interest: time for clearer values, principles and action, 24 April 2017, 3:

<https://publications.parliament.uk/pa/cm201617/cmselect/cmpubadm/252/252.pdf>

<sup>204</sup> Public Administration and Constitutional Affairs Committee, 24 April 2017, 48-49.

<sup>205</sup> See:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/561609/ACOBA\\_written\\_evidence\\_PACAC.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/561609/ACOBA_written_evidence_PACAC.pdf)

<sup>206</sup> Public Administration and Constitutional Affairs Committee, Government Response to the Committee's Thirteenth Report of Session 2016-17: Managing Ministers' and officials' conflicts of interest: time for clearer values, principles and action, 25 January 2018, 1: <https://publications.parliament.uk/pa/cm201719/cmselect/cmpubadm/731/731.pdf>

<sup>207</sup> Strickland and Maer, 11 April 2019, 15.

<sup>208</sup> Strickland and Maer, 11 April 2019, 5.

include either a delay in taking up the appointment or that on taking up the appointment the former Minister should not be involved in certain activities for a specified time. It may also rule that the proposed appointment or activity is unsuitable.<sup>209</sup> For Cabinet Ministers, Permanent Secretaries and their equivalents leaving office, there is also a minimum waiting period of three months before taking up employment.

ACoBA can reduce the general rule that there is a two-year lobbying ban in some circumstances, or recommend that it need not prevent communication with government on matters that are “an integral part of the normal course of business for the organisation concerned”.<sup>210</sup> The Advisory Committee aims to provide advice within 15 days of receiving an application from a former Minister and 20 working days from former Crown servants, and if there are concerns about the advice applicants can make representations to the Committee. All communication is confidential until the appointment is taken up or announced, at which point the Committee publishes its advice.<sup>211</sup>

#### **4.2.4 House of Lords Appointments Commission**

The Queen appoints peers to the House of Lords on the recommendation of the Prime Minister. This gives the Prime Minister considerable power over the evolving make-up of the House of Lords; a power that has persistently raised concerns about the inability of any authority to hold the Prime Minister accountable for decisions that might appear to be politically or personally motivated.

Since 2000, the House of Lords Appointments Commission has assisted the Prime Minister in deciding on appointments. The Commission is an independent, advisory, non-departmental public body with seven members.<sup>212</sup> The composition of the Commission is intended to avoid political bias with three members representing three political parties and the Chair other three members being independent and non-political.<sup>213</sup> The Commission has its own Code of Practice and Register of Commission Members’ Interests to maintain standards within its own organisation. The Code of Practice incorporates the Seven Principles of Public Life.<sup>214</sup>

##### **Remit of the Committee**

The Committee has two main responsibilities: to recommend individuals for the appointment as non-party-political life peers; and to vet the nominations of peers, including those nominated by political parties, to ensure the highest standards of propriety. The latter of these responsibilities is particularly important for the maintenance of standards, as the awarding of peerages by political parties for donations as a form of political gift has caused considerable controversy and scandal.<sup>215</sup> This was a live issue during the 2006-7 Cash for Honours scandal, in which both the Labour and Conservative parties were implicated in selling honours to party donors.<sup>216</sup> The media remain highly critical and sceptical of political nominations to this day.

##### **Nominations and vetting**

---

<sup>209</sup> Business Appointment Rules for Former Ministers, paragraph 7:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/579754/Business\\_appointment\\_rules\\_for\\_former\\_ministers.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/579754/Business_appointment_rules_for_former_ministers.pdf)

<sup>210</sup> Business Appointment Rules for Former Ministers, paragraph 8, 9.

<sup>211</sup> Business Appointment Rules for Former Ministers, paragraph 11, 12, 13.

<sup>212</sup> See: <https://lordsappointments.independent.gov.uk/the-commission-2>

<sup>213</sup> See: <https://lordsappointments.independent.gov.uk/the-commission-2>

<sup>214</sup> See: <https://lordsappointments.independent.gov.uk/codeofpractice>

<sup>215</sup> Hine and Peele 2016, 127.

<sup>216</sup> See for example, “Cash for Honours Timeline”, The Guardian, 11 October 2007:

<https://www.theguardian.com/politics/2007/oct/11/partyfunding.uk>

Anyone over the age of 21, resident in the United Kingdom and also a British, Irish or Commonwealth citizen can be nominated for a non-party political life peerage. Following an assessment, the Committee makes recommendations following an “independent and fair assessment” based on the “individual merit” of the nominees.<sup>217</sup> There are criteria against which nominees are considered, including the ability to make an “effective and significant contribution” to the House of Lords, a record of “significant achievement” and a strong commitment to high standards in public life. In addition, they are expected to be able to demonstrate “integrity and independence”, including the ability to put aside party political considerations where necessary.<sup>218</sup>

In addition to making recommendations on individual nominations the Committee also conducts a vetting process, which covers individuals nominated by political parties. The Committee can advise the Prime Minister about any concerns relating to the propriety of a nominee. The individual should have good standing in the community and with the regulatory authorities and any past conduct should not reasonably be regarded as bringing the House into disrepute.<sup>219</sup> Various forms of information are used to establish the propriety of the nominee, including information given by the nominee, the political party, as well as checks on propriety and party donations.

---

<sup>217</sup> See: <https://lordsappointments.independent.gov.uk/how-to-apply-2/criteria-guiding-the-assessment-of-nominations-for-non-party-political-life-peers-2>

<sup>218</sup> See: <https://lordsappointments.independent.gov.uk/how-to-apply-2/criteria-guiding-the-assessment-of-nominations-for-non-party-political-life-peers-2>

<sup>219</sup> See: <https://lordsappointments.independent.gov.uk/vetting>

## 5. The Civil Service

- Civil Service Code and Civil Service Management Code
- Civil Service Commission
- Parliamentary and Health Service Ombudsman
- Advisory Committee on Business Appointments
- Commissioner for Public Appointments

### 5.1 Summary of standards

The Civil Service provides the core administration of the state and assists the government to develop and deliver its policies as effectively as possible. It runs central government departments, agencies and many non-departmental public bodies (NDPBs).<sup>220</sup> It is non-partisan and its core characteristic is its impartiality, the intention being that it can work successfully with and win the trust of any incoming political leadership.

The Head of the Civil Service is also Secretary to the Cabinet and is responsible for supporting all Ministers in the running of government.<sup>221</sup> The Chief Executive of the Civil Service chairs the Civil Service Board, and also leads the efficiency programme. Permanent Secretaries, the most senior civil servants in each department, work to support the department's Minister, who is ultimately accountable to Parliament.<sup>222</sup>

The accountability of Ministers to Parliament for the work of their departments, with Permanent Secretaries providing support and advice, is an essential component in maintaining the impartiality of the Civil Service, which is also underpinned by a merit-based recruitment system for civil servants and the principles embedded in the Civil Service Code. The basis for an impartial Civil Service was originally laid out in the Northcote-Trevelyan settlement in 1854, which recognised that the public administration was suffering “both in internal efficiency and in public estimation”.<sup>223</sup> These “twin concerns” of efficiency and accountability have been in tension ever since and continue to be the “driving force” of reform.<sup>224</sup>

The Nolan Report referred to the “very large changes to the management and structure” of the Civil Service, and the need to respond to “greater delegation and diversity”.<sup>225</sup> In particular, the introduction of New Public Management (NPM), which brought in business management structures, the use of arms-length bodies and the increasing move to contract-out elements of public service delivery have changed the Service's working practices.<sup>226</sup> The Civil Service Reform Plan 2012 set out the challenges and aspirations of the Service clearly: with an emphasis on changing the culture and behaviours of the civil servants to become

---

<sup>220</sup> See: <https://www.gov.uk/government/organisations/civil-service/about>

<sup>221</sup> See: <https://www.gov.uk/government/organisations/civil-service/about/our-governance#permanent-secretaries>

<sup>222</sup> See: <https://www.gov.uk/government/organisations/civil-service/about/our-governance#permanent-secretaries>

<sup>223</sup> Northcote Trevelyan Report, 4, [http://www.civilservant.org.uk/library/1854\\_Northcote\\_Trevelyan\\_Report.pdf](http://www.civilservant.org.uk/library/1854_Northcote_Trevelyan_Report.pdf).

<sup>224</sup> Dobson, R. and Heywood, P. forthcoming. “Clean but Compromised: Corruption in the UK Public Administration”.

<sup>225</sup> Nolan Report 1995, 5.

<sup>226</sup> See Heywood, P.M. 2012. “Integrity management and the public service ethos in the UK: patchwork quilt or threadbare blanket?”, *International Review of Administrative Sciences* 78(3): 474-493.

“pacier, more flexible, focused on outcomes and results rather than process”.<sup>227</sup> Changes to the cultural practices of an institution inevitably also throw up ethical challenges too.

As a result, the standards regime has had to evolve in step with significant changes to the underlying structures and management of the Civil Service. These changes have been described as a move from a system that placed trust in a self-regulating culture of public integrity (or public service ethos) towards one that emphasises effective public service delivery and formal accountability.<sup>228</sup> Therefore, while there is a rich institutional regime for standards in the public administration, it also remains a “patchwork” that struggles to keep pace with and adapt to the changing expectations, complexity and structure of public life.<sup>229</sup>

### **Civil Service Code**

The Constitutional Reform and Governance Act 2010 provides the statutory underpinning for a non-partisan civil service.<sup>230</sup> The Civil Service Code was first introduced in 1996, and has been updated a number of times since. It was made statutory in November 2010 and updated in March 2015 to include standards of behaviour when dealing with the media.<sup>231</sup> The Code is issued by the Minister for the Civil Service and outlines the core values of the Civil Service, which include:

- Integrity: putting the interests of the public above private interests
- Honesty: being truthful and open
- Objectivity: advice and decisions should be based on rigorous analysis of the evidence
- Impartiality: acting solely on the merits of the case and serving governments of different political persuasions equally.<sup>232</sup>

In particular the impartiality value refers to both non-discrimination in the treatment of others, including the requirement to be fair, just and equitable, and also to be politically impartial, including not allowing personal political views to determine advice or actions. This second requirement is particularly important in the relationships between Civil Servants in their advice-giving role to Ministers. The increased use of Special Advisers, as temporary rather than permanent members of the Civil Service, to advise Ministers in recent years has been interpreted as presenting certain challenges to this arrangement. In 2012, the Public Administration Select Committee acknowledged this sensitivity arguing that although Special Advisers have a “legitimate and valuable function ... protecting the impartiality of the Civil Service”, their influential positions also have “the potential to destabilise the relationship between ministers and officials”.<sup>233</sup>

### **Special Advisers**

While Special Advisers are still required to conduct themselves in accordance with the Civil Service Code, they are not required to behave with impartiality and objectivity or retain the confidence of future governments.<sup>234</sup> Special Advisers are also subject to a Code of Conduct, which differs in a number of respects from the Code of Conduct applicable to civil servants. In

---

<sup>227</sup> Civil Service Reform Plan, June 2012, 9:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/305148/Civil-Service-Reform-Plan-final.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/305148/Civil-Service-Reform-Plan-final.pdf)

<sup>228</sup> Heywood 2012.

<sup>229</sup> Heywood 2012, 474.

<sup>230</sup> Maer and Ryan-White, 17 January 2018, 15.

<sup>231</sup> See: <https://www.gov.uk/government/publications/civil-service-code>

<sup>232</sup> See: <https://www.gov.uk/government/publications/civil-service-code>

<sup>233</sup> Public Administration Select Committee, Special Advisers in the Thick of It, 14 October 2012, 3: <https://publications.parliament.uk/pa/cm201213/cmselect/cmpublicadm/134/134.pdf>

<sup>234</sup> Code of Conduct for Special Advisers, paragraph 8.

particular, it recognises the “political dimension to [their] advice and assistance”.<sup>235</sup> Special Advisers are also subject to the Business Appointment Rules for Civil Servants when leaving the service (see below).<sup>236</sup>

Following recommendations made by the CSPL as early as 2003,<sup>237</sup> the Constitutional Reform and Governance Act 2010 introduced the Code of Conduct for Special Advisers and limited their role in three important respects, which are also covered in the Code of Conduct: Special Advisers must not authorise the expenditure of public funds, exercise any management role in relation to the civil service, or exercise any statutory or prerogative power.<sup>238</sup>

### **Civil Service Management Code**

The Civil Service Management Code, on the authority of the Constitutional Reform and Governance Act 2010 and the power of the Minister for Civil Service, sets out the terms of service of civil servants, and in particular provides detail on their recruitment in line with the recruitment principles issued by the Civil Service Commission (see below), conduct and discipline, and procedures for senior civil servants, including the application of the Business Appointment Rules.<sup>239</sup>

The Management Code emphasises “the need for civil servants to be, and to be seen to be, honest and impartial in the exercise of their duties” (paragraph 4.1.3). In particular, it provides four main principles for civil servants’ conduct:

- Not to misuse information or disclose information without authority, or frustrate the policies, decisions or actions of Government
- Not to take part in any public political activity that would compromise their impartiality
- Not to misuse their position or information to further their private interests or those of others; and where conflicts arise they must be declared to senior management
- Not to receive gifts or benefits of any kind that could compromise their judgement and integrity (paragraph 4.1.3(a-d)).

