

**Committee on
Standards in
Public Life**

COMMITTEE ON STANDARDS IN PUBLIC LIFE

STANDARDS MATTER 2

SUBMISSIONS TO THE PUBLIC CONSULTATION

RESPONSES FROM WITNESSES ATTENDING ONLINE EVIDENCE SESSIONS

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Statement of evidence to the Committee on Standards in Public Life.

Sir Bernard Jenkin MP, Chair, House of Commons Liaison Committee

(This statement and the oral evidence is given in a personal capacity, not on behalf of the Liaison Committee.)

STANDARDS MATTER 2

The formal terms of reference are to –

1. Review the evidence as to how well ethical standards are upheld in public life in the UK;
2. Review the evidence on the strength of the UK's arrangements for regulating and promoting ethical standards;
3. Review the adequacy and continuing relevance of the Seven Principles of Public Life;
4. Identify examples of best practice in the regulation of ethical standards;
5. Identify examples of best practice in the promotion of cultures that celebrate and encourage high ethical standards.

The most compelling evidence is not about how well ethical standards are upheld in public life in the UK, but about the cynicism about standards in public life expressed in so many quarters. This feeds on and also feeds the lack of public confidence that leaders in public life are sincerely committed to values intrinsic to the Seven Principles, to which they profess to subscribe.

On the question of “evidence on the strength of the UK’s arrangements for regulating and promoting ethical standards”, there is scrutiny and enforcement of codes and rules, and most people do their utmost to comply with such rules, but this is not the public perception. The evidence is less strong that scrutiny and enforcement is consistent, or that it is promoting personal and shared commitment to the attitudes and standards of behaviour that would demonstrate public service leaders try to live those values, whether there were explicit and enforceable rules or not. We can all think of recent instances of leaders who have demonstrated conscious disregard of rules or expected norms. There may be plenty of “best practice in the regulation of ethical standards”, but that is of little worth, unless there is more evidence of that personal and shared commitment.

The most important question arising from CSPL’s terms of reference is about the need to promote “cultures that celebrate and encourage high ethical standards.” How can this be achieved more widely and most particularly, so it is more vividly seen in political leaders?

There is now something of a crisis, regarding how to take forward standards and codes. This is certainly my experience after years of following the work of CSPL as Chair of PASC and then PACAC; and now as a member of the House of Commons Committee on Standards, which is midway through a much delayed tri-annual review of the House of Commons Code of Conduct. But this crisis is a cause for hope.

CSPL has historically been concerned about addressing ‘scandals’; things that have gone wrong and need for tighter regulation to put things right (such as financial scandals involving MPs; cash for

questions; expenses; and the continuing concerns about party fund raising; and the 'revolving door'. The more codes and rules that have been created, the less people seem to have been capable of thinking for themselves. This is because CSPL may well find that "the best practice of the regulation of ethical standards" leaves little space for the exercise of personal judgement. Leaders see the rules as something to be navigated, and this has removed at least some of their responsibility for using their own judgement. The hope is in the growing understanding that we all need to move on from the mere application of rules.

At present, beyond the mere statement of the Seven Principles, there is little proper consideration of, engagement with, and discussion about, what these principles mean to leaders in public life, as they go about their daily lives; and why those principles are important. As leaders navigate increasingly complicated set of rules, they think less about what values people in public life should be required to adopt and about why the rules exist.

I see the same thing in the personal conduct of some colleagues in Parliament and in the world of special advisers. The problem is that rules in many peoples' minds create implied permission to do anything that is "within the rules" - the utterly lame justification for our failure to have established an expenses system which could have any chance of maintaining the public's confidence. But the tightest set of rules on their own do not make people into better leaders or better examples for their organisations for the rest of society. Rules that are too strict have other adverse consequences.¹ The reluctance to talk about values, attitudes and standards of behaviour is not new, but it is now more than ever necessary to break this taboo. It is very personal. There is not a ready language to employ. It can feel excessively pious, or self-exposing, or intrusive into others' personal space, to raise such issues. It is an irony of the present age that woke values show no such reticence. Maybe the lesson for us in that is again a hopeful one: that younger people are hungry for discussion and understanding of values and principles which govern attitude and behaviour.

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

There are some very strong examples of where this is done. The armed forces regard it as imperative that there should be a set of shared values that is actively taught through instruction, reflection, and by the example set by leaders. This is also reflected in other organisations. The security services and the police forces recognise the value of creating bonds of trust through shared understandings of fundamental values. The challenge is that many public service leaders do not feel the experience of these institutions is relevant to them or to their own organisation or institution.

At present, there are no accepted ways of promoting "cultures that celebrate and encourage high ethical standards in public life" across all kinds of organisations, amongst leaders and potential leaders in public life. So, trying to frame rules and procedures to deal with the conflicts of interest which arise from party fund raising, or from the revolving door, are bound to be disappointing. *This*

¹ Public Administration and Constitutional Affairs Committee. Managing Ministers' and officials' conflicts of interest: time for clearer values, principles and action. 2017. [Link](#)

is not helped by leaders who fail to appreciate that their own example, and the examples of those whom they promote, is the most important factor.

The saddest example of the crisis we now face concerns the resignation of the PM's Adviser on Ministerial Interests. Nobody has been appointed to replace Sir Alex Allan since he resigned (to my knowledge).

I make no comment about the merits of the case, except to suggest that there were a great many exceptional circumstances which could have been so much better handled at the outset.²

Perhaps there is also a lesson about the Ministerial Code. It is a rather odd Code in this respect; it is very binary, reflecting how it grew out of Questions of Procedure For Ministers, which periodically postulated that if someone did certain things, they would be "expected to resign". Perhaps in a more private era, there was space for errors to lead to learning, but now, as a public document, there seems no space for someone to have breached the Code, and then for the issue, attitude or behaviour to be addressed, without a resignation.

The result is a mess; a sense that political leaders are either not committed or at least do not share the same understanding of the values and principles that are expected in public life. CSPL and people appointed to such roles as the PM's adviser or as Parliamentary Commissioner for Standards, risk being stranded in small islands of their own thinking, but surrounded by a sea of confusion or even indifference about the things we should care most about; the values we need leaders in public life to exemplify. They all subscribed to them in the abstract, but these values seem to many to be harking back to a different age and to lack practical relevance to the intense pressures and conflicts today's leaders need to address as a matter of routine.

There should be hope here too. In my experience, the vast majority of people in public life are longing for a way of engaging on questions of values and principles which would make it easier to navigate the moral hazards of public life. The question is how bodies like CSPL can do this, without being seen to preach, or to be setting themselves above the rest of us, which is bound to lead to misconstruing what it is seeking to achieve, and to resentment.

In summary, there is both a need and a hunger for a new way of approaching development of leaders, particularly political leaders, and special advisers which emphasises the mutual support and strengthening of personal capability and confidence which could be made available to us. This means that bodies like CSPL need to move on from thinking about which set of rules needs tightening up, towards a public discourse about what living the values intrinsic to the seven principles should mean, for example, to an MP going about their parliamentary, constituency or ministerial work.

Such a new approach needs to address what politicians and others in public life are actually faced with on a daily basis. This is best explained in evidence which has only just been published by the House of Commons Standards Committee received from Claire Foster-Gilbert of the Westminster Abbey Institute. She wrote, with MPs in mind:

² For further discussion of these issues see Public Administration and Constitutional Affairs Committee. The Minister and the Official: the fulcrum of Whitehall effectiveness. 2018 [Link](#)

Our democracy demands that they have to actively seek power - selection, election and reelection - even though their vocation and function is public service. Power is a constant companion to every politician, however motivated by service they might be, and power is morally corrosive. Not only does it skew already difficult moral choices and decisions and blur the clarity of what is and what is not in the public interest (how can a politician do anything in the public interest *without* power?) but it also creates a kind of aura around the one with power, which affects everyone with whom they come into contact, so that relationships too are skewed by this corrosive element. You cannot do away with the need to seek and retain power, because that is the price of democracy, so you have to guard yourself against its corrosive effect. Self-aware MPs will take active steps to help themselves ensure their moral disposition is kept healthy.³

It is possible and necessary to create meetings where these kind of conversations can take place. It is unlikely that this will happen spontaneously, or through formal structures. The best examples are those which are facilitated by disinterested charitable or voluntary institutions, such as the Windsor Leadership Trust or the Westminster Abbey Institute. To promote such work on a bigger scale requires more resources, but CSPL is in a position to recommend to Parliament, to the Civil Service and to other public sector organisations, that they should find the resources to make this support for personal development available to all leaders and potential leaders in the public realm.

Perhaps 50 years ago, or even 25 years ago, it could be assumed that there was an unspoken but implicit set of common values in society. Today we have far wider religious and cultural diversity, a far stronger strand of individualism, in which there is a sense that it is the right of every individual to choose their values, in the same way as they might choose what car to drive, or what clothes to wear. In such a society, for organisations to function effectively, their leaders must more consciously decide what values and principles they expect their colleagues and subordinates to subscribe to.

This is not something that government or Parliament can contract out to CSPL or to an ethics regulator, which advocates the seven principles and writes a code so we can all say "job done". The job of CSPL is to harness the needs of people in public life, particularly leaders under such daily pressures, and offer practical proposals for how those needs will be fulfilled. This should feel like an offer of support, which explicitly promises not more rules and admonition, but empowerment as leaders, and even a greater sense of self-fulfilment for them.