The departments and agencies deal with the disciplinary processes for breaches of the Management Code internally (paragraph 4.1.6).

### **Public Administration and Constitutional Affairs Committee**

Parliament provides oversight of the Civil Service through its committee system. The Public Administration and Constitutional Affairs Committee (PACAC), established in 2015, took over the responsibilities of the Public Administration Select Committee (2010-15). It is made up of 10 members, the Chair is elected and the remaining nine are appointed from parties across the House of Commons.<sup>240</sup>

The Committee has responsibility for overseeing constitutional matters and the administration of the Civil Service. It also scrutinises the reports of the Parliamentary and Health Service

---

<sup>235</sup> Code of Conduct for Special Advisers, December 2016, paragraph 1:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/579768/code-of-conduct-special-advisers-dec-2016.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/579768/code-of-conduct-special-advisers-dec-2016.pdf)

<sup>236</sup> Code of Conduct for Special Advisers, paragraph 21.

<sup>237</sup> Committee on Standards in Public Life, Defining the Boundaries within the Executive: Ministers, Special Advisers and the permanent Civil Service, 8 April 2003:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/336889/9th\\_report.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/336889/9th_report.pdf)

<sup>238</sup> Code of Conduct for Special Advisers, paragraph 5.

<sup>239</sup> Civil Service Management Code, November 2016: <https://www.gov.uk/government/publications/civil-servants-terms-and-conditions>

<sup>240</sup> See: <https://www.parliament.uk/business/committees/committees-a-z/commons-select/public-administration-and-constitutional-affairs-committee/membership/>



Ombudsman (see below).<sup>241</sup> The core purpose of the PACAC is “to conduct robust and effective scrutiny in order to help create conditions where the public can have justified confidence in public services/ government”.<sup>242</sup>

The primary upholders of standards for the Civil Service are the **Civil Service Commission**, the **Parliamentary and Health Service Ombudsman**, the **Advisory Committee on Business Appointments** and the **Commissioner for Public Appointments**.

## 5.2 Institutions

### 5.2.1 Civil Service Commission

There have been Civil Service Commissioners in place since 1855, but the Constitutional Reform and Governance Act 2010 put the Commission on a statutory footing for the first time.<sup>243</sup> There are currently 11 Commissioners, appointed by the Queen on the recommendation of the Minister for the Civil Service; and as such they are not civil servants. They also have their own Code of Conduct and register their interests.<sup>244</sup>

The Commission has two main responsibilities: to ensure that appointments to the Civil Service are made on merit on the basis of fair and open competition; and to hear appeals from civil servants under the Civil Service Code.

#### Merit-based recruitment

The Constitutional Reform and Governance Act 2010 requires that the recruitment of civil servants is based on merit and follows a fair and open competition. The Commission's Recruitment Principles outline the Commission's interpretation of this legal requirement.<sup>245</sup> There are some cases where there are exceptions to this legal requirement, which include short-term appointments, secondments and the re-appointment of civil servants.<sup>246</sup> Special Advisers, despite being temporary civil servants, are also exempt from the merit requirement (see above).

The Commission assesses each government department on its compliance with the Recruitment Principles; departments are given a rating of poor, fair or good, a sense of their forward trajectory and the number of breaches identified.<sup>247</sup> The Commission provides guidance to civil servants on making complaints in relation to external recruitment processes regarding concerns that have already been raised with the department concerned.<sup>248</sup> Once the Commission has reached a decision it can make recommendations to the department and ask it what action it will take to resolve the situation, request an apology, ask the department

---

<sup>241</sup> See: <https://www.parliament.uk/business/committees/committees-a-z/commons-select/public-administration-and-constitutional-affairs-committee/role/>

<sup>242</sup> See: <https://www.parliament.uk/business/committees/committees-a-z/commons-select/public-administration-and-constitutional-affairs-committee/role/>

<sup>243</sup> Maer, L., The Civil Service Code, Standard Note SN/PC/6699, 18 March 2015: <https://researchbriefings.parliament.uk/ResearchBriefing/Summary/SN06699>

<sup>244</sup> See: <https://civilservicecommission.independent.gov.uk/about-the-commission/civil-service-commissioners/>

<sup>245</sup> Civil Service Commission, Recruitment Principles, April 2018: [https://civilservicecommission.independent.gov.uk/wp-content/uploads/2019/03/02a\\_RECRUITMENT-PRINCIPLES-April-2018-FINAL-.pdf](https://civilservicecommission.independent.gov.uk/wp-content/uploads/2019/03/02a_RECRUITMENT-PRINCIPLES-April-2018-FINAL-.pdf)

<sup>246</sup> See: <https://civilservicecommission.independent.gov.uk/recruitment/exceptions/>

<sup>247</sup> See: <https://civilservicecommission.independent.gov.uk/recruitment/departmental-compliance/>

<sup>248</sup> Civil Service Commission, A Guide to Bringing a Recruitment Principles Complaint to the Civil Service Commission, January 2017: <https://civilservicecommission.independent.gov.uk/wp-content/uploads/2019/07/Jan-17-RPs-for-publication-updated-links-1.pdf>

for assurances that it is reviewing its process, publicise the complaint and make a public statement. There is no appeals process following the Commission's decision.<sup>249</sup>

In 2018-19, the Commission received 211 complaints relating to recruitment procedures, but the majority of these were either referred back to the departments concerned or were outside the Commission's remit. Therefore, the Commission considered 32 complaints and found breaches in 11 of those.<sup>250</sup> The Commission also conducted audits of the recruitment practices in all departments and found 105 breaches of the Recruitment Principles.<sup>251</sup>

### **Civil Service Code**

The Commission has responsibility for working with departments to uphold the Civil Service Code. In 2007, in conjunction with the Cabinet Office and Permanent Secretaries, it issued a best practice checklist,<sup>252</sup> to help departments in upholding and promoting the Code.<sup>253</sup>

In situations where a civil servant is asked to do something in conflict with the Civil Service Code, or is aware of another civil servant acting against its provisions, the first line of complaint is managed within the department. However, if the outcome of this complaint is unsatisfactory, complaints can be raised with the Civil Service Commission. Civil servants are able to bring complaints directly to the Commission, without first seeking an investigation within their department, but only at the discretion of the Commission.<sup>254</sup>

Complaints should be made in writing and can only be made by civil servants in relation to the Civil Service Code, and should concern the public interest rather than an internal, human resources or management issue. The Commission aims to respond within 15 days to complaints to indicate whether they are within its remit, and if they are found to be so, an investigation takes place. When a decision is reached, a Decision Notice is sent to the complainant and to the relevant department, and each are given 20 days to respond to its factual accuracy, after this time the Notice is published on the Commission's website.<sup>255</sup>

The Commission's recommendations focus on constructive engagement and it will aim to ensure that the breach is unlikely to recur. Recommended remedial measures may include changes to processes, training for individuals, an apology or a recommendation that another regulator conduct an investigation. There is no mechanism for appealing the decision of the Civil Service Commission and the Commission does not have the power to award compensation.<sup>256</sup> In 2018-19, the Commission received 85 appeals relating to the Code, of which 28 were referred back to the departments for investigation and initial decision-making.<sup>257</sup>

### **Whistleblowers**

Neither the Civil Service Code nor the Civil Service Management Code refers directly to whistleblowing procedures when a civil servant becomes aware of unethical behaviour in conflict with the public interest. In most cases, such behaviour would be in contravention of

---

<sup>249</sup> Civil Service Commission, January 2017.

<sup>250</sup> Civil Service Commission, Annual Report 2018-19, 24 July 2019, 23:

[https://civilservicecommission.independent.gov.uk/wp-content/uploads/2019/07/CSC\\_ARA-Report\\_2019\\_WEB.pdf](https://civilservicecommission.independent.gov.uk/wp-content/uploads/2019/07/CSC_ARA-Report_2019_WEB.pdf)

<sup>251</sup> Civil Service Commission, 24 July 2019, 3, 30-34.

<sup>252</sup> Best Practice: Checklist of actions for departments: [https://civilservicecommission.independent.gov.uk/wp-content/uploads/2019/03/03b\\_Best-Practice-Checklist.pdf](https://civilservicecommission.independent.gov.uk/wp-content/uploads/2019/03/03b_Best-Practice-Checklist.pdf)

<sup>253</sup> See: <https://civilservicecommission.independent.gov.uk/code/promotion-of-the-code/>

<sup>254</sup> Civil Service Commission, The Civil Service Code: A Guide for Civil Servants Bringing an Appeal to the Civil Service Commission, June 2017: [https://civilservicecommission.independent.gov.uk/wp-content/uploads/2019/03/03c\\_The-Civil-Service-Code-A-Guide-for-civil-servants-bringing-an-appeal-to-the-Civil-Service-Commission.pdf](https://civilservicecommission.independent.gov.uk/wp-content/uploads/2019/03/03c_The-Civil-Service-Code-A-Guide-for-civil-servants-bringing-an-appeal-to-the-Civil-Service-Commission.pdf)

<sup>255</sup> Civil Service Commission, June 2017.

<sup>256</sup> Civil Service Commission, June 2017.

<sup>257</sup> Civil Service Commission, 24 July 2019, 12.

the Civil Service Code and complaints can be made to the Civil Service Commission, for which there should be no reprisals.<sup>258</sup> The rights of whistleblowers are protected in UK legislation by the Public Interest Disclosure Act 1998.<sup>259</sup>

### 5.2.2 Parliamentary and Health Service Ombudsman

The Parliamentary and Health Services Ombudsman has responsibility for making final decisions on complaints that have not been resolved by UK government departments and other public organisations.<sup>260</sup> The Ombudsman has a statutory role, is accountable to Parliament and reports to the Public Administration and Constitutional Affairs Committee (see above). The Board is led by the Ombudsman and also includes non-executive members, which bring an external perspective into the Ombudsman's governance.<sup>261</sup>

The Ombudsman aims to right individual wrongs suffered, but also to provide an opportunity for learning and for the improvement of services.<sup>262</sup> The remedies for maladministration or poor service that has led to "injustice or hardship" include:

- An apology, explanation and acknowledgement of responsibility
- Remedial action, including reviewing or changing a decision, or making changes to a policy or process
- Financial compensation<sup>263</sup>

In 2017-18, the Ombudsman dealt with 6,606 complaints from the public about government departments, their agencies and other public organisations.<sup>264</sup>

### 5.2.3 Advisory Committee on Business Appointments

The general powers and structure of ACoBA are discussed in Section 4.2.3 (see above). However, it is important to note the limitation of remit that prevents ACoBA from providing advice on cases below the most senior ranks of the Civil Service. To increase oversight of the application of the Business Appointment Rules for civil servants below these ranks, a 2017 Public Administration and Constitutional Affairs Committee inquiry report, following evidence provided by the Chair of ACoBA,<sup>265</sup> recommended that the government should "nominate a departmental non-executive director on each government department board to take on responsibility for oversight of the Business Appointment Rules".<sup>266</sup> This recommendation was taken up by the government.<sup>267</sup>

### 5.2.4 Commissioner for Public Appointments

---

<sup>258</sup> Civil Service Commission, June 2017.

<sup>259</sup> See: <http://www.legislation.gov.uk/ukpga/1998/23/contents>.

<sup>260</sup> A full list of the organisations under their remit can be found here: <https://www.ombudsman.org.uk/making-complaint/what-we-can-and-cant-help/government-organisations-we-can-investigate>

<sup>261</sup> See: <https://www.ombudsman.org.uk/about-us/who-we-are>

<sup>262</sup> Ombudsman's introduction to the Principles: <https://www.ombudsman.org.uk/about-us/our-principles/ombudsmans-introduction-principles>

<sup>263</sup> Parliamentary and Health Service Ombudsman, Principles for Remedy, 10 February 2009, 10: <https://www.ombudsman.org.uk/sites/default/files/page/Principles%20for%20Remedy.pdf>

<sup>264</sup> See: <https://www.ombudsman.org.uk/publications/complaints-about-uk-government-departments-and-agencies-2017-18-0>

<sup>265</sup> See: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/561609/ACoBA\\_written\\_evidence\\_PACAC.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/561609/ACoBA_written_evidence_PACAC.pdf)

<sup>266</sup> Public Administration and Constitutional Affairs Committee, 24 April 2017, 42.

<sup>267</sup> ACoBA Annual Report 2017-18, 3.

The Commissioner for Public Appointments was established in 1995, following the recommendations of the Nolan Report,<sup>268</sup> and is independent of both the government and Civil Service.<sup>269</sup> The Commissioner regulates the way Ministers appoint positions in public bodies, as set out in the Governance Code on Public Appointments, which includes the Principles of Public Appointments. The Cabinet Office publishes the Code.<sup>270</sup>

The Commissioner's statutory functions are set out in the Public Appointments Order in Council 2019, and include: carrying out audits of the practices followed by the appointing authorities; conducting investigations with the object of improving the quality of public appointments; conducting inquiries in response to a complaint or otherwise; and may also require authorities to publish summary information relating to appointments.<sup>271</sup> A crucial duty of the Commissioner is to be an advocate of diversity and good practice to encourage candidates from under-represented groups to apply for posts; data on diversity is published in the Commissioner's annual report.<sup>272</sup>

### **Governance Code on Public Appointments**

A previous Code of Practice for ministerial appointments to public bodies was replaced in January 2017 by the Governance Code on Public Appointments, which is drafted by the Minister for the Cabinet Office and includes the eight principles for public appointments: ministerial responsibility, selflessness, integrity, merit, openness, diversity, assurance and fairness.<sup>273</sup> The responsibilities of Ministers, the Commissioner, Advisory Assessment Panels, Senior Independent Panel Members and Departments are also laid out in the Code.

Advisory Assessment Panels are responsible for deciding which candidates meet the published criteria for the role and then supplying the Minister with the names of all the potential candidates.<sup>274</sup> The Panels remain advisory, however, and Ministers may choose to appoint an individual who is not considered "appointable" by a Panel, but in such cases would be required to consult the Commissioner.<sup>275</sup> The responsibility for public appointments ultimately lies with the Minister concerned, who in turn is accountable to Parliament.

In cases where Ministers and the Commissioner agree that an appointment is "significant" panels should include Senior Independent Panel Members. These individuals should be familiar with senior recruitment, independent of the department and not politically active.<sup>276</sup> They have specific responsibilities for highlighting any material breaches in the appointment process.<sup>277</sup> Departments are responsible for ensuring the process is run in a way that complies with the Code,<sup>278</sup> and are also responsible for the transparency requirements,

---

<sup>268</sup> Nolan Report, recommendation 38.

<sup>269</sup> Maer, L. and Ryan-White, G., Commissioner for Public Appointments, Briefing Paper 03368, House of Commons Library, 30 November 2017, 4: <https://researchbriefings.parliament.uk/ResearchBriefing/Summary/SN03368>

<sup>270</sup> Maer and Ryan-White, 30 November 2017, 3.

<sup>271</sup> Public Appointments Order in Council 2019, 10 April 2019, paragraph 4: <https://publicappointments.cabinetoffice.gov.uk/wp-content/uploads/2019/04/2019-Public-Appointments-Order-In-Council.pdf>

<sup>272</sup> See Commissioner for Public Appointments, Annual Report 2018-19: <https://publicappointmentscommissioner.independent.gov.uk/wp-content/uploads/2019/10/2018-19-OCPA-Annual-Report.pdf>

<sup>273</sup> Maer and Ryan-White, 30 November 2017, 6; see also, Governance Code on Public Appointments, December 2016: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/578498/governance\\_code\\_on\\_public\\_appointments\\_16\\_12\\_2016.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/578498/governance_code_on_public_appointments_16_12_2016.pdf)

<sup>274</sup> Governance Code, paragraph 5.5.

<sup>275</sup> Governance Code, paragraph 3.2.

<sup>276</sup> Governance Code, paragraph 6.1.

<sup>277</sup> Governance Code, paragraph 6.3.

<sup>278</sup> Governance Code, paragraph 7.1.

including advertising public appointments and the contact details of their public appointments team.<sup>279</sup>

### **Remit of the Commissioner**

In 2016, a review of the Commissioner's role was published.<sup>280</sup> The report received extensive commentary from the outgoing Commissioner, as well as the CSPL and the Public Administration and Constitutional Affairs Select Committee (PACAC), which interpreted the recommendations as weakening the role of the Commissioner.<sup>281</sup> There were two main recommendations that caused controversy: the increased emphasis on ministerial responsibility for appointments and the recommendation that the government rather than the Commissioner should publish the Governance Code.<sup>282</sup>

Under the current Code, the Commissioner must be consulted if a Minister chooses to make an appointment that a Panel has deemed not to be "appointable";<sup>283</sup> decides to make an appointment without a competition;<sup>284</sup> or appoints a Senior Independent Panel Member.<sup>285</sup> He must also be notified of extension of tenure beyond ten years/two terms, The CSPL in particular raised concerns about the removal of "too many of the checks and balances on Ministerial powers in relation to the public appointments process", to the inquiry into the report led by the PACAC.<sup>286</sup> In March 2017, the CSPL indicated that the "new regime will require continued monitoring and review".<sup>287</sup> Since this time, concerns about potential weaknesses in the system have not borne out in practice, however, and Ministers' conduct has not so far led to the problems anticipated.

### **Investigating complaints**

The Commissioner can hear complaints relating to appointment processes that have taken place within the previous 12 months and that concern an individual's experience as an applicant, the way the department or organisation responsible held the appointment process, or instances where it appears that the Governance Code was not followed. Initially, complaints should be taken up with the department concerned, but if the complainant is dissatisfied with the department's response they may bring it to the Commissioner.<sup>288</sup> The Commissioner publishes the details of the complaints investigated; and the outcome of investigations, and can also make recommendations for future appointment processes.<sup>289</sup>

The Commissioner also has the power to hold investigations into any aspect of the public appointments process,<sup>290</sup> the results of which are also published on the Commissioner's website. While the Commissioner can make recommendations as a result of these complaints

---

<sup>279</sup> Governance Code, paragraph 8. 2.

<sup>280</sup> Grimstone, G. Better Public Appointments: A review of the public appointments process, March 2016: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/507066/Better\\_Public\\_Appointments\\_March\\_2016.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/507066/Better_Public_Appointments_March_2016.pdf)

<sup>281</sup> Maer and Ryan-White, 30 November 2017, 13-15.

<sup>282</sup> Maer and Ryan-White, 30 November 2017, 12.

<sup>283</sup> Governance Code, paragraph 3.2.

<sup>284</sup> Governance Code, paragraph 3.3.

<sup>285</sup> Governance Code, paragraph 6.2.

<sup>286</sup> Committee on Standards in Public Life, Submission of Evidence to the Public Administration and Constitutional Affairs Select Committee inquiry into Better Public Appointments: A review of the public appointments process, 7 April 2016:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/516352/PACAC\\_sub\\_Grimstone\\_Review.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/516352/PACAC_sub_Grimstone_Review.pdf)

<sup>287</sup> See: <https://www.gov.uk/government/news/public-appointments-cspl-view-on-pacac-follow-up-report>

<sup>288</sup> Governance Code, paragraph 4.4.

<sup>289</sup> See: <https://publicappointmentscommissioner.independent.gov.uk/publications/outcome-of-investigations/>; see also: <https://publicappointmentscommissioner.independent.gov.uk/wp-content/uploads/2017/04/OIC-2016.pdf>

<sup>290</sup> Public Appointments Order in Council 2019, paragraph 4(3).

and investigations, there is no power to ask for a competition to be re-run or for a particular individual to be appointed.

### **Conduct of Public Appointees**

Once recruited, all public appointees are required to comply with the Seven Principles of Public Life and the Code of Conduct for board members of public bodies.<sup>291</sup> This Code of Conduct is owned by the Cabinet Office and outlines the expected behaviour of board members, including the use of public funds, allowances, gifts and hospitality, use of official resources and information, political activity and employment and appointments.<sup>292</sup> In particular, conflicts of interest should be declared and registered with the relevant department and the individual should not take part in discussions or the determination of matters in which they have a financial interest.<sup>293</sup>

---

<sup>291</sup> Governance Code, paragraph 9.1.

<sup>292</sup> Code of Conduct for Board Members of Public Bodies, June 2019:  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/809093/Code-of-Conduct-for-Board-Members-of-Public-Bodies-2019-WEB.PDF](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/809093/Code-of-Conduct-for-Board-Members-of-Public-Bodies-2019-WEB.PDF)

<sup>293</sup> Code of Conduct for Board Members of Public Bodies, paragraph 4.3.

## 6. The Judiciary

- Guide to Judicial Conduct
- Lord Chief Justice and Lord Chancellor
- Judicial Conduct Investigations Office
- Judicial Appointments Commission
- Judicial Appointments and Conduct Ombudsman

### 6.1 Summary of standards

The independence and impartiality of the Judiciary is an essential pillar in the UK's democracy, underpinning liberty and the rule of law.<sup>294</sup> Judicial independence is maintained in three main ways. First, institutional independence maintains the independence of judicial business from political interference and from civil liabilities relating to judges' decisions. Second, personal independence protects judicial independence by securing their tenure and excluding them from interests that could either affect or could be seen to affect their duties and judgements. Third, internal independence maintains the freedom of judges from influences within the judiciary, from their peers or more senior judges.<sup>295</sup> The regulatory framework surrounding the judiciary aims to maintain independence on all three fronts.

The legal underpinning for judicial independence and discipline was considerably strengthened in the Constitutional Reform Act 2005, which was influenced in part by international law and the provisions of the European Convention on Human Rights (Article 6.1).<sup>296</sup> The Equalities Act 2010 further underlines the importance of equality and fairness in the conduct of judges.<sup>297</sup> The 2005 Act aimed to achieve a clearer separation of powers between the legislature and the judiciary, distancing judicial office holders from political influence and executive power and thus increasing the extent of judicial independence. In doing so, the Act modified the office of the Lord Chancellor, sharing the judicial responsibilities of the Lord Chancellor with the Lord Chief Justice; created the Supreme Court; and made provisions for a Judicial Appointments Commission and a Judicial Appointments and Conduct Ombudsman.<sup>298</sup>

The Court of Appeal plays an important role in maintaining high standards in the Judiciary,<sup>299</sup> as the right to appeal provides opportunities for litigants to appeal judicial decisions to a higher court.<sup>300</sup> The Court can order a retrial in civil cases and can quash criminal convictions.<sup>301</sup> However, this has been supplemented since 2005 by an option to make complaints to the Ombudsman, which has had the effect of increasing judicial accountability. Causes for complaint are varied, but broadly fall into two categories: complaints relating to judicial decisions and case management (which are dealt with through the Court), and complaints relating to the conduct of judicial office holders (which are dealt with by the Judicial Conduct Investigations Office).

<sup>294</sup> Shetreet, S. and Turenne, S. 2014. Judges on Trial: The Independence and Accountability of the English Judiciary. Cambridge: Cambridge University Press, 1.

<sup>295</sup> See Shetreet and Turenne 2014, 5-6.

<sup>296</sup> Shetreet and Turenne 2014, 7.

<sup>297</sup> Guide to Judicial Conduct, Foreword, 3.

<sup>298</sup> See: <http://www.legislation.gov.uk/ukpga/2005/4/notes/division/2>

<sup>299</sup> Shetreet and Turenne 2014, 7.

<sup>300</sup> Shetreet and Turenne 2014, 13.

<sup>301</sup> Shetreet and Turenne 2014, 220.

The Judicial Council provides guidance to judges on their conduct through the Guide to Judicial Conduct. This guidance is not statutory, but is underpinned by the oath taken by judges on their appointment:<sup>302</sup>

I will do right by all manner of people, after the law and usages of this realm, without fear or favour, affection or ill will.

### **Guide to Judicial Conduct**

The Guide to Judicial Conduct (the Guide) was first published in 2003, and is designed to offer assistance to judges, coroners and magistrates on their conduct. It was most recently updated in March 2019.<sup>303</sup> As implied in its title, the Guide is not a Code or a set of rules to judicial conduct; rather it constitutes “a set of core principles” for the judiciary, and where there is doubt, advice should be sought from the relevant leadership judge.<sup>304</sup>

The Guide sets out three principles for judicial conduct: judicial independence, impartiality and integrity.<sup>305</sup> These are underpinned by the values contained in the Bangalore Principles, which were endorsed by the United Nations Human Rights Commission in 2003,<sup>306</sup> and cover not only conduct in relation to judicial functions, but also judges’ conduct in their private lives.<sup>307</sup> This explicit recognition of private life relates to its potential to affect judges’ public lives and public trust in the judiciary as a whole, and is in contrast to the debates around regulating the private lives of politicians and other public office holders (see above).