Bernard Jenkin MP
House of Commons
London
8th March 2021

³ Claire Foster-Gilbert. Evidence to the Committee on Standards. Tuesday 2 March 2021. [Link](#)

Centre for the Study of Corruption



The Committee on Standards in Public Life Standards Matter 2: Public Consultation

submission by the Centre for the Study of Corruption at the University of Sussex

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January 2021

The **Centre for the Study of Corruption (CSC)**, founded in 2011, is the UK's foremost academic centre for studying corruption. Located within one of the world's leading universities, CSC is regarded as a highly credible source of independent and objective research and ideas. It is widely recognised for combining world-class academic approaches and research with the practical experience of how corruption can be addressed in the real world. We operate in three broad areas:

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The Committee on Standards in Public Life

Standards Matter 2: Public Consultation

submission by the Centre for the Study of Corruption at the University of Sussex¹

1. The Centre for the Study of Corruption's submission to this review is based on the premise that public integrity and standards in public life are critical to preventing corruption, but also that our interest in understanding and preventing corruption is ultimately driven by the goal of improving governance in the UK and around the world.

2. There are few countries that might claim to have the global clout and moral authority to take an international lead on tackling corruption. Since passing the Bribery Act in 2010, the UK has claimed such a position, and by and large has played its hand well. It has risen up the OECD rankings of corporate bribery investigations; held an Anti-Corruption Summit which resulted in several hundred commitments; is making slow but identifiable progress with the City and the recalcitrant Overseas Territories on issues of money laundering; and has launched a substantive international push on public registers of beneficial ownership. It is therefore important not just for the UK, but for the setting of global standards with regard to corruption, that the UK maintains high standards of integrity domestically.²

3. A summary of our submission based on CSC research suggests that:

- UK standards in public life are in decline and at risk of declining further, with numerous recent breaches of integrity at the heart of politics and public life.
- Dependence on established norms and personal integrity is no longer tenable when these are regularly undermined; the UK may need to move in some areas from principles to rules, backed up by enforceable sanctions.
- Key elements of the standards regime need to be strengthened, including ensuring independence from political interference, clear lines of accountability, consistency among different bodies and greatly improved oversight and coordination.
- Standards need to be properly applied to the private sector when it delivers a public service or function, with appropriate penalties for breaches.
- In line with international trends among advanced economies and mature democracies, the UK should consider alternative institutional structures such as an Integrity Commission, Anti-Corruption Agency or Independent Commissioner, to incorporate and where necessary replace the patchwork of arrangements.

¹ The Centre for the Study of Corruption (CSC) at the University of Sussex has also contributed to the submission by the UK Anti-Corruption Coalition, of which it is a member.

² Part of this response is based upon Working Papers published by the Centre for the Study of Corruption, including Barrington, R. 2020. "The Role of UK Anti-corruption Champion: A short history of the championship: who, why and what?", Working Paper 5. Centre for the Study of Corruption, University of Sussex; Barrington, R. 2020. "The Governance of Corruption in the UK: Who is in charge?", Working Paper 6. Centre for the Study of Corruption, University of Sussex.

Question 1: Standards of Conduct in the UK

A. *How well do you think ethical standards - as enshrined by the Seven Principles of Public Life - are upheld in public life today?*

4. The standards system in the UK is based to a large extent on principles and informal conventions, rather than on clear rules policed by regulatory institutions. Such a system places great trust in individuals' ability to assess and regulate their own behaviour. In recent years, there have been a number of instances of behaviour by ministers and MPs that have cast doubt on whether individuals perform this task in a way that matches up to the standards expected of them by the public, as outlined in the Seven Principles of Public Life.

5. Although there have been moves to increase regulation and oversight, particularly for civil servants, progress is "patchwork".³ The strains on the system are increasing, particularly as a result of extensive outsourcing of public service provision to private and voluntary sector organisations, blurring the lines between public and private.⁴ One of the unmet trials for public standards is how to make them relevant and practical when there are a range of other pressures on public servants to perform with effectiveness and efficiency.

6. Our contention is not that external service providers are inherently less ethical, but rather that ethics is partly cultural, and the Principles must be clearly applicable in private and voluntary sector working environments. Moreover, while the government retains a responsibility to hold outsourced service providers to account, its expertise and capacity to do so has in many areas been eroded. The Committee has recognised this tension,⁵ but it remains unclear how those with commissioning responsibility for the provision of public services monitor ethical compliance in service delivery. This point of public service delivery is often the only interaction that individuals have with the state, and so their treatment and its perceived fairness/ethicality is crucial to their confidence in government institutions.

B. *Do you believe that there have there been any notable shifts in approaches or attitudes to ethical standards in public life in recent years?*

7. There have been both institutional and behavioural changes. Institutionally, there has been reduced investment in some independent regulatory bodies and a tendency to decentralise standards regulation – making standards less 'standardised' and implementation more ad hoc or vulnerable to improper influence. This is evident for example in the abolition of the Audit Commission and reliance on private-sector auditors of local government, and the abolition of Standards for England. Conflicts of interest in local government are poorly regulated, with codes of conduct being inconsistent since they became the responsibility of individual councils. While the Local Government Association (LGA) published a model Code of Conduct in December 2020,⁶ the Code's advice on declarations of gifts and hospitality is less strict than many councils' existing codes.⁷

³ 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.

⁴ Dobson, R. and Heywood, P.M. 2019. "Clean, but compromised: Corruption in the UK administration", DPCE Online; David-Barrett, E. 2020. "Regulating conflicts of interest in public office", in Graycar, A. (ed), *Handbook on corruption, ethics and integrity in public administration*, Cheltenham: Edward Elgar.

⁵ CSPL, 2018. *The continuing importance of ethical standards for public service providers*. London: CSPL.

⁶ Local Government Association, "Model Councillor Code of Conduct 2020", 19 January 2021.

⁷ See Paul Millar, "Gifts and hospitality loophole in new 'model' local government Code of Conduct", CSC blog, <https://scscsussex.wordpress.com/>, 29 January 2021.

8. In terms of behaviour, there have been a number of instances at the highest levels of UK public life in recent years which appear to be unethical, or in direct contravention of the Nolan principles. However, it has been difficult to hold individual officeholders to account because the mechanisms for doing so are based on convention rather than hard rules backed up by institutions with regulatory power.

9. These norm violations relate to:

(i) partisan favouritism in decisions relating to appointments, policy, and how spending decisions are made, such as:

- Allocation of public funds to secure political advantage (as in the case of the Towns Fund grants to marginal seats).
- Award of peerages and honours to party donors.
- Increased politicisation of appointments to key public office roles, with decisions appearing to prioritise individuals with particular ideological views and or demonstrated loyalty, rather than expertise or relevant experience.
- Use of party disciplinary mechanisms to punish disloyalty to No. 10 (e.g., by suspending from the Conservative Party those MPs who voted against the government on the Withdrawal Bill, and removing the whip from an MP after he secured support from opposition MPs on the IS committee to elect him as chair rather than No. 10's preferred candidate).
- Use of "hostile briefings" from government insiders to discredit individuals in public office roles who have fallen out of favour.

(ii) how allegations of misconduct are handled, such as:

- The Prime Minister overruling the advice of the independent adviser on Ministerial standards in the Patel case.
- The PM failing to request an investigation into the conduct of Robert Jenrick over the Westferry affair.⁸
- Ministers and advisers refusing to resign over issues where that would previously have been the norm.

(iii) how the government interacts with mechanisms of public accountability and institutions that provide checks and balances on executive power, such as:

- The Conservative Party rebranding its official Twitter account as "factcheckUK" during the televised leaders' debate, using it to publish anti-Labour posts.
- Government boycotts of particular media in certain periods,^{9,10} accusations of bias and use of threats to the BBC and Channel 4.¹¹

⁸ BBC News, "Robert Jenrick: Labour calls for inquiry into Westferry planning row", 26 June 2020.

<https://www.bbc.co.uk/news/uk-politics-53193613>.

⁹ Owen, G. "Downing Street boycotts Radio 4's Today over election bias...", *Daily Mail Online*, 14 December 2019. <https://www.dailymail.co.uk/news/article-7793107/Downing-Street-boycotts-Radio-4s-Today-programme-bust-election-bias.html>.

¹⁰ See Emily Maitlis' Twitter post: <https://twitter.com/maitlis/status/1263233919413039112?s=21>.

¹¹ Taylor, M. & Waterson, J. "Boris Johnson threatens BBC with two-pronged attack", *Guardian*, 15 December 2019. <https://www.theguardian.com/media/2019/dec/15/boris-johnson-threatens-bbc-with-two-pronged-attack>.

- Exclusion of some journalists from press briefings.¹²
- Politicised attacks on the Supreme Court.
- Government failure to adhere to its own transparency commitments (relating to the timely publication of public procurement contracts).

10. Taken together, these instances suggest an unwillingness on the part of the government to countenance scrutiny or criticism of its actions, and a disregard for process and institutions designed to ensure public accountability. While it is not yet clear whether these examples suggest a temporary blip or are evidence of a longer-term trend, they highlight weaknesses in the accountability mechanisms for those with the most political power.

11. On the flip side there has been increased recognition in Westminster and Whitehall of the extent of bullying and harassment, which is not only damaging to the individuals involved (although the primary concern in individual cases) but is destructive to the environment in which ethical standards can be upheld. An atmosphere of intimidation is not conducive to the ability to “challenge poor behaviour wherever it occurs”, as required by the Leadership principle. The new procedures for dealing with bullying and harassment have the potential to improve standards across the board, particularly if adequately integrated into the standards framework.