There are restrictions on judges’ extra-judicial activities in relation to commercial activities, engagement with community organisations, fundraising, participating in the public debate and the media, social activities and contact with the legal profession.<sup>308</sup> There are additional restrictions on salaried judges, which are set out formally in their Terms and Conditions; these include being banned from legal practice and apart from receiving money from investments and property, salaried judges cannot undertake any remunerated employment or retain any fees or emolument, except royalties.<sup>309</sup> There are also reporting requirements for judges, which include personal involvement in court proceedings and criminal charges,<sup>310</sup> and also in relation to any complaints or disciplinary proceedings they might be involved in. Failure to report could lead to disciplinary action.<sup>311</sup>

Salaried judges are banned from engaging in political activity. This has long been the case, but the principle was underlined by the Constitutional Reform Act 2005, and included in the Terms of Appointment and Terms of Service. This includes a ban on undertaking any political activity, having connections with any political party or holding political office.<sup>312</sup> Members of the Judiciary who are also Members of the House of Lords are formally disqualified from taking part in the work of the House.<sup>313</sup> There are lesser restrictions on fee-paid judges, Magistrates and coroners, although they should avoid conflicts with their judicial office.<sup>314</sup> Retired judges are free to engage in political activity and public debate, but “should take care

---

<sup>302</sup> Shetreet and Turenne 2014, 186.

<sup>303</sup> See: <https://www.judiciary.uk/publications/guide-to-judicial-conduct/>

<sup>304</sup> Guide to Judicial Conduct, March 2019, 4: <https://www.judiciary.uk/wp-content/uploads/2018/03/Guide-to-Judicial-Conduct-March-2019.pdf>

<sup>305</sup> Guide to Judicial Conduct, March 2019, 6.

<sup>306</sup> Bangalore Principles of Judicial Conduct, 2002: [https://www.unodc.org/pdf/crime/corruption/judicial\\_group/Bangalore\\_principles.pdf](https://www.unodc.org/pdf/crime/corruption/judicial_group/Bangalore_principles.pdf)

<sup>307</sup> Guide to Judicial Conduct, March 2019, 6.

<sup>308</sup> Guide to Judicial Conduct, March 2019, 9-18.

<sup>309</sup> Guide to Judicial Conduct, March 2019, 17.

<sup>310</sup> Guide to Judicial Conduct, March 2019, 17.

<sup>311</sup> Guide to Judicial Conduct, March 2019, 18.

<sup>312</sup> Guide to Judicial Conduct, March 2019, 12.

<sup>313</sup> See: <https://www.parliament.uk/mps-lords-and-offices/lords/-ineligible-lords/>

<sup>314</sup> Guide to Judicial Conduct, March 2019, 12-13.



to avoid any activity that may tarnish the reputation of the judiciary and the perception of its independence”.<sup>315</sup>

A major concern of the Guide is to manage conflicts of interest effectively when carrying out judicial activities. This includes managing bias and perceived bias in the process. Judges should not sit on a case where there is a close relationship with any party or their spouse or partner, and similarly friendship or animosity or a business relationship with any party should also exclude the judge from sitting.<sup>316</sup> If circumstances could give rise to bias, then these should be disclosed and followed by recusal from the case, unless all parties, including the judge, consent to the continuation. There are some cases in which the situation will be brought to the attention of the parties, but on consideration, despite them not giving consent for continuation the judge can decide to proceed.<sup>317</sup> Judges are not required to register their interests in advance.

### **Supreme Court Justices**

The 12 Supreme Court Justices are appointed by a selection Committee convened by the Lord Chancellor.<sup>318</sup> In 2009, the Justices of the Supreme Court also adopted a Guide to their own judicial conduct, which drew upon the guidance provided in the Guide to Judicial Conduct for Judges. It covers judicial independence, impartiality, integrity, propriety, competence and diligence.<sup>319</sup> The responsibility for deciding on an appropriate course of conduct, however, remains with the individual Justice.<sup>320</sup> Justices are not required to register their interests, although previously when members of the House of Lords they were required to comply with the rules of the House.<sup>321</sup>

The Court also has a procedure for judicial complaints, which are dealt with primarily internally, as there is no external oversight body. In the first instance complaints are passed to the Chief Executive, who decides whether the complaint should be investigated; if the complaint relates to a judicial decision or provides no grounds for the complaint, then no action is taken and the complainant is informed. Where there is a case the complaint is referred to the most senior member of the court to which the complaint does not relate, usually the President. If a formal action is considered the Justice is informed, along with the Lord Chancellor, who is also consulted about the action to be taken. A formal action involves a Tribunal including the Lord Chief Justice, the Lord Chancellor and others, and the Lord Chancellor makes the decision on whether to remove the Justice from office and may also publish the Tribunal’s report.<sup>322</sup>

The primary upholders of standards for the Judiciary are the **Lord Chancellor and Lord Chief Justice**, the **Judicial Conduct Investigations Office**, the **Judicial Appointments Commission** and the **Judicial Appointments and Conduct Ombudsman**.

## **6.2 Institutions**

### **6.2.1 Lord Chancellor and Lord Chief Justice**

---

<sup>315</sup> Guide to Judicial Conduct, March 2019, 13.

<sup>316</sup> Guide to Judicial Conduct, March 2019, 19.

<sup>317</sup> Guide to Judicial Conduct, March 2019, 20.

<sup>318</sup> See: <https://www.supremecourt.uk/about/appointments-of-justices.html>

<sup>319</sup> United Kingdom Supreme Court, Guide to Judicial Conduct 2009: <https://www.supremecourt.uk/docs/guide-to-judicial-conduct.pdf>

<sup>320</sup> United Kingdom Supreme Court, 2009, paragraph 1.4.

<sup>321</sup> See: <https://www.supremecourt.uk/about/justices-interests-and-expenses.html>

<sup>322</sup> Judicial Complaints Procedure: UK Supreme Court: <https://www.supremecourt.uk/docs/judicial-complaints-procedure.pdf>

The Lord Chancellor is the head of the Ministry of Justice, appointed by the Monarch on the advice of the Prime Minister. Until the changes made by the 2005 Constitutional Reform Act, the Lord Chancellor was also the head of the judiciary and speaker in the House of Lords, but this is no longer the case. The Lord Chancellor cannot sit as a judge.<sup>323</sup>

The Lord Chief Justice has over 400 statutory responsibilities, but in relation to standards in the judiciary shares responsibility with the Lord Chancellor for judicial discipline. This responsibility is joint and equal, and is supported by the Judicial Conduct Investigations Office (see below).<sup>324</sup> The Lord Chief Justice is appointed by a panel convened by the Judicial Appointments Commission (see below), and usually comes from the Court of Appeal, although members of the Supreme Court can also be appointed.<sup>325</sup>

In undertaking their responsibilities for upholding judicial standards, the Lord Chancellor and Lord Chief Justice may choose to pay regard to the Guide to Judicial Conduct, but they “are not obliged to follow it”.<sup>326</sup> The Lord Chancellor and Lord Chief Justice are responsible for making final decisions about the discipline of judges and there is no right of appeal against their decisions.<sup>327</sup>

## 6.2.2 Judicial Conduct Investigations Office

The Judicial Conduct Investigations Office (JCIO) is an independent statutory body, which supports the Lord Chancellor and Lord Chief Justice in considering complaints about the conduct of the judiciary. It does not deal with complaints about the decisions made by judges or the management of cases, which can be subject to appeals, but rather considers complaints relating to the personal conduct of judicial office holders.<sup>328</sup> The JCIO is principally an advisory body, without powers to make findings or issue sanctions. The JCIO makes recommendations to the Lord Chancellor and Lord Chief Justice on the basis of evidence and precedent cases, who then issue a sanction.<sup>329</sup>

### Complaints and investigations

Complaints should be made within three months of the matter occurring, should be made in writing and can be submitted online.<sup>330</sup> The Judicial Discipline (Prescribed Procedures) Regulations 2014 and The Judicial Conduct (Judicial and Other Office Holders) Rules 2014 provide the procedures and rules by which complaints should be made and handled.<sup>331</sup>

In certain circumstances the JCIO can consider the evidence and then either dismiss the case or recommend sanctions to the Lord Chancellor and Lord Chief Justice. Otherwise, a nominated judge, appointed by the Lord Chief Justice, considers the case, and can either recommend disciplinary action, or refer the case to an investigating judge if it is sufficiently

---

<sup>323</sup> See: <https://www.parliament.uk/site-information/glossary/lord-chancellor/>

<sup>324</sup> See: <https://www.judiciary.uk/about-the-judiciary/who-are-the-judiciary/judicial-roles/judges/lord-chief-justice/>

<sup>325</sup> See: <https://www.judiciary.uk/about-the-judiciary/who-are-the-judiciary/judicial-roles/judges/lord-chief-justice/>

<sup>326</sup> Guide to Judicial Conduct, March 2019, 5.

<sup>327</sup> Judicial Conduct (Judicial and Other Office Holders) Rules 2014: Supplementary Guidance: [https://s3-eu-west-2.amazonaws.com/jcio-prod-storage-1xuw6pgd2b1rf/uploads/2015/12/Supplementary\\_Guidance\\_Judicial\\_and\\_other\\_office\\_holders\\_.pdf](https://s3-eu-west-2.amazonaws.com/jcio-prod-storage-1xuw6pgd2b1rf/uploads/2015/12/Supplementary_Guidance_Judicial_and_other_office_holders_.pdf)

<sup>328</sup> See: <https://judicialconduct.judiciary.gov.uk/>

<sup>329</sup> See: <https://judicialconduct.judiciary.gov.uk/>

<sup>330</sup> See: <https://judicialconduct.judiciary.gov.uk/making-a-complaint/>

<sup>331</sup> The Judicial Discipline (Prescribed Procedures) Regulations 2014 No.1919: [https://s3-eu-west-2.amazonaws.com/jcio-prod-storage-1xuw6pgd2b1rf/uploads/2015/12/uksi\\_20141919\\_en.pdf](https://s3-eu-west-2.amazonaws.com/jcio-prod-storage-1xuw6pgd2b1rf/uploads/2015/12/uksi_20141919_en.pdf); Judicial Conduct (Judicial and Other Office Holders) Rules 2014: [https://s3-eu-west-2.amazonaws.com/jcio-prod-storage-1xuw6pgd2b1rf/uploads/2015/12/Judicial\\_Conduct\\_Judicial\\_Rules\\_2014.pdf](https://s3-eu-west-2.amazonaws.com/jcio-prod-storage-1xuw6pgd2b1rf/uploads/2015/12/Judicial_Conduct_Judicial_Rules_2014.pdf)

serious or complex. An investigating judge conducts an investigation and reports findings to the Lord Chancellor and Lord Chief Justice, who in turn issue a sanction.<sup>332</sup>

If there is a recommendation to remove or suspend a judge, he or she has the right to a Disciplinary Panel to hear the case. The Panel is made up of four members, two judicial and two lay members and they consider the evidence and provide a report to the Lord Chancellor and Lord Chief Justice with their recommendations, who may then jointly issue sanctions.<sup>333</sup>

When a disciplinary sanction has been issued to a judicial office holder, the JCIO publishes a Disciplinary Statement on its website; these statements remain on the website for one year or, if they result in a removal from office, remain on the website for five years. The Lord Chancellor and Lord Chief Justice can decide jointly whether to issue a press statement or delete statements, depending on the individual case.<sup>334</sup>

### 6.2.3 Judicial Appointments Commission

The Judicial Appointments Commission is independent and responsible for selecting candidates for judicial office.<sup>335</sup> There are 15 Commissioners; the Chair of the Commission is a lay member, and of the remaining Commissioners six are judicial, two are legal professionals, five are lay members and one is a non-legally qualified judicial member. Twelve of the Commissioners are appointed in an open competition and the Judicial Council or the Tribunal Judges' Council select the remaining three.<sup>336</sup>

The selection process includes a statutory consultation and other background checks into the character of the candidates.<sup>337</sup> The Commission also conducts a quality assurance check throughout the process,<sup>338</sup> and it has a process for receiving complaints through its complaints manager.<sup>339</sup> If complaints are not successfully handled the Judicial Appointments and Conduct Ombudsman can investigate further (see below).

### 6.2.4 Judicial Appointments and Conduct Ombudsman

The Ombudsman is independent and has responsibility for handling complaints related to judicial appointments and the conduct of the judiciary. The Ombudsman is appointed for five years and the Commission for Public Appointments oversees the appointment (see above).