C. *What do you see as the most significant threats to ethical standards in public life today?*

12. The system for regulating standards in the UK is extremely fragmented. A Transparency International study in 2016 found more than 60 separate 'specialist enforcement, prevention, investigative and oversight agencies involved in the policing of offences directed against corruption behaviour' in addition to 45 police forces.¹³ More recently, a report by the Independent Commission on Aid Impact (ICAI), the most comprehensive analysis to date of the UK's institutional architecture with regard to illicit financial flows and corruption, identified 20 government departments, committees, agencies and operational bodies with overlapping responsibilities.¹⁴

13. The UK's own self-assessment report for the United Nations Convention Against Corruption (UNCAC) from 2017 describes an extraordinarily extensive, complicated and sophisticated national anti-corruption architecture, but it is impossible to discern who is in charge, or at least has some kind of oversight.

14. Within its multi-agency approach, the UK has an Anti-Corruption Champion. However, in terms of the governance of the UK's anti-corruption response, the role of Champion is unsatisfactory in several ways:

- Its responsibilities and remit are unclear
- This means it is also unclear where responsibilities lie if not with the Champion. To compensate for this void, a series of parallel ad-hoc mechanisms have been gradually created in response to specific issues (like economic crime), with no sense of an overall strategic approach.

¹² Mason, M. & Sparrow, A. “Political journalists boycott No 10 briefing after reporter ban”, *Guardian*, 3 February 2020. <https://www.theguardian.com/politics/2020/feb/03/political-journalists-boycott-no-10-briefing-after-reporter-ban>.

¹³ Transparency International UK. 2016. *Corruption Law: A non-lawyers guide to laws and offences in the UK relating to corrupt behaviour*. London: TIUK.

¹⁴ Independent Commission for Aid Impact. 2020. *Mapping the UK's approach to tackling corruption and illicit financial flows*.

- There is a dependence on informal structures and influence, particularly since the post is no longer held by someone with ministerial status.

15. While the UK is on the whole better off for having had a Champion, and the UK has upped its game in other anti-corruption areas – such as by publishing a national Anti-Corruption Strategy and creating the Joint Anti-Corruption Unit – the ad-hoc nature of the Champion’s role is increasingly inadequate. Moreover, most achievements have come via a series of tactical decisions rather than a strategic approach.

16. In the context of an increased willingness of those in public office to flout the norms and conventions on which the standards system in the UK has rested so heavily, the fragmentation of the system coupled with the lack of statutory bodies with powers to investigate and punish misconduct is becoming more problematic. When norms are violated and there is no notable reaction or sanction, this can lead to a rapid erosion of standards.¹⁵

17. On the other hand, there is a risk that institutional responses to norm-breaking in political institutions could lead to a misidentification of weaknesses in political accountability as standards issues. This could lead to bureaucratic solutions, adding to the complexity of the “patchwork”. For example, the question of whether the Prime Minister (PM) or another institution, such as Parliament or an independent body, should have the power to hold Ministers accountable has implications beyond individual cases of wrongdoing or the reluctance to uphold standards by individual PMs.

18. In a similar vein, the challenge of technology to the democratic system, particularly around elections, is unlikely to be solved purely by technical innovation. While such improvements are essential to safeguarding the democratic processes we currently possess; in the long-term solutions might demand reform to the democratic system itself to make it less vulnerable to manipulation. This might include the wider consideration of participatory models of democracy and decision-making.

Question 2: The Seven Principles of Public Life

A. *Do the Seven Principles of Public Life accurately describe the appropriate ethical responsibilities for those in public roles, including both political and non-political office-holders?*

B. *Would you amend or replace any of the principles or their descriptors? If so, how?*

19. There is nothing in the principles that describes interpersonal relationships, either between colleagues or standards of behaviour expected in interactions with the public. While there are other ways in which such standards can be upheld, such as through HR systems, an overarching principle on respectful conduct could encourage higher standards.

20. The Leadership principle could be stronger on the point of holding others accountable to the standards. This is particularly important because of the critical role of ‘tone at the top’ in shaping behaviour, and because norms are maintained through community ‘policing’, i.e., colleagues being willing to call out poor behaviour or shame those for misconduct. Such community norm enforcement can run into difficulties particularly in political contexts, where partisan loyalty may be prioritised and – as noted previously – such loyalty seems currently to be prized to the detriment of considerations of standards or even merit.

21. There remains – as in many contexts – resistance to whistleblowing, particularly in hierarchical contexts. This hinders the ability of oversight mechanisms to respond effectively to breaches.

¹⁵ See, Barrington 2020, Working Paper 6.

Question 3: The UK's arrangements for regulating standards

A. *Are you confident that the UK's arrangements for regulating ethical standards are robust and effective?*

B. *Are there any areas of public life where regulation on issues of ethical standards is not strong enough?*

22. The web of bodies regulating standards in the UK is very fragmented and has become less fit for purpose in the last decade - for example:

- The abolition of Standards for England and decentralisation of standards regulation to councils, which often lack training and resources to monitor and investigate allegations, leaves a major gap in the standards landscape.
- The Advisory Council on Business Appointments lacks a statutory basis and there is no sanction for failing to seek its advice or ignoring its advice. This is despite a number of factors which have increased the risk of 'revolving door' related conflicts of interest, including increased use of outsourcing by the government.¹⁶ The risk of conflicts may be particularly high when ministers leave the Cabinet but stay in politics as backbench MPs, a role in which they are permitted to earn income from second jobs and own shares in a company.
- The system for regulating ministerial conduct is very weak and politicised. It is the PM who decides whether the independent adviser on ministers' interests investigates a matter, and the PM who decides whether sanctions are imposed. The independent adviser is in turn appointed by the PM.
- There are inconsistencies between the Ministerial Code and the Code of Conduct for MPs, with rules for ministers in some cases less stringent than for MPs. Given that most ministers are also MPs, this creates an unnecessary ambiguity.
- There is insufficient ability to ensure that third-party providers of public services uphold ethical standards.

Question 4: Best practice in standards regulation

A. *What makes an effective standards regulator?*

23. Research on the effectiveness of Anti-Corruption Agencies (ACAs) suggests that an effective regulator of the conduct of public officeholders needs high-level political endorsement, in terms of tangible resources and secure autonomy, so that it cannot be used as a political weapon. ACAs vary in function, with some focusing on prevention of corruption through policy and public outreach, while others have investigatory and even prosecutorial powers.

24. Effectiveness requires firstly 'a concrete notion of who the regulator *is* in the area, what the rules being regulated *are*, and what powers the regulator *has*',¹⁷ buttressed by clear institutional support

¹⁶ David-Barrett 2020; David-Barrett, E. 2011. *Cabs for Hire: Fixing the revolving door between government and business*. London: TIUK.

¹⁷ Power, S. 2020. "The Transparency Paradox: Why transparency alone will not improve campaign regulations", *Political Quarterly* 91(4): 733.

in terms of resources to fulfil any regulatory aims. A regulator also needs the power to sanction violations, which are proportionate in that they act as a sufficient deterrent to wrongdoing, but do not deter engagement in public life and, finally, should be transparent in all its activities, including publishing searchable databases relevant to its remit (surrounding appointments, lobbying opportunities or conflicts of interest) to allow for greater oversight.

25. Transparency ought not to be seen as an end in and of itself, and should certainly not be seen as a reform which will necessarily lead to greater public confidence in the political system. Indeed, there is evidence from those that study political finance¹⁸ and freedom of information initiatives¹⁹ that transparency might well have the opposite effect.²⁰ It may well curb instances of corruption, while at the same time leading to an increase in *perceptions* of corruption from the public. It is, therefore, necessary to complement greater transparency with increased outreach and political literacy education.

B. Do the UK's standards regulators have the right powers and remit to act effectively?

26. ACOBA is not adequately regulating the 'revolving door'. In thinking about ways to improve regulation of this area, there are several options. The most extreme is to ban civil servants from taking certain jobs when they leave public office, but this carries a number of disadvantages. Most evidently, it would risk deterring people from joining the civil service or becoming ministers in the first place, since doing so would constrain their career opportunities and, importantly, earning potential. Instead of banning officeholders from post-public employment, most countries rely on softer approaches. It is common to have a temporary 'cooling off' period, in which individuals are not permitted to take certain kinds of job. The length of the period can be adapted depending on the risk associated with the officeholder – more senior officials can be banned for longer. Similarly, the type of activity from which the official is excluded can be specified, to prevent someone from engaging in lobbying specifically, for example, or working on projects for their private-sector employer that relate to their previous job. However, it is difficult to monitor compliance with cooling-off periods, or even to ensure that the need for them is identified.

27. Clear guidance and training on the application of the principles in private and voluntary sector service providers is needed, as the principles do not necessarily fit seamlessly into non-public sector working environments. This needs careful consideration. The Cabinet Office's Green Paper on transforming public procurement notes that the regulatory framework should be consistent with the seven principles, but provides little clarity on how this would be achieved.²¹ Careful consideration should be given to the role they could play in assessments about the effectiveness of public sector contracts.

C. Should the independence of standards regulators be enhanced and protected, and if so, how?

28. One possible way of improving the standards system would be to introduce a single competent authority for preventing and investigating corruption in public office. This contrasts with rather well-respected agencies in some advanced economies, including Singapore, Hong Kong and the Republic

¹⁸ Power, S. 2020. *Party Funding and Corruption*. Basingstoke: Palgrave MacMillan.

¹⁹ Worthy, B. 2010. "More Open but Not More Trusted? The effect of the Freedom of Information Act 2000 on the United Kingdom central government", *Governance* 23(4): 561-582.

²⁰ See also Grimmelikhuijsen, S.G. and Meijer, A.J. 2014. "Effects of Transparency on the Perceived Trustworthiness of a Government Organization: Evidence from an online experiment", *Journal of Public Administration Research and Theory* 24(1): 137-157; Fenster, M. 2015. "Transparency in search of a theory", *European Journal of Social Theory* 18(2): 150-167.

²¹ Cabinet Office, "Green Paper: Transforming public procurement", 15 December 2020.

<https://www.gov.uk/government/consultations/green-paper-transforming-public-procurement>

of Korea. France recently created its first such agency under the recent Loi Sapin II in 2018, while Australia is in the process of a public consultation about the powers and extent of an agency to which the government has already committed.

29. There is a mis-match between the current system of ad-hoc governance and the Government's stated aspirations. Moreover, this is on a subject which it has repeatedly said is important for economic prosperity and national security – and regarding which there are significant international commitments to fulfil. In other words, while certain aspects of the national anti-corruption approach have been successfully updated (creation of the Joint Anti-Corruption Unit and the National Anti-Corruption Strategy 2017-22, key legislation), overall governance has yet to catch up.²²

Question 5: Creating ethical cultures

A. *How can the Seven Principles best be embedded within a public sector organisation's working culture?*

B. *What are the most significant obstacles to embedding high ethical standards in a public sector organisation?*

30. Research suggests that (good) government functions around 'logics of appropriate behaviour' which function at the formal (regulatory) level, but also the informal (normative) level and that the norms and values embodied within our political institutions shape the behaviour of those within these institutions, but also those outside.²³ Therefore, norm erosion is not just a political problem, but can erode social trust as well. A renewed focus on holding officeholders to account against the Nolan Principles and leveraging informal 'soft' power might help to rebuild norms.

31. As discussed, the UK system of standards relies heavily on trusting individuals to evaluate and regulate their own behaviour. Yet, recent research has shown that:

“the idea that individuals can regulate their own conflicts of interest makes an assumption that may be misplaced: that individuals can screen out biases in making judgements. The ethical officeholder is expected to identify a potential conflict of interest and take appropriate action to ensure that it does not influence the execution of his or her duties. Fundamentally, this assumes that their actions are based on conscious choices and deliberate decisions. Yet insights from psychology suggest, on the contrary, that human behaviour is often the product of 'automatic' or 'fast' thinking. As such, they may be influenced by 'implicit biases', automatic associations that influence action without triggering reflective awareness.”²⁴

32. This raises questions as to whether officeholders' judgements about their own impartiality can be trusted. Psychologists have also identified the phenomenon of 'motivated reasoning', where an individual's self-interest changes their understanding of reality and individuals are able to justify corrupt actions to themselves and others.²⁵

²² Barrington 2020, Working Paper 5.

²³ See, for example, Olsen, J.P. and March, J.G. 2006. The Logic of Appropriateness, in Moran, M., Rein, M. and Goodin, R.E. (eds.), *The Oxford Handbook of Public Policy*. Oxford: Oxford University Press.

²⁴ Dávid-Barrett 2020.

²⁵ See Redlawsk, D.P. 2002. "Hot cognition or cool consideration? Testing the effects of motivated reasoning on political decision making", *Journal of Politics* 64(4): 1021–44; and Snow, N.E. 2009. "How ethical theory can improve practice: Lessons from Abu Ghraib", *Ethical Theory and Moral Practice* 12(5): 555.

33. In public office, these risks may be especially acute, because of the frequency with which officeholders face ethical dilemmas and the often ambiguous or complex nature of the decisions they must make. The subtlety present in many conflict-of-interest situations may mean that officeholders justify potential breaches of integrity by characterising problems in certain ways or noting that there is a lack of clarity about which course of action would be the most appropriate.²⁶ This may provide 'cover' for individuals to engage in questionable actions while claiming plausible deniability.

34. Moreover, these situational effects may interact with the character of politicians and public servants. The work of Feldman and others suggests that some individuals identify as 'good people' and see themselves as far more moral, unbiased, and law abiding than they actually are.²⁷ Such people, Feldman argues, may be particularly good at ignoring or justifying their own unethical behaviour, and do not respond to ordinary forms of regulation. If politicians and public officials are more likely to see themselves as 'good people', as seems plausible, this may affect their ability to accurately judge their own behaviour.

35. Therefore, simply changing the rules – or the system of sanctions for misconduct in public office – may not be effective ways of changing behaviour owing to a range of cognitive biases, including that individuals may not recognise their behaviour as rule-breaking, or underestimate the likelihood that they will be sanctioned. However, the literature does also suggest that people can be sensitised to these biases, and can become more proficient in recognising them and in moderating their own behaviour. Therefore, any changes to formal regulatory systems need to be supported with more training and engagement with public officials about the complexity of ethical dilemmas.

²⁶ Feldman, Y. and Halali, E. 2019. "Regulating 'good' people in subtle conflicts of interest situations", *Journal of Business Ethics* 154(1): 65–83.

²⁷ Feldman, Y. 2018. *The Law of Good People: Challenging states' ability to regulate human behavior*. Cambridge: Cambridge University Press.



Transparency International UK Submission to the Committee on Standards in Public Life Standards Matter 2 consultation

Executive Summary

The introduction of the seven Nolan Principles was a significant moment for standards regulation in the UK. These are an integral part of building positive social norms and practices in our democratic system. However, as they are by nature very broad, on their own it is entirely possible for those in public life to interpret them very differently in practice, whilst believing in good faith that they are upholding them. This inconsistency in approach, combined with poor transparency, limited scope of regulations, a lack of independence for key regulators and weak sanctions for breaches of the rules mean that ethical standards cannot be effectively upheld. The UK has a wide ranging and complex patchwork of codes, laws and conventions that regulate ethical behaviour in public life at a local, devolved and UK level. The fact that key areas or risk have been identified and some attempt has been made to mitigate them, is very welcome. However, as these frameworks have often been developed in response to a specific scandal or incident, they are not always comprehensive or holistic in approach. They also frequently fall below international best practice. We welcome this review and the opportunity to reflect more comprehensively on the gaps in the existing framework for ensuring ethical standards.

Transparency International UK has published several research reports that examine many different aspects of this agenda in detail.¹ We have not sought to replicate those reports here. Rather we have looked systemically across the different ethical frameworks and identified common themes that undermine their effectiveness.

Key recommendations

Independence and autonomy

- Regulation of conduct in accordance with the Ministerial Code and rules on Business Appointments should be put on a statutory footing.

Powers and Sanctions

- There should be a holistic review of the powers and sanctions available to those involved with upholding ethical standards in public life. This is particularly important with regard to codes and bodies that regulate the Executive.

Scope

¹ See Accountable Influence 2015

https://www.transparency.org.uk/sites/default/files/pdf/publications/Accountable_Influence_Bringing_Lobbying_out_of_the_Shadows.pdf

In whose Interest? 2018 <https://www.transparency.org.uk/publications/in-whose-interest>

Permission Accomplished 2020 <https://www.transparency.org.uk/publications/permission-accomplished>

- Reform the Statutory Register of Consultant Lobbyists to capture lobbying activity by both in house and multi-client lobbyists. Information on the purpose, target and spending on lobbying should be included in the register.

Transparency

- All transparency data must be published on time and in machine readable format to enable different data sources to be compared and scrutinized
- Reintroduce transparency to investigations by the Parliamentary Commissioner for Standards into alleged breaches of the MPs code of conduct
- Introduce transparency to the ACoBA decision making process. Full information about the procedures for assessing applications and the reasons for its judgements should be published.

Delayed and incomplete data

- The Cabinet Office to provide regular guidance on how ministerial meetings data should be collected and reported. More information should be made available regarding meetings held by ministers, special advisers and senior civil servants with third parties, including lobbyists, and that such entries contain a sufficient amount of detail on matters discussed, to identify the specific subject matter(s) of the discussion and the specific purpose or intended outcome of the discussion.
- There needs to be clear, publicly available, guidance given to Ministers about the scope of the Ministerial Code and the level of reporting expected to ensure a greater degree of consistency.
- We also support the recommendation of the Standards Committee² that there should be a new suite of sanctions that will address the 'sanctions gap' that exists between issuing an MP suspension and requiring an MP to make an apology.

Question 1: Standards of Conduct in the UK

How well do you think ethical standards - as enshrined by the Seven Principles of Public Life - are upheld in public life today?

1. The Seven Principles model exemplary behaviours that stand in stark contrast to an array of corrupt practices, including:

Abuse of office: The performance or failure to perform an act, in violation of laws, by a public official in the discharge of his or her functions, for the purpose of obtaining an undue advantage for himself or herself or for another person or entity.³

Bribery: The offering, promising, giving, accepting or soliciting of an advantage as an inducement for an action to improperly perform their job, role

² House of Commons Committee on Standards, *Sanctions in respect of the conduct of members*
<https://publications.parliament.uk/pa/cm5801/cmselect/cmstandards/241/24102.htm>

³ Article 19 UN Convention Against Corruption (UNCAC)

or function. Inducements can take the form of gifts, loans, fees, rewards or other advantages (taxes, services, donations etc.)