The Ombudsman can only investigate complaints that have not been resolved by the first tier complaints processes, and investigates these processes rather than the complaints themselves. If the Ombudsman determines that the complaint is within remit, an investigating officer will conduct an investigation and report back to the Ombudsman, who decides the outcome of the complaint.<sup>340</sup>

With regards to complaints about appointments, the Ombudsman can:

---

<sup>332</sup> Judicial Conduct Rules 2014; Judicial Conduct (Judicial and Other Office Holders) Rules 2014 Supplementary Guidance: [https://s3-eu-west-2.amazonaws.com/jcio-prod-storage-1xuw6pgd2b1rf/uploads/2015/12/Supplementary\\_Guidance\\_Judicial\\_and\\_other\\_office\\_holders\\_.pdf](https://s3-eu-west-2.amazonaws.com/jcio-prod-storage-1xuw6pgd2b1rf/uploads/2015/12/Supplementary_Guidance_Judicial_and_other_office_holders_.pdf)

<sup>333</sup> Judicial Conduct Rules 2014; Judicial Conduct Rules 2014 Supplementary Guidance 2014.

<sup>334</sup> See: <https://judicialconduct.judiciary.gov.uk/disciplinary-statements/publication-policy/>

<sup>335</sup> See: <https://www.judicialappointments.gov.uk/what-jac-does>

<sup>336</sup> See: <https://www.judicialappointments.gov.uk/commissioners>

<sup>337</sup> See: <https://www.judicialappointments.gov.uk/statutory-consultation>

<sup>338</sup> See: <https://www.judicialappointments.gov.uk/quality-assurance>

<sup>339</sup> See: <https://www.judicialappointments.gov.uk/making-complaint>

<sup>340</sup> See:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/759413/jaco-investigation-booklet.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/759413/jaco-investigation-booklet.pdf)

- Make recommendations to the Lord Chancellor and Judicial Appointments Commission on how to proceed
- Recommend a change in procedures
- Propose that compensation be paid to a complainant

In relation to complaints about judicial conduct, the Ombudsman can:

- Ask for a reinvestigation of a complaint by the JCIO
- Ask a disciplinary panel to examine the complaint
- Recommend changes in procedure
- Propose that compensation be paid to a complainant.<sup>341</sup>

It is not possible to appeal the final decision on complaints made by the Ombudsman.<sup>342</sup>

---

<sup>341</sup> See: <https://www.gov.uk/government/organisations/judicial-appointments-and-conduct-ombudsman/about>

<sup>342</sup> See: <https://www.gov.uk/government/organisations/judicial-appointments-and-conduct-ombudsman/about/complaints-procedure>

## 7. Local Government

- Local Authorities and Councils
- Local Government and Social Care Ombudsman

### 7.1 Summary of standards

Across the United Kingdom, local government is organised and administered in either a two-tier structure of county and district authorities or a unitary structure of borough or city councils. At the local level there are parish and town councils. In England and Wales most local council services are administered by the principal authority which is either the unitary authority or, in a two-tier structure, the county council. Many local authorities now share the administration of local services and some have formally joined forces in new combined authorities, often based on a city region. At the local level, parish, community and town councils also have responsibility for local issues, such as community centres and neighbourhood planning.<sup>343</sup>

It is important to acknowledge the scale and scope of local government as well as the complexity of modern governance arrangements for service delivery. There are tens of thousands of elected councillors representing all the major parties with a growing independent sector. Most of these elected representatives have strong ties with the areas they represent, not least because they live in the locality. This can pose particular challenges in relation to the management of conflicts of interests and can test ethical standards more generally. Local government has a wide range of legal duties and is increasingly contracting out services or work in partnership with neighbouring authorities, the voluntary sector and private providers.

The responsibility for ethical standards in local authorities has undergone much change in recent years, which rather than mirroring the increased codification of standards elsewhere in the standards regime has resulted in much greater freedom across councils to set and maintain standards. The 2011 Localism Act stripped back regulation and oversight to a bare minimum, resulting in a regime that has resorted to “hard law, almost complete local autonomy, with minimum direction and intervention from the centre”.<sup>344</sup> The Act placed responsibility for the conduct of councillors in the hands of local authorities, which are responsible for maintaining a Code of Conduct and a register of disposable pecuniary interests, and must also deal with alleged breaches of the Code and registration requirements.<sup>345</sup> There is no requirement for local authorities to provide a Code of Conduct for local authority staff, but many continue to do so.<sup>346</sup>

The 2011 Act dismantled the regime that had been in place since 2000 with centralised powers of oversight and monitoring. The Local Government Act 2000 had instituted measures of oversight, including a model Code of Conduct, which local authorities were required to integrate into their own; a Standards Board for England to promote high standards and investigate complaints; Adjudication Panels to adjudicate on investigations; and Standards Committees in each local authority to promote high standards of conduct.<sup>347</sup> However, both

<sup>343</sup> See: <https://www.gov.uk/understand-how-your-council-works>

<sup>344</sup> Hine and Peele 2016, 263.

<sup>345</sup> Sandford, M., Local Government Standards in England, House of Commons Library Briefing Paper No. 05707, 7 March 2019, 4: <https://researchbriefings.parliament.uk/ResearchBriefing/Summary/SN05707>

<sup>346</sup> Sandford, 7 March 2019, 5.

<sup>347</sup> Committee on Standards, 10 February 2015, Appendix 1, 74.

the functioning and the reception of this system of regulation was highly criticised with the Standards Boards, at least initially, taking an extended time to resolve complaints.<sup>348</sup>

Following significant criticism, including from the CSPL, a number of adjustments were made through the Local Government and Public Involvement in Health Act 2007,<sup>349</sup> which primarily provided increased opportunities for resolving complaints at the local level.<sup>350</sup> The assessment of the allegations were now to be made by Standards Committees, and the Standards Board (now named Standards England) took on an oversight role and acted as a “strategic regulator”.<sup>351</sup> Despite the changes, sustained criticism led to an overhaul of the regime in 2011, including the abolition of Standards England.<sup>352</sup>

### Codes of Conduct and Guidance

Since 2012, local authorities have been responsible for creating their own Codes of Conduct, which should incorporate the Seven Principles of Public Life. These Codes are much less consistent than previously, where the rules and provisions of a model code had to be incorporated. The Department for Communities and Local Government has published an illustrative text,<sup>353</sup> but states explicitly that councils can “choose” whether or not they use it as the basis for their own Codes of Conduct.<sup>354</sup> In 2013, the Department also provided a guidance document for Councillors on dealing with their personal interests. The Guidance makes it clear that it is a criminal offence to fail to tell the Monitoring Officer about disposable pecuniary interests, or to knowingly provide false or misleading information.<sup>355</sup>

The Local Government Association also provides a model Code of Conduct for local authorities to use as a basis for their own. In its 2019 review of local government standards, the CSPL proposed that the Local Government Association should be responsible for updating a model code of conduct, in consultation with councillors at all levels.<sup>356</sup>

The primary upholders of standards in local government are the **Local Authorities** and the **Local Government and Social Care Ombudsman**.

## 7.2 Institutions

### 7.2.1 Local authorities and Councils

The Localism Act 2011 creates two main duties for local authorities: (1) to develop a Code of Conduct that complies with the Seven Principles of Public Life and sets out how councillors

---

<sup>348</sup> Hine and Peele 2016, 249.

<sup>349</sup> Committee on Standards in Public Life, Standards Matter: A review of best practice in promoting good behaviour in public life, 17 January 2013, 19:  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/348304/Standards\\_Matter.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/348304/Standards_Matter.pdf)

<sup>350</sup> Sandford, 7 March 2019, 4.

<sup>351</sup> Hine and Peele 2016, 259; see also Committee on Standards, 10 February 2015, Appendix 1.

<sup>352</sup> Committee on Standards, 10 February 2015, Appendix 1, 75.

<sup>353</sup> See:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/240161/120906\\_III\\_ustrative\\_Code\\_of\\_Conduct\\_2\\_.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/240161/120906_III_ustrative_Code_of_Conduct_2_.pdf)

<sup>354</sup> See: <https://www.gov.uk/government/publications/illustrative-text-for-local-code-of-conduct--2>

<sup>355</sup> Department for Communities and Local Government, Openness and Transparency on Personal Interests: A Guide for Councillors, September 2013:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/240134/Openness\\_and\\_transparency\\_on\\_personal\\_interests.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/240134/Openness_and_transparency_on_personal_interests.pdf)

<sup>356</sup> Committee on Standards in Public Life, Local Government Ethical Standards: A Review by the Committee on Standards in Public Life, January 2019, 14:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/777315/6.4896\\_C\\_O\\_CSPL\\_Command\\_Paper\\_on\\_Local\\_Government\\_Standards\\_v4\\_WEB.PDF](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/777315/6.4896_C_O_CSPL_Command_Paper_on_Local_Government_Standards_v4_WEB.PDF)

will register and declare pecuniary and other interests; and (2) to ensure that the authorities' Monitoring Officers establish and maintain a register of members' interests.<sup>357</sup>

### **Registration of interests**

Councillors are required to register their relevant pecuniary interests within 28 days of their election; they must also disclose their interests if they arise and are relevant to a discussion at a meeting of the council. Dispensations are available to enable councillors to take part in debates, from which they would otherwise be barred, including for example in the case of owning property in an area, while also deciding on levels of council tax.<sup>358</sup>

The Monitoring Officer should be notified and maintain and publish a register of interests; the interests required to be registered include those of a councillor's spouse, partner or civil partner.<sup>359</sup> In a 2019 report reviewing local authority arrangements, the CSPL recommended that local authorities should establish registers for gifts and hospitality and that a range of other appointments, such as unpaid directorships and membership of groups that seek to influence public policy should also be disclosed.<sup>360</sup>

### **Breaches of the Code**

There should be mechanisms in place to investigate breaches of the Code, although these can vary depending on the processes put in place by the local authority; these might include the creation (or maintenance) of a Standards Committee, but this is not a requirement.<sup>361</sup>

There are provisions for the appointment of an Independent Person, which must be consulted during an investigation into an alleged breach of the Code, and can also be consulted by the accused individual.<sup>362</sup> The 2011 Act, abolished the requirement of having independent lay people on Standards Committees, previously the requirement was for 25%. The CSPL criticised the reduced role of lay members in its 2013 report.<sup>363</sup> In 2019, the CSPL recommended that the views of the Independent Person should be formally recorded in any decision notice or minutes.<sup>364</sup>

The procedures for investigations vary, with some authorities having created a Standards Panel to hear the case or consider the investigation report.<sup>365</sup> The presumption is that hearings should be held in public.<sup>366</sup> There is no higher authority for appeals of decisions, except through the courts,<sup>367</sup> although the Local Government Ombudsman can investigate the process by which decisions were reached (see below).<sup>368</sup>

### **Sanctions**

There has been a considerable weakening of sanctions in the 2012 regime compared to those that preceded it. Councils have the ability to censure members or remove them from committees, but short of criminal prosecution there is little else that can be used as a sanction.<sup>369</sup> In 2013, the CSPL raised concerns about the sanctions available to local authorities where misconduct was identified. It argued that:

---

<sup>357</sup> Department for Communities and Local Government, September 2013.

<sup>358</sup> Sandford, 7 March 2019, 8.

<sup>359</sup> Sandford, 7 March 2019, 8.

<sup>360</sup> Committee on Standards in Public Life, January 2019, 14.

<sup>361</sup> Sandford, 7 March 2019, 10.

<sup>362</sup> Committee on Standards, 10 February 2015, Appendix 1, 79; see also Sandford, 7 March 2019, 10.

<sup>363</sup> Committee on Standards in Public Life, January 2013, 55.

<sup>364</sup> Committee on Standards in Public Life, 30 January 2019, 15.

<sup>365</sup> Committee on Standards, 10 February 2015, Appendix 1, 81.

<sup>366</sup> Committee on Standards, 10 February 2015, Appendix 1, 81.

<sup>367</sup> Committee on Standards, 10 February 2015, Appendix 1, 82.

<sup>368</sup> Sandford, 7 March 2019, 10.

<sup>369</sup> Committee on Standards, 10 February 2015, Appendix 1, 82.

The only sanctions now available, apart from through the use of party discipline, are censure or criminal prosecution for deliberately withholding or misrepresenting a financial interest. We do not think these are sufficient.<sup>370</sup>

There are two criminal offences that apply under the Localism Act 2011. These include failure to register or disclose relevant pecuniary interests, or taking part in discussions when precluded from doing so by a conflict of interest; and providing false or misleading information in relation to pecuniary interests.<sup>371</sup> The Guide for Councillors provides a list of pecuniary interests that should be disclosed.<sup>372</sup> Other breaches of the Code are dealt with by the local authority, which has the power to censure or remove councillors from committees, but cannot suspend or disqualify them from membership.<sup>373</sup> There is no right of appeal when the local authority finds a councillor in breach of the Code.<sup>374</sup>

In 2019 the CSPL described the criminal offences related to disclosure of pecuniary interests, introduced in the 2011 Act, as “disproportionate in principle and ineffective in practice, and should be abolished”.<sup>375</sup> It also proposed that local authorities should be given the power to suspend a councillor for breaches of the Code for up to six months, and that there should be a right to appeal to the Ombudsman.<sup>376</sup>

## 7.2.2 Local Government and Social Care Ombudsman

The Local Government and Social Care Ombudsman is run by the Commission for Local Administration, which is an independent body funded by government grant.<sup>377</sup> The Ombudsman is its chair, and is accompanied by the Parliamentary and Health Services Ombudsman and three advisory members. The Commissioners have their own Code of Conduct and disclose their interests.<sup>378</sup>

The Ombudsman has the power to investigate complaints about a local authority’s handling of a complaint.<sup>379</sup> The Ombudsman’s powers are limited to undertaking investigations into the local authority’s decision-making process; it can make non-binding recommendations, including that an investigation should be re-run. It cannot re-investigate the breach itself or recommend sanctions.<sup>380</sup> The remit of the Ombudsman does not currently extend to parish and town councillors, although the CSPL has recommended that it should do so, and that it should also provide an appeal mechanism for standards decisions at the local level (recommendation 13).<sup>381</sup>

---

<sup>370</sup> Committee on Standards in Public Life, January 2013, 55.

<sup>371</sup> Sandford, 7 March 2019, 10; Localism Act 2011 paragraph 34.

<sup>372</sup> Department for Local Government, September 2013, Annex A.

<sup>373</sup> Sandford, 7 March 2019, 10.

<sup>374</sup> Committee on Standards in Public Life, January 2019, 59.

<sup>375</sup> Committee on Standards in Public Life, January 2019, 11.

<sup>376</sup> Committee on Standards in Public Life, January 2019, 15-16.

<sup>377</sup> See: <https://www.lgo.org.uk/information-centre/about-us/who-we-are/our-boards/commission>

<sup>378</sup> See: <https://www.lgo.org.uk/information-centre/about-us/who-we-are/our-boards/commission>

<sup>379</sup> Sandford, 7 March 2019, 10.

<sup>380</sup> Committee on Standards in Public Life, January 2019, 60.

<sup>381</sup> Committee on Standards in Public Life, January 2019, 61.



## 8. Political Parties

- Electoral Commission
- Speaker's Committee on the Electoral Commission

### 8.1 Summary of standards

Although political parties are not strictly speaking public institutions, they play an integral part in the political system and their conduct has a profound effect on public trust. In this context there has been an increasing awareness of the need to regulate political parties, particularly their financing and campaign spending. A challenge for regulators is that in the fast-moving environment around elections, by the time any wrong-doing is identified and investigated, the election will have likely already taken place and the electorate's opportunity to impose political sanctions will have passed.<sup>382</sup> A reasonable balance needs to be struck, however, as political parties, while often powerful, high profile and increasingly professionalised, are also largely administered by volunteers and part-time staff.<sup>383</sup>

In 1997, following a manifesto promise, and a scandal in which the Labour Party was forced to return a £1 million donation, the remit of the CSPL was expanded to consider party funding.<sup>384</sup> It produced its first report on political parties in 1998,<sup>385</sup> which led directly to the Political Parties, Elections and Referendums Act 2000. The Act established the Electoral Commission and increased transparency around the sources of party donations and party expenditure during election campaigns, and also banned donations from foreign sources.<sup>386</sup> While making progress in the regulation of political parties and their activities around elections, the changes were not sufficient to eradicate concerns over their conduct. In particular, the regulations failed to get to grips with spending that exceeded incomes, including spending that was not specifically campaign related, and the increasing tendency for funding to come from large donations and loans.<sup>387</sup> Loans to parties did not have to be recorded and yet had the effect of placing parties in positions of dependency, in which loan providers could in effect call in debt if they were dissatisfied with party policy or activities.<sup>388</sup>

In response to unregistered loans and other outstanding challenges, the 2006 Electoral Administration Act provided some resolution with the regulation of "non-commercial loans", requiring the declaration of borrowings, and increasing the timeliness of reporting and increasing possible sanctions for breaches.<sup>389</sup> In 2009 the issues of campaign finance and the powers of the Electoral Commission were also addressed in the Political Parties and Elections Act, including addressing sanctions and investigatory powers.<sup>390</sup> A 2007 CSPL report raised the difficult issue of the accountability and independence of the Electoral

<sup>382</sup> See Hine and Peele 2016, for discussion of challenges faced by regulators over time, 227.

<sup>383</sup> Committee on Standards in Public Life, Review of the Electoral Commission, January 2007, 2: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/336901/11thReport\\_FullReport.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/336901/11thReport_FullReport.pdf)

<sup>384</sup> See Hine and Peele 2016, 221.

<sup>385</sup> Committee on Standards in Public Life, The Funding of Political Parties in the United Kingdom, October 1998: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/336870/5thInquiry\\_FullReport.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/336870/5thInquiry_FullReport.pdf)

<sup>386</sup> Hine and Peele 2016, 221-2.

<sup>387</sup> Hine and Peele 2016, 223-5.

<sup>388</sup> Hine and Peele 2016, 225.

<sup>389</sup> Hine and Peele 2016, 227.

<sup>390</sup> Hine and Peele 2016, 229.

Commission and the responsibilities of the Speaker's Committee as an oversight body (see below).<sup>391</sup>

A number of issues remained outstanding, however, including party dependence on large donations and loans.<sup>392</sup> In its 2011 report, the CSPL drew up a three-pronged plan for reform of the system in order to address the issue of big donors, including caps on donations, increased limits on expenditure and additional funding for political parties from the public purse.<sup>393</sup> The report did not receive universal approval, two members provided dissenting opinions,<sup>394</sup> and the proposals were largely rejected.<sup>395</sup> In recognition of the increasing prominence of third-party campaigners in the 2010 election, the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014, put in place additional regulations to limit their spending, in a move that has been subject to considerable controversy.<sup>396</sup>

More recent developments, prompted in part by the 2016 European Union Membership Referendum, have seen heightened concerns not only about spending in campaigns and the origins of funds, but also about the quality of the discourse, the danger of disinformation and fake news, and the regulation of online campaigning.<sup>397</sup> In June 2018, the Electoral Commission issued recommendations in their Digital Campaigning report.<sup>398</sup> The recommendations included more detailed reporting on digital spending by campaigning groups, increased checks and limits on groups paying for digital campaigns, and more enforcement powers to gather information. It also restated its longstanding recommendations about requiring digital political material to include an imprint of its origin, and increasing sanctions for breaches of the rules. The final report of a Digital, Culture, Media and Sport Committee inquiry, in February 2019,<sup>399</sup> supported many of the Commission's recommendations and those made by the CSPL in 2017 on the use of digital imprints.<sup>400</sup> The report also addressed the risk of foreign influence and concluded that, "the UK is clearly vulnerable to covert digital influence campaigns".<sup>401</sup>

In March 2019, the Public Administration and Constitutional Affairs Committee launched an urgent inquiry into requirements for electoral reform, following recommendations made by the Law Commission in 2016,<sup>402</sup> which have yet to be implemented by government.<sup>403</sup> The Electoral Commission has produced information on the suggested changes, which include an increase in sanctions for when campaigners and parties break electoral law, bringing in civil

---

<sup>391</sup> Committee on Standards in Public Life, January 2007.

<sup>392</sup> Hine and Peele 2016, 233.

<sup>393</sup> Committee on Standards in Public Life, Political Party Finance: Ending the Big Donor Culture, November 2011: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/336913/13th\\_Rep\\_orl\\_Political\\_party\\_finance\\_FINAL\\_PDF\\_VERSION\\_18\\_11\\_11.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/336913/13th_Rep_orl_Political_party_finance_FINAL_PDF_VERSION_18_11_11.pdf)

<sup>394</sup> Committee on Standards in Public Life, November 2011, Appendix 8.

<sup>395</sup> Hine and Peele 2016, 234.

<sup>396</sup> Hine and Peele 2016, 209.

<sup>397</sup> See Electoral Commission, Digital Campaigning: Increasing Transparency for Voters, June 2018: [https://www.electoralcommission.org.uk/\\_data/assets/pdf\\_file/0010/244594/Digital-campaigning-improving-transparency-for-voters.pdf](https://www.electoralcommission.org.uk/_data/assets/pdf_file/0010/244594/Digital-campaigning-improving-transparency-for-voters.pdf)

<sup>398</sup> Electoral Commission, June 2018, 24-26.

<sup>399</sup> Digital, Culture, Media and Sport Committee, Disinformation and "fake news": Final Report, 18 February 2019: <https://publications.parliament.uk/pa/cm201719/cmselect/cmcmds/1791/1791.pdf>

<sup>400</sup> Committee on Standards in Public Life, Intimidation in Public Life, December 2017: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/666927/6.3637\\_C\\_O\\_v6\\_061217\\_Web3.1\\_2\\_.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/666927/6.3637_C_O_v6_061217_Web3.1_2_.pdf)

<sup>401</sup> Digital, Culture, Media and Sport Committee, 18 February 2019, 71.

<sup>402</sup> See: <http://www.lawcom.gov.uk/project/electoral-law/>

<sup>403</sup> See: <https://www.parliament.uk/business/committees/committees-a-z/commons-select/public-administration-and-constitutional-affairs-committee/news-parliament-2017/electoral-law-inquiry-launch-17-19/>

sanctions under the remit of the Electoral Commission to enforce candidate finance rules and legislation on digital campaigning.<sup>404</sup>

### Guidance

The Electoral Commission provides guidance for parties, candidates and agents, campaigners and other organisations and individuals. The guidance for parties covers registration, donations and loans, reporting campaign spending and the submission of party accounts.<sup>405</sup>

The Political Parties, Elections and Referendums Act 2000 regulates the donations political parties are able to accept. The registered Treasurer receives the donations and is responsible for ensuring that they comply with the regulations. A donation includes any money, goods or services that are given to a party without charge or on non-commercial terms that have a value over £500. Parties can only accept donations from permissible donors, a list of which can be found on the Electoral Commission's website, but in all cases the donation must come from within the UK, or from individuals included on the electoral register. (Northern Irish campaigners are, however, able to accept donations from Irish based sources.) All donations should be recorded, including the value and the donor's name and address.<sup>406</sup>

Parties must report certain information to the Electoral Commission, including any impermissible donations that were made to the party (these should be returned); all single permissible donations over the value of £7,500; all donations that add up to £7,500 from the same source in a calendar year; and all permissible donations and loans that are or add up to £1,500 and come from a source that has already been reported to the Commission within the same calendar year.<sup>407</sup> Parties must submit returns to the Commission once a quarter; and once a general election is called, returns must be made weekly.<sup>408</sup>

Parties are also required to report on their campaign spending and there are different limits on spending for different kinds of elections.<sup>409</sup> During the 2017 general election, parties presenting candidates for election across Great Britain were able to spend up to £18,960,000 and £540,000 across Northern Ireland. The actual spending limit depended on the number of constituencies that each party contested.<sup>410</sup> The Electoral Commission regulates three types of spending: spending on party campaigns, third party campaigns and spending on candidates and its remit includes a duty to take reasonable steps for compliance with those rules.<sup>411</sup>

The campaign spending rules and limits apply during the regulated period in the run up to an election; UK general elections have a 365 day regulated period, but for other types of election the period is shorter at only four months.<sup>412</sup> Parties must report their spending to the Electoral Commission following an election period, along with a declaration from the person

---

<sup>404</sup> Electoral Commission, Reforming Electoral Law, 2019: [https://www.electoralcommission.org.uk/\\_data/assets/pdf\\_file/0009/259434/Reforming-electoral-law-PACAC-booklet.pdf](https://www.electoralcommission.org.uk/_data/assets/pdf_file/0009/259434/Reforming-electoral-law-PACAC-booklet.pdf)

<sup>405</sup> See: <https://www.electoralcommission.org.uk/i-am-a/party-or-campaigner/guidance-for-political-parties>

<sup>406</sup> The Electoral Commission, Overview of Donations to Political Parties, 3-5: [https://www.electoralcommission.org.uk/\\_data/assets/pdf\\_file/0014/102263/to-donations-rp.pdf](https://www.electoralcommission.org.uk/_data/assets/pdf_file/0014/102263/to-donations-rp.pdf)

<sup>407</sup> Overview of Donations to Political Parties, 6.

<sup>408</sup> Overview of Donations to Political Parties, 7.

<sup>409</sup> The Electoral Commission, Overview of Party Campaign Spending, 3: [https://www.electoralcommission.org.uk/\\_data/assets/pdf\\_file/0019/106363/to-campaign-spend-rp.pdf](https://www.electoralcommission.org.uk/_data/assets/pdf_file/0019/106363/to-campaign-spend-rp.pdf)

<sup>410</sup> The Electoral Commission, UK Parliamentary General Election 2017: Political Parties, 7: [https://www.electoralcommission.org.uk/\\_data/assets/pdf\\_file/0017/224810/UKPGE-2017-Political-Parties-guidance.pdf](https://www.electoralcommission.org.uk/_data/assets/pdf_file/0017/224810/UKPGE-2017-Political-Parties-guidance.pdf)

<sup>411</sup> The Electoral Commission, Overview of Party Campaign Spending, 4; see also Political Parties, Elections and Referendums Act 2000, section 145.