Undue influence: A more subtle form of corruption, which involves one person taking advantage of a position of power over another. This can involve making use of legal mechanisms to influence the decision-making process; for example, they may legally contribute to electoral campaigns; provide research and host receptions but expect favourable decisions in exchange.

Cronyism and nepotism: A form of favouritism whereby someone in public office exploits his or her power and authority to provide a job or favour to a family member (nepotism), friend or associate (cronyism), even though he or she may not be qualified or deserving.

Profiteering: An individual might profit from public office by drawing on classified knowledge or stature derived from his or her public role in order to profit financially. Profiteering could take the form of insider trading, i.e., 'acquisition or disposal by an insider with 'inside information' on a regulated market.

The standards also form the moral backbone for the rules, conventions and processes, which act as safeguards against the types of misconduct mentioned above.

2. Quantifying the level of non-compliance with these standards is not a straightforward task. Even if one was to review all available administrative data – for example, the number of prosecutions for bribery involving public officials in the UK – there would remain unknowns, such as the amount of misconduct that goes unnoticed, unreported, or lacks sufficient evidence or will to bring to trial. Nevertheless, there are some general observations that we can make.
3. Generally, elite opinion considers corruption in the UK public sector less prevalent than other parts of the world. Though not the highest scoring globally, the UK usually performs relatively well in the Corruption Perception Index (CPI) - a composite index based on expert assessments by country specialists and senior business people. Despite being based on perceptions alone, its ranking of the UK as higher than Russia, Syria and Venezuela would not usually be challenged. However, that does not mean conduct that falls below the standards set in the Principles does not exist. In fact, it occurs more than the CPI score may suggest.
4. By our count, there were at least 30 different alleged breaches of parliamentary and ministerial rules in 2020 alone. Since 2015, there are upwards of 120 incidents where, arguably, ministers or parliamentarians fell short of the standards expected of them in public office. The nature and severity of these incidents varies – from failures to report financial interests through to alleged misconduct relating to tens of millions of pounds – but the consequences of even a few scandals can have a damaging impact.
5. Though it may be tempting to attribute the causes of these cases solely to the individuals involved, the systems for ensuring probity in public office are also relevant. Despite its reputation as a beacon of good governance, the UK's institutional checks and balances against abuses of power are incredibly

fragile and fall short of international good practice. There are no limits to political contributions, which has left the door wide open to cash being exchanged freely for political access and potential influence. Opaque lobbying and poor reporting of politicians' personal interests give cover to undue influence over major decisions. And insufficient safeguards against misconduct in office – often based on convention or policy that has proven increasingly malleable in recent years – provide little disincentive against egregious behaviour. One only has to look as far as the Westferry debacle for a case in point.

6. Consequently, it is perhaps unsurprising that 63 per cent of respondents to a recent survey thought the British system of Government is rigged to the advantage of the rich and powerful.⁴ Though public perceptions of misconduct do not necessarily reflect reality, they are almost as important. The appalling scenes from Capitol Hill earlier this month show what can happen when this mistrust, whipped-up into a frenzy by populists, reaches an extreme. Therefore, we must bolster the safeguards against perceived and actual behaviours that corrode trust in our institutions and our democracy.

Do you believe that there have there been any notable shifts in approaches or attitudes to ethical standards in public life in recent years?

7. There have been concerning developments in custom and practice in recent years that are undermining the integrity of our political system. While the Nolan principles are well established, there are long-standing conventions around ethical standards in public life that no longer seem to be observed. The structures and rules may not have been weakened but the complex network of shared understandings that underpins them has been. Restraint and self-regulation can no longer be relied upon to as a means of reinforcing or upholding ethical standards.

Resisting conventions of accountability

8. There had been an assumption that if standards regarding individual conduct were breached the individual concerned would have to resign. There have been a range of cases in recent years where this has not happened, and which therefore call into question whether it is still possible to rely on conventions as a means of upholding standards in public life.
9. In 2017, the Secretary of State for Leaving the EU, was rebuked by the Speaker for misleading MPs when he stated to the Brexit Select Committee that there were no impact assessments on the economic impact of Brexit. Misleading Parliament, even inadvertently, was traditionally seen as something that would cause a Minister to resign, but the Secretary of State remained in post. In 2018, the Secretary of State for Work and Pensions was publicly rebuked by the Head of the National Audit Office for misleading Parliament by misrepresenting an NAO report on universal credit. The Secretary of State apologised to the House but remained in post. In both cases there were potential breaches of the ministerial code that were not investigated.

⁴ Audit of Political Engagement 16 Hansard Society 2019

<https://www.hansardsociety.org.uk/publications/reports/audit-of-political-engagement-16>

10. The Westferry Printworks debacle provides another case in point. The Secretary of State for Housing, expedited Conservative Party donor, Richard Desmond's, planning application for a development in East London which would have saved Desmond's venture around £40 million in community levies. The meeting and subsequent correspondence between the two had not been published through official disclosures because the Secretary of State considered them to be personal affairs; they were only revealed by a newspaper investigation. In the past, Ministers have resigned for less, however he still remains in post with the confidence of the Prime Minister.
11. Societal values change over time and some issues which historically may have been considered resignation matters, may no longer be viewed so seriously. However, in a political system that relies heavily on convention, it is important that standards are seen to be upheld, and that everyone is seen to be playing by the same rules.

Attacking institutions

12. The debates about the process of Brexit have also challenged the idea that all those in public life, regardless of their party affiliation or personal belief, share a respect for the institutions of the state and the role they play in our democracy. In support of a particular policy agenda, we have Government Ministers⁵ and even the Prime Minister⁶ call into question the independence of the judiciary, the rule of law, and the independence of the civil service. Attacks on the impartiality of the civil service became so virulent and widespread that trade unions wrote to all party leaders asking them to stop accusing civil servants of having an agenda and seeking to undermine them.⁷
13. It is of course right that individual decisions can and should be challenged. However, when the legitimacy of the institutions themselves is called into question by prominent public figures, it undermines the foundations of our democratic system.

Politicising public appointments

14. In a political system like the UK, which is both highly centralised and largely dependent on conventions, a lot rests on the extent to which the Executive or even an individual government minister, chooses to use the discretionary powers they wield. Systems which have been in place for many years without significant dispute can become highly controversial very quickly when ministers choose to assert their powers. For example, there is a tension in public appointments between running an open, independent process on the basis of merit and the government of the day's desire to appoint those who support their policy agenda. There needs to be a balance and this can be well managed. However as the Commissioner for Public Appointments, stated in correspondence with this committee

⁵ <https://www.theguardian.com/politics/2019/sep/12/brexit-kwasi-kwarteng-criticised-for-biased-judges-comment>

⁶ <https://www.theguardian.com/books/2020/aug/22/against-the-law-why-judges-are-under-attack-by-the-secret-barrister#>

⁷ <https://www.ft.com/content/25bad52a-abbb-11e9-8030-530adfa879c2>

“...some at the centre of government want not only to have the final say but to tilt the competition system in their favour to appoint their allies...”⁸

15. Several recent appointments have raised suspicions that roles are awarded based on political connections rather than merit. Examples, include the appointment of a former Special Adviser as the Chair of the BBC⁹ and a former MP being appointed as Ambassador to Cuba.¹⁰ This is not to accuse or single out the individuals concerned, rather to highlight the perception that political affiliation is increasingly the main criterion for recruitment and that this undermines the process and political integrity more broadly.

Denying Freedom of Information requests

16. It is becoming harder to access government information by using freedom of information requests. Although there is a clear time frame set out in the Act for departments to respond, this is frequently not the case, even before specific exemptions are applied. FOI requests are also more likely to be dined today than 10 years ago. Research by openDemocracy shows that the percentage of requests granted in full has declined every year since 2010 – from a high of 62 percent in 2010 to 44 percent in 2019¹¹. The percentage of requests withheld in full has steadily increased from 21 percent in 2010 to 35 percent in 2019. Freedom of Information requests are an essential tool in holding governments to account and any restrictions to these processes, whether in policy or practice, is a cause for concern.

Bypassing due process

17. Allegations of cronyism have been made of governments of different political persuasions over the years. They are however particularly pervasive at the moment, involving wide ranging concerns about both public procurement and political appointments. In large part, these focus on the bypassing of due process as a key reason for suspicion of misconduct.

18. Traditionally, extra safeguards are put in place to minimize the risks of corruption when politically connected persons are involved in public procurement. The National Audit Office report into procurement during the COVID 19 pandemic¹² revealed that there was in fact a VIP lane for companies that had political connections. This is outside of the remit of this inquiry but it is fundamental to understanding concerns about shifts in ethical standards.

19. Similarly, concerns about appointments to the House of Lords, particularly regarding party donors, are not new. We note that for the first time a Prime

⁸ Letter from the Commissioner for Public Appointments to the Chair of CSPL 7 October 2020 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/932513/Peter_Riddell_to_Lord_Evans.docx.pdf

⁹ <https://www.theguardian.com/media/2021/jan/06/former-goldman-sachs-banker-richard-sharp-to-be-next-bbc-chairman> [accessed 27 January 2021]

¹⁰ <https://www.theguardian.com/politics/2021/jan/26/former-tory-mps-posting-as-uk-ambassador-to-cuba-raises-fresh-cronyism-claims> [accessed 27 January 2021]

¹¹ Art of Darkness report <https://beta.documentcloud.org/documents/20415987-art-of-darkness-opendemocracy>

¹² <https://www.nao.org.uk/report/government-procurement-during-the-covid-19-pandemic/>

Minister has personally intervened to confirm the appointment of a peer, against the wishes of the House of Lords Appointment Commission.¹³ The perception that money can buy a seat in legislature is a very damaging one and whilst political patronage continues to be a feature of these appointments we see merit in calls for the House of Lords Appointments Commission to be put on a statutory footing.¹⁴

Malign foreign influence

20. A significant development in ethical standards in recent years has been the impact of foreign investment in the UK on political integrity. The report of the Intelligence and Security Committee on Russia¹⁵ found that Russian influence in the UK has become the new normal. Russian money has been invested in extending patronage and building influence across the British establishment, from PR firms to charities, political interests, as well as academic and cultural institutions, for the purposes of reputation laundering. As the report recognized, Russian money and influence is so enmeshed within society that this cannot simply be undone. It needs to be recognized that this puts additional pressures on system for ensuring ethical standards and that parliamentary oversight and transparency should be strengthened to prevent MPs and peers from becoming unwitting agents of hostile states.

21. All of the aforementioned developments constitute significant threats to ethical standards in public life.

Question 3: The UK's arrangements for regulating standards

Are you confident that the UK's arrangements for regulating ethical standards are robust and effective?

Are there any areas of public life where regulation on issues of ethical standards is not strong enough?

22. There are a number of areas in which the UK's institutional checks and balances against abuses of power for private gain continue to fall short of international good practice. These weaknesses are systemic, being repeated across different parts of the UK and different types of public body. Below we explore a number of case studies below that exemplify these deficiencies. The case studies predominantly focus on ethical frameworks for the UK Government and Parliament and should not be considered an exhaustive list. Many of the issues identified, particularly regarding transparency and scope, also apply to equivalent codes in the devolved nations or in local government.

¹³ PM letter to Lord Bew 21 December 2020 <https://www.gov.uk/government/publications/pm-letter-to-the-house-of-lords-appointments-commission-21-december>

¹⁴ House of Lords Appointments Commission - Private Notice Question 5th January 2021 theyworkforyou.com/lords/?id=2021-01-05c.15.5#g15.6

¹⁵ Intelligence and Security Committee Russia report HC632 July 2020 https://b1cba9b3-a-5e6631fd-sites.googlegroups.com/a/independent.gov.uk/isc/files/20200721_HC632_CCS001_CCS1019402408-001_ISC_Russia_Report_Web_Accessible.pdf?attachauth=ANoY7cp5p7evF7OUk7_FJ46AbZi5cva5n0_ruDTwuvOjZLjjT0kWOYKLE46Y8LeA2DzHWQn3OxzPN6mIVShUarOK6Xkm6V5kPZbavmHLG9YvXa6Nv5Z-pKnPrW_brSZ2Hayky7XzB8JndKhVky1pH1YXfowLW5P4WH2CoiHOHPeNreQtTxv7Xy8AoG-gbWv1ncZwvNWHAB_ISD2wVs8nKmHlKGuB36YJ7Arh20HETR63sb4jlvixuCEUULMnk6kQeOpOJkRONbxShfwxMwmy4izA6Vs0ovtPRqRYHH1Dw7SaBRREhr4XCUU%3D&attredirects=0

23. Three of our reports from recent years provide more details of the issues at hand and our proposed solutions. *Permission Accomplished* reviews the risks of corruption in local government planning decisions, which in large part covers deficiencies in the framework for governing standards across local authorities in England as a whole. *Accountable Influence* provides a detailed assessment of the improvements needed in lobbying regulation in the devolved nations and Westminster. And *Take Back Control* examines the deficiencies in our rules for governing money in politics that provide an open door to corrupt behaviour.

Transparency

24. The first step in an ethical framework intended to build a culture of open government is to publish data about vested interests: who is seeking to influence government decision making and the financial interests of decision makers themselves. It is also important that different datasets can be compared and analysed in the round to give a complete picture. Some registers, such as the Statutory Register of Consultant Lobbyists, are even designed to be read alongside other data, in that case, ministerial meetings data.
25. In practice although key data sets are published this is not done in a way that consistently allows for meaningful scrutiny. Publishing data in machine readable formats is a basic tenet of transparency. Yet there are data sets in the UK that still fail to meet this basic standard. Registers of financial interest and the registers of All Party Parliamentary Groups (APPGs) are important examples of this but there are also many examples in local government.
26. The transparency of MPs' interests is an essential tool to ensure that the public can scrutinise any potential undue influence and conflicts of interests. As is the case for political donations, which are published by the Electoral Commission, information on MPs' financial interests should be available in a way that allows members of the public to analyse them at the click of a button. For example, it should not take more than a few seconds to understand how many outside interests an MP has, and their remuneration for these posts over the course of one or multiple parliaments. However, this is currently not the case.
27. The current register of members' financial interests is not easily searchable, user friendly or analysable. The data are published as PDFs, which makes any historical analysis very time consuming. To undertake the tasks mentioned above could take days, not seconds, to complete. Publishing members' interests in an inaccessible format like this gives the impression that Parliament is not serious about transparency. At worst, it looks like it is deliberately making it difficult for the public to understand MPs' outside interests.
28. These are not new concerns, and we support the recommendations from this committee in your 2009 report² and again in your 2018 report.³ In 2017, we spent a significant amount of time working with the Parliamentary Digital Service to create the framework for a system that would help make MPs' financial interests more accessible and analysable for the public. Despite

our clear blueprint for reform, nothing substantive appears to have happened since and we are at a loss as to why.

29. APPG registers are key to understanding where their funding comes from and assessing risks of influence from foreign governments. All APPGs are required to publish information including details of their membership, who the elected officers are, who the public contact is, date of the last meeting, details of any financial interests and whether there is an external secretariat providing support and the monetary value of that support. This information is all published on Parliament's website, so is in the public domain.
30. However, the registers are only published in HTML and pdf formats. These are not machine readable and makes meaningful scrutiny of the data both difficult and extremely time consuming. This only gets worse when attempting to read across from the different data sources to see where, if at all, there are any links. It is both feasible and highly desirable for APPG data to link seamlessly with other integrity registers, including the register of consultant lobbyists and the register of members' financial interests.
31. It should be easy for a constituent or interested organisation to easily find out how many APPGs and individual MP is a member of, how many APPGs have financial support from outside of Parliament or how many APPGs have not met within the last quarter. In principle this information is all freely available. In practice it is very difficult to access without significant IT skills and the knowledge of the Python programming language.¹⁶ As long as this data is not available in machine readable format, we cannot be sure of the full extent of the corruption risks within the work of APPGs.
32. A lack of transparency can also undermine the work of a regulator by creating a perception of inactivity or uniform approval where this is not in fact the case. The Parliamentary Commissioner for Standards is currently prevented from revealing whether or not they are investigating a matter that has been brought to their attention. This means that they are exposed to accusations of refusing to act and the perception is created that there is no interest in investigating potential breaches of the MPs code of conduct. While there are some matters that may need to be kept confidential, such as in cases of bullying, harassment and sexual harassment, there is a clear public interest in knowing if our parliamentarians are subject to investigation on corruption issues.
33. Moreover, as the Commissioner has previously outlined, publishing ongoing cases can uphold the integrity of both the Commissioner and MPs. Announcing that an investigation has begun cultivates the public's trust in the Commissioner's ability to hold politicians to account.

¹⁶ Dempsey, N Scraping All-Party Parliamentary Groups in R with parlygroups
<https://medium.com/analytics-vidhya/scraping-all-party-parliamentary-groups-in-r-with-parlygroups-29b05907afda> [Accessed 13 Nov 2020]

34. Equally the fact that the Advisory Council on Business Appointments (ACoBA) does not publish any information about how it makes decisions and in particular, decisions it may make not to allow a former Minister from taking on a private sector role, creates the perception that all requests are approved. It is understandable that personal information would need to be kept confidential and that attention should be paid to ensuring nothing published would damage the reputation of the individual concerned, or deter others from making an application. However, the lack of any information about refusals creates the perception that ACoBA simply approves every application and that there are no real restrictions on what roles can be taken.

Limited scope undermining the purpose of the regulation

35. Another challenge to the regulation of ethical standards in public life is where the narrow scope of the data collected makes it difficult, or in some cases impossible get a complete picture. The Statutory Register of Consultant Lobbyists is a good example of this problem.

36. The UK has now had a lobbying register for six years, but the public is still largely left in the dark about who is trying to influence public-policy decisions that affect their everyday lives. The UK's Statutory Register of Consultant Lobbyists and records of ministerial meetings, which when combined are supposed to provide a complete picture of lobbying activity, provide us with very little useful information with which to hold the powerful or influential to account.

37. There are two broad and fundamental problems which mean that it is not possible for the lobbying register to be effective. These are structural problems, rather than failures of implementation or operation. The first is the scope of the register. The UK is unique in only seeking to regulate the activity of consultant lobbyists who contact Government Ministers or Permanent Secretaries.

38. In 2013 when the proposed register was being debated in Parliament, lobbying trade bodies and campaigners came together to warn that the register would capture less than 1 per cent of lobbying activity¹⁷. The concern was that the very narrow definition, focusing on consultant lobbyists, rather than the lobbying activity, meant that little would be revealed about those seeking to influence the Government. This has proven to be the case.