<sup>412</sup> The Electoral Commission, Overview of Party Campaign Spending, 5.

responsible that the return is complete and correct. It is a criminal offence to make a false declaration knowingly or recklessly. Reports must be made within either three or six months of the election, depending on whether the amount spent is under or over £250,000.<sup>413</sup>

The primary upholder of standards for political parties is the **Electoral Commission**, which is overseen by the **Speaker's Committee**.

## 8.2 Institutions

### 8.2.1 The Electoral Commission

The Electoral Commission is an independent statutory body, established by the Political Parties, Elections and Referendums Act 2000. It has 10 Commissioners appointed by the House of Commons for a period not exceeding 10 years, with the convention being for a four-year term. The Electoral Commission has three main roles in relation to standards setting and maintenance in UK elections: it is the independent body that oversees elections, it regulates political financing and it keeps the regulatory framework under review, making recommendations for necessary changes to the system.<sup>414</sup>

As the regulator for political funding and spending, the Electoral Commission ensures that people understand the rules that apply to them by providing guidance, publishes data on political funding and spending, and investigates breaches of the rules and imposes sanctions.

#### Publishing information

The Commission keeps a register of donations and loans to parties, which is publicly available; and also reports on campaign spending following an election.<sup>415</sup>

#### Monitoring compliance

The Commission checks the information provided for any risks and in the run up to elections it carries out targeted monitoring of donations and spending.<sup>416</sup> The Commission has both supervisory and investigatory powers.<sup>417</sup> Its supervisory powers involve the ability to gather information. The Commission can issue Disclosure Notices, which require regulated organisations to provide specific documents or information<sup>418</sup> and if access to information is refused, it can also request an Inspection Warrant from a justice of the peace; failure to comply with the warrant is a criminal offence.<sup>419</sup>

#### Breaches of the rules

In cases where the Commission has grounds to suspect a breach of the rules, it has a range of powers available. It can issue an Investigation Notice requiring the disclosure of information and documentation,<sup>420</sup> apply to the High Court for a disclosure order,<sup>421</sup> or conduct a statutory interview.<sup>422</sup> The Commission also has the power to issue a Stop Notice,

---

<sup>413</sup> The Electoral Commission, Overview of Party Campaign Spending, 15.

<sup>414</sup> See: <https://www.electoralcommission.org.uk/our-work/roles-and-responsibilities>

<sup>415</sup> See: <https://www.electoralcommission.org.uk/our-work/roles-and-responsibilities/our-role-as-regulator-of-political-party-finances>

<sup>416</sup> See: <https://www.electoralcommission.org.uk/our-work/roles-and-responsibilities/our-role-as-regulator-of-political-party-finances>

<sup>417</sup> Electoral Commission, Enforcement Policy, 5 April 2016, paragraph 2.4:

[https://www.electoralcommission.org.uk/\\_data/assets/pdf\\_file/0011/199703/April-2016-Enforcement-Policy.pdf](https://www.electoralcommission.org.uk/_data/assets/pdf_file/0011/199703/April-2016-Enforcement-Policy.pdf)

<sup>418</sup> Electoral Commission, 5 April 2016, paragraph 3.2.

<sup>419</sup> Electoral Commission, 5 April 2016, paragraph 3.6-3.8.

<sup>420</sup> Electoral Commission, 5 April 2016, paragraph 4.2-4.5.

<sup>421</sup> Electoral Commission, 5 April 2016, 4.6-4.8.

<sup>422</sup> Electoral Commission, 5 April 2016, 4.9-4.11.

which requires the regulated organisation either to not begin or to cease to a given activity.<sup>423</sup> It is a criminal offence to fail to comply with these provisions.

If the Electoral Commission suspects a breach of the rules, it considers whether investigating it is in the public interest and is justified in terms of the use of its resources.<sup>424</sup> In certain circumstances the Commission will liaise with the police and prosecutors.<sup>425</sup> There are three possible outcomes to an investigation: insufficient evidence; the Commission is satisfied beyond reasonable doubt that an offence or contravention of the rules has taken place; or it is no longer in the public interest to continue the investigation.<sup>426</sup>

Where a breach in the rules is found, the Electoral Commission has powers to impose sanctions. The sanctions available include: fixed monetary penalties of £200; variable monetary penalties between £250 and £20,000; and compliance and restoration notices to either stop a breach continuing or recurring, or to take action to restore the position to where it would have been had no breach taken place.<sup>427</sup> Failure to comply with a compliance or restoration notice can result in a criminal conviction. In cases of serious breaches, involving knowing or reckless behaviour or offences related to the spending or donations of candidates, the Electoral Commission refers the case to the police for investigation.<sup>428</sup>

## 8.2.2 The Speakers Committee

The Speakers Committee on the Electoral Commission is a statutory body, established by the Political Parties, Elections and Referendums Act 2000.<sup>429</sup> The Speaker of the House of Commons is the Committee chair and sits along with the Minister of the Cabinet Office, the Chair of the Public Administration and Constitutional Affairs Committee and the Parliamentary Under-Secretary for Housing, Communities and Local Government; and with five other members appointed by the Speaker.<sup>430</sup>

It oversees the work of the Electoral Commission with duties to recommend the appointment and re-appointment of Commissioners and to examine the estimates and five-year plans of the Electoral Commission. In appointing Commissioners, the Committee ensures that there is a fair competition. It then makes recommendations for approval by the House of Commons and the Queen then appoints Commissioners.<sup>431</sup>

---

<sup>423</sup> Electoral Commission, 5 April 2016, 5.1-5.5.

<sup>424</sup> Electoral Commission, 5 April 2016, paragraph 6.8.

<sup>425</sup> Electoral Commission, 4 April 2016, paragraph 6.14.

<sup>426</sup> Electoral Commission, 5 April 2016, paragraph 6.17.

<sup>427</sup> Electoral Commission, 5 April 2016, section 8.

<sup>428</sup> See: <https://www.electoralcommission.org.uk/who-we-are-and-what-we-do/our-enforcement-work>

<sup>429</sup> See: <https://www.parliament.uk/business/committees/committees-a-z/other-committees/speakers-committee-on-the-electoral-commission/>

<sup>430</sup> See: <https://www.parliament.uk/business/committees/committees-a-z/other-committees/speakers-committee-on-the-electoral-commission/>

<sup>431</sup> The Speakers' Committee on the Electoral Commission, Work of the Committee 2017-18, 28 November 2018, 4: <https://publications.parliament.uk/pa/cm201719/cmselect/cmspeak/1786/1786.pdf>

## 9. Third-party actors

### Lobbyists

- Office of the Registrar of Consultant Lobbyists

### Third-party public service providers

- Suppliers Code of Conduct
- Government Commercial Function

### 9.1 Summary of standards

The last 30 years have seen the shape of political life change considerably, as third-party actors have become increasingly involved in the way politics is done and how decisions are implemented and public duties are fulfilled. As a consequence there have been increasing concerns about the need to regulate actors that are not strictly public servants, but are closely involved in the making of public policy and take on responsibilities for the delivery of public services.

This general trend towards bringing third-party actors into the standards regime is reflected in the CSPL's changing remit and the areas it has explored in its reports over the years. Its remit expanded first in 1997 to include political parties and again in 2013 to include "all those involved in the delivery of public services", including the employees of private sector companies contracted to provide public services.<sup>432</sup> The pattern of the Committee's reports over time also track changing interests and pressures on public standards: first tackling the accountability of ministers' special advisers in 2003; considering lobbying for the first time in 2013; and addressing the integrity challenges of private providers of public services in 2014, an issue it revisited in 2015 and again in 2018.<sup>433</sup>

This section focuses on the ways in which regulation has evolved to include lobbyists, campaigning groups and third-party providers of public services. Extending regulation to actors who are not public officials, but have considerable involvement in and responsibility for public policy and service delivery poses a number of challenges. These relate to the different institutional contexts in which third parties work, the different pressures and expectations on them in terms of performance and the difficulties of incentivising and monitoring certain types of conduct.

In the case of lobbyists the solution has been to concentrate on increasing transparency rather than to attempt to impose codes of conduct or proscribe particular types of behaviour.<sup>434</sup> In the case of the providers of public services a larger framework is in place to monitor performance and financial accountability, but it does not necessarily cover ethical behaviour or incorporate standards that would be expected of public officials and civil servants.<sup>435</sup> In its 2018 report, the CSPL highlighted the particular tension inherent in the imposition of ethical standards, such as the Seven Principles of Public Life, on private and

---

<sup>432</sup> In 2013, the remit was also restricted so as not to include the devolved legislatures. See:

<https://www.gov.uk/government/organisations/the-committee-on-standards-in-public-life/about/terms-of-reference>

<sup>433</sup> For a full list of reports see: <https://www.gov.uk/government/collections/cspl-reports>

<sup>434</sup> See Hine and Peele 2016, 209.

<sup>435</sup> Committee on Standards in Public Life, Ethical Standards for Providers of Public Services, June 2014, 24: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/336942/CSPL\\_EthicalStandards\\_web.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/336942/CSPL_EthicalStandards_web.pdf)

voluntary organisations. These include conflicts between the selflessness principle and the profit motive, the balance of value for money and ethics, and the varying obligations and burdens imposed by transparency and openness.<sup>436</sup> Despite these challenges, there is an increasing awareness that ethical standards are both necessary and expected of all providers of public services and that systems need to be improved to ensure that they are a core component of commissioning and continuing oversight.

## 9.2 Lobbyists and campaigning organisations

Lobbying is an intrinsic part of the democratic system. It is both legitimate and beneficial to the political process, but it can also enable practices that can lead to a “lack of trust and confidence in political decision making”.<sup>437</sup> Concerns arise around two dimensions, first that individuals and groups do not have equal resources to enable them to lobby on a level playing field, and second that there might be improper forms of benefit or exchange involved that compromise the ability of public officials to fulfil their duties.<sup>438</sup> The considerable rise in the extent and intensity of lobbying activity in recent years has led to calls to regulate the industry.

In 2009, an inquiry by the Public Administration Select Committee (PASC) recommended the promotion of ethical behaviour by lobbyists and the introduction of a mandatory register for “all those involved in accessing and influencing public-sector decision makers” to be managed by an independent body.<sup>439</sup> In 2012, the Political and Constitutional Reform Select Committee issued a follow-up report to the government’s consultation on introducing a statutory register. It reiterated the PASC recommendations and also addressed the question of whether charities and other third-party campaigning groups should be included.<sup>440</sup>

The Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act (Lobbying Act) delivered a partial solution to the regulation of lobbyists.<sup>441</sup> The CSPL produced a report in 2013, as the legislation was making its way through Parliament, which expressed doubts that the register proposed by the government “would be enough to allay public concern”.<sup>442</sup> The Act brought in a compulsory register, limited to consultant lobbyists, or “multi-client lobbying firms”, contrary to the recommendations of the Committees. The argument was that these were the firms that introduced the most opacity into the system in terms of what was being lobbied for and by whom,<sup>443</sup> but it meant that the Act did not address the concerns around in-house lobbyists and PR departments. It also controversially introduced regulations on registration and expenditure by “third-party campaigners”, which charities in particular have protested strongly against.<sup>444</sup>

### 9.2.1 Office of the Registrar of Consultant Lobbyists

---

<sup>436</sup> Committee on Standards in Public Life, May 2018, 33-37.

<sup>437</sup> Committee on Standards in Public Life, Strengthening Transparency around Lobbying, November 2013, 5: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/407530/2901376\\_LobbyingStandards\\_WEB.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/407530/2901376_LobbyingStandards_WEB.pdf)

<sup>438</sup> See Hine and Peele 2016, 197.

<sup>439</sup> Public Administration Select Committee, Lobbyists: Access and Influence in Whitehall, First Report of Session 2008-9, 5 January 2009, 51: <https://publications.parliament.uk/pa/cm200809/cmselect/cmpublicadm/36/36i.pdf>

<sup>440</sup> Political and Constitutional Reform Committee, Introducing a Statutory Register of Lobbyists, Second Report of Session 2012-13, 13 July 2012, 5: <https://publications.parliament.uk/pa/cm201213/cmselect/cmpolcon/153/153.pdf>

<sup>441</sup> See: <http://www.legislation.gov.uk/ukpga/2014/4/contents>

<sup>442</sup> Committee on Standards in Public Life, November 2013, 5.

<sup>443</sup> Hine and Peele 2016, 206-207.