39. The second is the level of information that is required. The small number of consultant lobbyists that are required to join the register only need to declare the name of their clients. This means it is very difficult to understand the nature of the lobbying that is taking place.

¹⁷ See Francis Ingham's evidence to the Political and Constitutional Affairs Select Committee inquiry on the Government's Lobbying Bill <https://publications.parliament.uk/pa/cm201314/cmselect/cmpolcon/601/601.pdf>

40. In principle we should know the purpose of lobbying activity by comparing the Statutory Register of Lobbyists with ministerial meetings data. Here again though the limited scope of the register undermines its purpose.
41. Academic analysis of more than 72,000 reported ministerial meetings and nearly 1,000 lobbying clients and consultants revealed “major discrepancies” between these two sources of information about lobbying in the UK. They concluded that the “wide variation between the two sets of data, along with other evidence, contribute to our conclusion that the Government could have made, and still should make, the lobby register more robust.”¹⁸
42. The lobbying transparency regimes in comparable countries are not so narrow in scope. In the USA, Canada and Ireland, all lobbying activity – whether by in-house or consultant lobbyists – information is captured in one location instead of across multiple data sources. The UK is in the difficult position where we have a lobbying register but lack real transparency. We still do not have a complete picture of lobbying activity and lobbying scandals continue to be a feature of our politics. There have been at least 26 lobbying scandals since 2010 revealing critical information that was not captured by either the statutory lobbying register or departmental disclosures. 12 of these lobbying scandals have been in the last five years. This undermines trust in our democracy.

Recommendation: In order to catch up with international best practice lobbying registers that capture both in house and multi client lobbying activity and reveal information including the purpose of the lobbying and how much was spent on lobbying activity should be introduced.

43. The scope of the definition of lobbying activity also creates problems in the MP’s Code of Conduct. Currently, the code of conduct bans paid advocacy, but the current wording may be causing a degree of ambiguity. The guide accompanying the code states that members must not lobby government if this would ‘confer benefit exclusively’ on the organisation or individual employing the Member¹⁹. This definition is unnecessarily narrow and it provides room for evading the rule’s intent. Moreover, the presentation and explanation of the code of conduct may allow misunderstanding, as seen in the case of David Morris, who the Commissioner found to have inadvertently breached the rules due to a ‘misunderstanding’ on Morris’s behalf. Ian Paisley Jr argued that he had not breached the rules on paid advocacy when he opposed imposing sanctions on the Sri Lankan Government after his family had been on two holidays in Sri Lanka paid for by the Sri Lankan Government worth about £50,000, because of the exclusive benefit rule. This was not

¹⁸ McKay, A.M., Wozniak, A. Opaque: an empirical evaluation of lobbying transparency in the UK. *Int Groups Adv* 9, 102–118 (2020). <https://doi.org/10.1057/s41309-019-00074-9>

¹⁹ House of Commons, *Code of conduct together with the guide to the rules relating to the conduct of members*, p.36 <https://publications.parliament.uk/pa/cm201719/cmcode/1882/1882.pdf>

accepted by the Parliamentary Commissioner for Standards, but it is significant that this was considered a legitimate defence.²⁰

Recommendation: The wording around the current paid advocacy ban should be simplified so that it is clear any paid lobbying to further the interests of anyone declared as a registerable interest is unacceptable, regardless as to whether it confers exclusive benefit to the payer.

Delayed and incomplete data

44. Ministerial meetings data is one of the main ways that the public can assess who is trying to influence the Government. The way that this data is published hinders effective scrutiny of who is seeking to influence Government. Although there have been some improvements in recent years, there are still issues with how meaningful, timely and accurate the data is.
45. The rationale for requiring those on the lobbying register to only declare their clients and not details of the policy on which they are lobbying was that this information could be found in the ministerial meetings data. However, as shown by our analysis of lobbying on housing policy this is not the case. The most common purposes stated for meetings with ministers are “introductory meeting”, “general meeting” or simply that this was “not recorded by the department”. These declarations keep lobbying activity firmly in the shadows.

Recommendation: We endorse the recommendation from GRECO that more information should be made available regarding meetings held by ministers, special advisers and senior civil servants with third parties, including lobbyists, and that such entries contain a sufficient amount of detail on matters discussed, to identify the specific subject matter(s) of the discussion and the specific purpose or intended outcome of the discussion.²¹

46. There is also an issue with the timeliness of the data. Departments have three months after the end of the quarter when they can publish the data and are inconsistent about when they do this. There can be significant delays in publication. TI UK’s Accountable Influence report found that the ministerial meetings data available in September 2015 was over a year old.²² This remains a problem – both HMT and FCO took nearly a year to publish the details of meetings that took place in quarter 4 of 2019. This makes it impossible for the public to understand at the time a policy is being debated who may be seeking to influence the Government.
47. Departments are also inconsistent in their approach as to what information needs to be published about ministerial meetings and there have been a number of instances where Ministers have failed to declare meetings. This

²⁰ <https://publications.parliament.uk/pa/cm201719/cmselect/cmstandards/2113/211303.htm#footnote-007>

²¹ GRECO 5th Round Evaluation Report on the Paragraph 78 <https://rm.coe.int/fifth-evaluation-round-preventing-corruption-and-promoting-integrity-i/168088ea4c>

²² Transparency International UK Accountable Influence 2016 p16 https://www.transparency.org.uk/sites/default/files/pdf/publications/Accountable_Influence_Bringing_Lobbying_out_of_the_Shadows.pdf

means that it is not possible to rely on the accuracy of the published information.

48. In 2011, Theresa Villiers, then a DfT Minister, failed to declare a lunch with a university friend who was also the principal lobbyist for developers Helioslough. The developers had been campaigning since 2006 to build a £400m international rail freight exchange on 300 acres of green belt land near St Albans in Hertfordshire. The Minister described the event as a private engagement, which did not need to be disclosed, despite acknowledging that the development was discussed over lunch and that emails followed the meeting from said friend asking the Minister to lobby colleagues in government.
49. More recently in 2020, Robert Jenrick, Secretary of State for Housing, was found to have expedited Conservative Party donor Richard Desmond's planning application for a development in East London in a way that meant Desmond would not have to pay community infrastructure levy money to Tower Hamlets Council. The meeting between Jenrick and Desmond was not included in the ministerial meetings data.
50. We believe that a more comprehensive approach to reporting on ministerial meetings data would often save Ministers from having to judge whether a meeting needed to be declared given their various roles, and from the consequent public accountability for those decisions. Meetings that Ministers have at events organised by a political party which would have been declared had they been hosted by their government department, should also be reported among their ministerial meetings.

Recommendation: Improvements to the way ministerial meetings data is recorded could be achieved with clear guidance from the Cabinet Office about the purpose of the data, how it relates to other data sets and how it should be reported. This guidance should confirm the scope and application of the Ministerial Code by stating explicitly in publicly available guidance that ministers must report and publish any meetings touching upon official business, even if these occur outside parliamentary hours at social events.

51. While there are clear rules on the reporting of financial interests for MPs and Ministers, to ensure there are no conflicts of interest in decision making, there are often errors and delays in reporting. There can also be significant differences in the level of reporting that is deemed necessary.
52. There have been a number of recent examples where MPs either failed to correctly declare their financial interests or failed to do so within the required 28 days. Given how difficult it is to scrutinise this data it is likely that there are more errors and inaccuracies than become public knowledge.
53. Ian Paisley Jr MP failed to register a holiday to the Maldives which was paid for by a corporate body (the resort) rather than, as Ian Paisley claimed 'a

personal friend'. The Parliamentary Standards Commissioner concluded that Mr Paisley had 'no direct relationship with the donor' and that the complimentary rooms from the resort "might reasonably consider to influence Mr Paisley, which made registration a requirement" The Registrar of Financial Interests also stated that Mr Paisley's status as an MP might have been an element of the 'friendship'²³. This was not the first time Mr Paisley had failed to declare his financial interest correctly. In 2013 he failed to register two visits to Sri Lanka in 2013 with his family, paid for by the Sri Lankan government, worth, according to Ian Paisley himself, around £50,000.²⁴

54. Richard Drax MP recently added properties to his declaration of financial interests, correcting a number of errors and omissions, following a newspaper investigation into his business interests.²⁵

55. In 2018 there were two investigations in quick succession into Boris Johnson's declarations of financial interests. Johnson was found to have breached the parliamentary code by failing to register nine payments (totalling £52,711.80) on four occasions within the 28 day period specified. He apologised and made assurances that his parliamentary interests were now up to date. Just over three months later the Commissioner investigated him again for late registrations. The Committee found that Johnson had, again, breached the parliamentary code for failing to register a share of a Somerset property within the 28 days of acquiring it.²⁶

56. The Guardian newspaper recently published a series of stories about the Chancellor of the Exchequer's financial declarations.²⁷ The suggestion was that insufficient information was being provided about his wife's and wider family's extensive financial interests. The declarations had gone through the appropriate scrutiny process and been approved by the Independent Advisor on the Ministerial Code. However, this minimalist approach to reporting was in sharp contrast to other senior office holders. When David Cameron was Prime Minister, he reported extensively on the financial interest of a wide range of family members. The fact that individuals can, in good faith, take such different approaches to reporting their financial interest whilst following the same rules and codes of conduct, creates confusion and concern.