<sup>444</sup> Hine and Peele 2016, 209; see also: <https://www.theguardian.com/voluntary-sector-network/2018/jan/17/the-lobbying-act-stifling-charity-campaigns-it-shouldnt>

The Lobbying Act provided statutory regulation of parts of the lobbying industry for the first time in UK history with the establishment of the Register.<sup>445</sup> The Office of the Registrar is an independent statutory body, sponsored by the Cabinet Office, but accountable to Parliament.<sup>446</sup> The Registrar's responsibilities include:

- Setting up and managing the Register
- Ensuring that the industry follows the requirements of the register
- Publishing detailed guidance on the industry's duties
- Publishing an annual statement of accounts<sup>447</sup>

### **The Register**

The Register is published online,<sup>448</sup> and includes both the current list and previous editions. The main obligations of those engaged in consultant lobbying activity are to (1) register as a consultant lobbyist before conducting any lobbying; and (2) to provide quarterly updates to the register of the lobbyists' clients.<sup>449</sup>

When joining the Register, basic information about the lobbyist or organisation must be declared, including whether they are signed up to a relevant Code of Conduct and where that Code can be found. There is no specific Code to which they have to abide.<sup>450</sup>

Only certain communications are subject to registration; these include direct communications with a UK government Minister or Permanent Secretary that relate to government business. They do not include communications with a government department or Special Adviser. The name of the client on whose behalf the lobbying has taken place needs to be recorded in the quarterly information return, although the individual communications made on behalf of the client do not need to be listed.<sup>451</sup>

The Office of the Registrar of Consultant Lobbyists launched two public consultations in July 2019: the first on whether more communications should be subject to registration than is required at present; and the second on the relevance of Codes of Conduct to which lobbyists signed up.<sup>452</sup>

## **9.3 Third-party public service providers**

In 2017, the government spent about one third of its budget, £251.5 billion, on services to be delivered by third parties.<sup>453</sup> Central departments commission the delivery of services at a national level, and local authorities also have responsibilities for commissioning services within their remit. It is essential that these services deliver value for money and there are robust systems in place for ensuring that they do so. However, maintaining the ethical standards in the delivery of these services once commissioned is a more challenging

---

<sup>445</sup> See Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014: <http://www.legislation.gov.uk/ukpga/2014/4/contents/enacted>

<sup>446</sup> See: <http://registrarofconsultantlobbyists.org.uk/about/our-governance/>

<sup>447</sup> See: <http://registrarofconsultantlobbyists.org.uk/about/the-registrar/>

<sup>448</sup> See: [https://registerofconsultantlobbyists.force.com/CLR\\_Search](https://registerofconsultantlobbyists.force.com/CLR_Search)

<sup>449</sup> Guidance on Registration and Quarterly Information Returns, June 2019: <http://registrarofconsultantlobbyists.org.uk/guidance/requirements-to-register/>

<sup>450</sup> Guidance on Registration and Quarterly Information Returns, June 2019.

<sup>451</sup> Guidance on Registration and Quarterly Information Returns, June 2019.

<sup>452</sup> See: <http://registrarofconsultantlobbyists.org.uk/consultations-on-registerable-communications-and-codes-of-conduct/>

<sup>453</sup> Committee on Standards in Public Life, The Continuing Importance of Ethical Standards for Public Service Providers, May 2018, 6:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/705884/20180510\\_PSP2\\_Final\\_PDF.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/705884/20180510_PSP2_Final_PDF.pdf)



endeavour, particularly given the wide range of new ways of delivering services and the complexity of arrangements involving long supply chains and the use of sub-contractors.<sup>454</sup>

Third-party organisations and their employees work within different institutional cultures to those that have developed over time in the public sector. In its 2014 report, the CSPL concluded that, “services being delivered by people not previously involved in public service was a live risk to ethical standards in public life”.<sup>455</sup> It proposed a range of recommendations to improve standards, including ensuring that third-party providers were aware of their ethical obligations, were required to formally sign up to them and that they should also be provided with training and guidance as to how to carry them out.

Concerns were also raised that the commissioners of public services were in need of “guidance on how to embed ethical standards in the commissioning and procurement process”.<sup>456</sup> The report found that while there were some established and transparent frameworks in place, they were “fragmented, piecemeal and inconsistent”.<sup>457</sup> In contrast to the expectations of the public, which is concerned not only with outcomes but also with processes, it found that the “primary focus” of commissioners was on “costs and outcomes”.<sup>458</sup>

The CSPL returned to the issue of third-party providers of services in 2018, and found that “very little had been done to implement” their previous recommendations.<sup>459</sup> Although the CSPL praised the introduction of the Suppliers Code of Conduct and the Commissioners’ Working Manual on Standards, and recognised the increased awareness of ethical obligations among service providers, it also argued that more needed to be done to “encourage strong and robust cultures of ethical behaviour in those delivering public services”.<sup>460</sup>

### **Suppliers Code of Conduct**

The first issue of the Suppliers Code of Conduct was published by the Government Commercial Function in September 2017; and updated in February 2019.<sup>461</sup> The Code lays out both what is expected of suppliers and what suppliers can expect from the civil servants they interact with. The Code requests suppliers to be “mindful of the need to maintain public trust and protective of government’s reputation”.<sup>462</sup>

The Code also has a paragraph on ethical behaviour, which references the CSPL’s 2014 report and 2015 guidance.<sup>463</sup> However, while it requests that suppliers are “explicit about the standards they demand [of employees] and to have governance and processes to monitor adherence to these standards”, it does not require adherence to the CSPL guidelines or the Seven Principles of Public Life.<sup>464</sup>

---

<sup>454</sup> Committee on Standards in Public Life, Ethical Standards for Providers of Public Services, June 2014, 14: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/336942/CSPL\\_EthicalStandards\\_web.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/336942/CSPL_EthicalStandards_web.pdf).

<sup>455</sup> Committee on Standards in Public Life, June 2014, 12.

<sup>456</sup> Committee on Standards in Public Life, June 2014, 7.

<sup>457</sup> Committee on Standards in Public Life, June 2014, 24.

<sup>458</sup> Committee on Standards in Public Life, June 2014, 24.

<sup>459</sup> Committee on Standards in Public Life, May 2018, 5.

<sup>460</sup> Committee on Standards in Public Life, May 2018, 7.

<sup>461</sup> Government Commercial Function, Suppliers Code of Conduct, February 2019:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/779660/20190220-Supplier\\_Code\\_of\\_Conduct.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/779660/20190220-Supplier_Code_of_Conduct.pdf)

<sup>462</sup> Suppliers Code of Conduct, paragraph 2.7.

<sup>463</sup> See, Committee on Standards in Public Life, Ethical Standards for Providers of Public Services: Guidance, December 2015:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/481535/6.1291\\_C O\\_LAL\\_Ethical\\_standards\\_of\\_public\\_life\\_report\\_Interactive\\_2\\_.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/481535/6.1291_C O_LAL_Ethical_standards_of_public_life_report_Interactive_2_.pdf)

<sup>464</sup> Suppliers Code of Conduct, paragraph 3.1.

## Monitoring and complaints

It is not clear how commissioners of services undertake to assess or monitor ethical standards and conduct in the services they commission. In 2018, the CSPL raised concerns about the “continuing lack of transparency and accountability around vital aspects of service delivery, including complaint-handling mechanisms”.<sup>465</sup> It also questioned whether ethical considerations were taken into account when decisions were made on commissioning services or whether there was sufficient transparency throughout the contracting process or monitoring of the service delivery.<sup>466</sup>

There are opportunities for those in receipt of services to make complaints, which in the first instance should be directed at the service provider. However, departments also handle complaints and in the last resort, complaints can be directed to Parliamentary and Health Care Ombudsman (see section 5.2.2) or if relating to local services can be directed to the local authority and then the Local Government and Social Care Ombudsman (see section 7.2.2).<sup>467</sup>

---

<sup>465</sup> Committee on Standards in Public Life, May 2018, 7.

<sup>466</sup> Committee on Standards in Public Life, May 2018, 25.

<sup>467</sup> See: <https://www.lgo.org.uk/>

## 10. Conclusion

This report has considered the standards regime that governs the conduct of public officials and others involved in the making of public policy and the delivery of public services. It provides a snapshot of the regime in 2019, but within the context of great change in the 25 years since the Committee on Standards in Public Life was first established. The responses to this changing context have been guided by the golden thread of the Seven Principles of Public Life. The system's evolution over time can be largely characterised as an increasing tendency towards transparency and accountability through the creation of independent institutions to carry out monitoring and sanctioning. However, particularly in Westminster where there are legitimate concerns over sovereignty, and in the Judiciary where judicial independence is primary, there remain pockets of self-regulation, considerable discretion and reliance upon principle and judgement over the codification of rules and formal mechanisms.

The impetus for change throughout the system has come from both within and without, but has often been instigated by scandal or public disquiet. The Committee on Standards in Public Life was established in response to scandal focused on Members of Parliament, but few institutional areas discussed in this report have been immune to allegations or revelations of poor conduct by their members. Each time the system has responded with new and often innovative integrity mechanisms, sometimes as a result of legislative change and sometimes through the slow evolution and formalisation of existing mechanisms.

The recent recognition of bullying, harassment and sexual harassment in Parliament demonstrates the way in which public institutions are part of the wider social and cultural environment, where expectations change and behaviours that might previously have been left unacknowledged are no longer tolerated. As the independent inquiries into the problem have made clear, not only does Parliament require new mechanisms for complaints and sanctioning, but also that cultural change is required to ensure that staff and MPs alike are protected from oppressive and disrespectful treatment.<sup>468</sup>

The broader context in which public life takes place and the blurring of the lines between the public and private sector—particularly in the provision of public services—has provided further impetus for change. This has had particular implications for the Civil Service, where management processes and ways of working have transformed over the last 30 years; posing new ethical challenges as individuals move between the private and public sector more frequently and private organisations take on responsibility for providing public services. The codification of rules and standards is a response to these changing institutional cultures and the increased emphasis on efficient service delivery.<sup>469</sup>

Overall, the British system has responded to many of the integrity challenges it has faced over the last 25 years; frequently following the advice and innovations proposed by the Committee on Standards in Public Life. And yet, while it is likely that these changes have had a positive impact on integrity in the system, levels of public trust in public standards have tended to remain low or even decline over time.<sup>470</sup> While there are multiple reasons for negative public attitudes, including the effects of scandals, increased scrutiny, and the gaps left in the evolving regime, at the very least this trend suggests a need to model integrity more clearly to the public. In other words, in this modern world in which information is easily come

---

<sup>468</sup> See in particular, Cox, 15 October 2018.

<sup>469</sup> See Heywood, 2012.

<sup>470</sup> Committee on Standards in Public Life, Survey of public attitudes towards conduct in public life 2012, September 2013, 4: <https://www.gov.uk/government/publications/public-attitudes-survey-2012>

by and easily shared, being seen to do the right thing is perhaps almost as important as doing it, if these systems that run on trust are to survive.

An ethics regime will at times be ahead of the curve, anticipating change and challenge before it happens, and at others behind it, playing catch up and paying dearly in reputation for missteps along the way. In the years to come, there will be new and emerging challenges that the standards regime will be required to negotiate: from the increasing political divisions in society and reported levels of intimidation in public life, to the rise of new technologies and the risks they pose to democratic processes. These are likely to be particularly severe in election periods, when the capacity of state institutions to monitor online election campaigns and the financing of these campaigns is stretched. However, the steady growth of lobbying and campaigning between elections is also likely to continue, and the system appears to be only belatedly getting to grips with the problem. Similarly, the need to manage new relationships between public and private sectors has the potential to put further pressure on the Civil Service and local authorities: the media is increasingly exposing examples of poor practice in this area, which at present the institutional set up appears to be poorly equipped to monitor and manage.

High standards in public life are essential because they form the bedrock of both democracy and justice, and failure to protect them has the potential to undermine the system entirely. In the political turmoil of 2019, public standards appear to hold both perplexity and promise. Recent controversies appear to demonstrate a disconnect between public expectations and political practice, and also raise the thus far unresolved question about the reasonable limits that can be imposed by bureaucratic institutions on democratically elected bodies and individuals. However, in our political institutions, the rising awareness that cultures of bullying and harassment are not only damaging to individuals, but also affect the quality of government and decision-making, suggests the potential for significant positive change at the centre of power.

Change in this area continues apace and improvements are frequently proposed and implemented to address new concerns and to fill regulatory gaps. This is unlikely to slow in the coming years, as the UK's exit from the European Union raises new and unprecedented challenges for standards regulators. Time will tell what impact the current political situation will have on the standards landscape, but it is clear that there continue to be both complex and emerging ethical challenges that require a balanced and thoughtful approach in order to protect the public interest and maintain public trust.