Recommendation There needs to be clear, publicly available, guidance given to Ministers about the scope of the Ministerial Code and the level of reporting expected

²³ <https://www.parliament.uk/globalassets/documents/pcfs/rectifications/mr-ian-paisley-mp-rectification.pdf>

²⁴

https://publications.parliament.uk/pa/cm201719/cmselect/cmstandards/1397/139703.htm#_idTextAnchor002

²⁵ <https://www.theguardian.com/world/2021/jan/03/reparations-row-mp-adds-plantation-to-his-register-of-members-interests-richard-drax> [accessed 27 January 2021]

²⁶ <https://publications.parliament.uk/pa/cm201719/cmselect/cmstandards/2113/211303.htm#footnote-007>

²⁷ <https://www.theguardian.com/politics/2020/nov/27/huge-wealth-of-sunaks-family-not-declared-in-ministerial-register> [accessed 27 January 2021]

to ensure a greater degree of consistency. We also support the recommendation of the Standards Committee²⁸ that there should be a new suite of sanctions that will address the ‘sanctions gap’ that exists between issuing an MP suspension and requiring an MP to make an apology.

Autonomy and Independence

57. Effective monitoring and regulation of ethical standards requires independence and autonomy from both government and those that are being regulated. The expenses scandal demonstrated the damage that can be done to public trust in institutions when the relationship between regulator and those they are regulating is seen to be too close. Although swift action was taken to create an independent body to oversee MPs expenses, other areas of regulation still lack the necessary autonomy in decision making.
58. Leadership is very important in creating an ethical culture and it is important that the Prime Minister is able to set the tone of the standards and ethics that they expect their ministers to uphold. However, the level of control the Prime Minister can exert over the process is a concern. Investigations into a potential breach of the code can only be triggered by the Prime Minister. The investigation is then run by the Independent Adviser on Ministerial Standards and the report is delivered to the Prime Minister who decides what if any sanctions are appropriate. The Independent Adviser is appointed by and reports to, the Prime Minister. This is not to suggest that investigations by the Independent Adviser are not independent, just that the lack of autonomy in deciding when an issue should be investigated means compliance with integrity and ethical standards for ministers are essentially based on self-regulation and the risk of reputational damage. There is also no consistency over which allegations warrant and investigation and which do not. This is not a strong enough framework to ensure trust in political system and to prevent the perception that wrongdoing in high office goes unchecked.
59. In recent years there have been a number of cases where serious allegations of misconduct by ministers were made but there were no investigations. In 2012 the close relationship between Secretary of State for Culture Media and Sport and both James Murdoch and Fred Michel, News Corporation’s lobbyist, was raised at the Leveson Inquiry. It was revealed that the Secretary of State had lobbied the Prime Minister to encourage him to approve the takeover, writing a memo against the advice of his officials and contradicting his statements to Parliament.²⁹ The Secretary of State and his Special Adviser remained in contact with Murdoch and Michel even when the Secretary of State knew he would be making a decision on whether to allow News Corporation’s takeover of BSkyB. There were calls for an investigation into potential breaches of the Ministerial Code which were declined by the Prime Minister.

²⁸ House of Commons Committee on Standards, *Sanctions in respect of the conduct of members* <https://publications.parliament.uk/pa/cm5801/cmselect/cmstandards/241/24102.htm>

²⁹ <https://www.theguardian.com/politics/2012/may/24/leveson-inquiry-jeremy-hunt-bskyb> [accessed 27/1/2021]

60. The examples cited above where Ministers were found to have misled Parliament were potential breaches of the Ministerial code. Equally the example last year of the Housing Secretary failing to declare meetings and correspondence with Richard Desmond about a planning application may have been a breach of the code. Calls for an investigation to do not mean that there has been a breach of the rules, but the lack of an investigation in the face of serious allegations creates the perception that those in government are above the law.
61. The value of the ministerial code as a safeguard of conduct in public office was further undermined by the recent case involving the Home Secretary. The Independent Adviser on the Ministers' Interests found that the Home Secretary had engaged in bullying behaviour but the Prime Minister declined to take action and expressed his support for the Home Secretary. This led to the resignation of the Independent Adviser on the Ministerial Interests.
62. In their 5th evaluation round report on the UK, GRECO drew attention to concerns about the lack of autonomy for both the Ministerial Code of Conduct and ACoBA and concluded that,
- “both institutions may gain in being considerably more autonomous from government and being capable of investigating breaches on their own initiative leading to sanctions”*.³⁰
63. We do not believe that it is possible for the Ministerial Code to be an effective tool in upholding ethical standards whilst its implementation is so closely tied to the Prime Minister.

Recommendation: Regulation of conduct in accordance with the Ministerial Code and rules on Business Appointments should be put on a statutory footing.

Regulatory bodies that lack the powers and sanctions that they need to be effective

64. In addition to independence and autonomy an effective standards regulator needs the power to conduct investigations into potential breaches of the rules and the ability to impose powerful sanctions for breaches to act as a deterrent and sufficient resources to carry out these roles. This is frequently not the case in the UK as can be seen with ACoBA and the Electoral Commission.
65. In the UK most public officials recognise the potential for conflicts and try hard to avoid them. However, a number of prominent cases have come to light in recent years in which former Ministers and civil servants have taken lucrative consultancies or directorships with companies that have relationships with their old departments.

³⁰ <https://rm.coe.int/fifth-evaluation-round-preventing-corruption-and-promoting-integrity-i/168088ea4c>

66. The current system does not lend itself to building public confidence in the integrity of the UK's political institutions. At times, appointments may have the appearance of impropriety, even if it often remains unclear whether an actual distortion of public policy has taken place. And that in itself damages trust in government.
67. The Public Administration Select Committee called for ACoBA to be abolished and replaced with an independent, statutory body in 2012. Its successor committee the Public Administration and Constitutional Affairs Select Committee found that the situation had got worse and also called for urgent reform of ACoBA.
68. One of the main reasons for this is that ACoBA is just an advisory body – it has no authority to ensure that its advice is carried out. Even where ACOBA does impose conditions, it lacks the power to monitor whether those decisions are respected, or to impose sanctions on individuals who disregard their advice.
69. This lack of monitoring capacity is arguably the greatest weakness of the current system for scrutinising post-public employment. It means that it falls to the media or NGOs to provide scrutiny, on an ad hoc basis, of how former Ministers and civil servants behave once they have left office. PACAC found that Private Eye was more effective at tracking post Ministerial appointments than ACoBA. Yet the media is not always interested in portraying the complexities of these cases, with some media tending to sensationalise the risks and ignore any potential benefits.
70. PACAC called ACoBA “a toothless regulator”³¹ as it cannot impose sanctions for breaches of its rules. There are numerous examples of individuals, including the current Prime Minister,³² applying to ACoBA retrospectively once they have already taken up a role. This is often noted in the decision letter, in the case of Boris Johnson, the delay in notifying ACoBA was deemed unacceptable. However, no action can be taken so there is no deterrent to prevent future rule breaking.
71. The challenges of regulating the revolving door, preventing conflicts of interest and regulatory capture are not new, but neither are they going to go away. The civil service is no longer considered a ‘job for life’ and political careers are notoriously unstable. Whilst the creation of ACoBA demonstrates an understanding that this is an area that needs to be regulated, the current system is inadequate. As Sir Bernard Jenkin, then Chair of PACAC, said it “represents a failure of governance in public life—it inspires no public confidence, nor does it protect the reputations of those it is intended to protect.”³³

³¹ <https://www.civilserviceworld.com/professions/article/pacac-to-relaunch-inquiry-into-toothless-regulator-of-whitehall-revolving-door> [accessed 27 January 2021]

³² <https://www.politicshome.com/news/article/boris-johnson-ticked-off-by-appointments-watchdog-over-new-telegraph-role> [accessed 27 January 2021]

³³ <https://www.economist.com/britain/2019/12/12/cheer-up-sacked-mps-a-big-payday-awaits> [accessed 27 January 2021]

72. The Electoral Commission is also hindered in its role of regulation elections in the UK. As we set out in our evidence to this committee's inquiry into electoral regulation, the level of fine that the Commission can impose for breaches of the rules is so low that they can be considered the cost of doing business. This means that there is no meaningful deterrent to breaking the rules.

73. One of the challenges facing regulators is that in many cases they identify the need for additional powers and sanctions but are not able to make these changes. As outlined above select committees have been calling for fundamental reforms of ACoBA since 2012. The Electoral Commission has also been asking for additional powers and sanctions for many years. There are blocks to achieving change and the protracted delays contribute to the undermining of trust in our democracy.

Recommendation: There should be a holistic review of the powers and sanctions available to those involved with upholding ethical standards in public life. This is particularly important with regard to codes and bodies that regulate the Executive.

ABOUT TRANSPARENCY INTERNATIONAL UK

Transparency International (TI) is the world's leading non-governmental anti-corruption organisation. With more than 100 chapters worldwide, TI has extensive global expertise and understanding of corruption.

Transparency International UK (TI-UK) is the UK chapter of TI. We raise awareness about corruption; advocate legal and regulatory reform at national and international levels; design practical tools for institutions, individuals and companies wishing to combat corruption; and act as a leading centre of anticorruption expertise in the UK.

We are independent, non-political, and base our advocacy on robust research.

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Standards Matter 2: response to CSPL landscape review of institutions, processes and structures in place to support high standards of conduct

Contact – Jacqui McKinlay, Chief Executive

About the Centre for Governance and Scrutiny

The Centre for Governance and Scrutiny (CfGS, previously the Centre for Public Scrutiny) is a national centre of expertise on governance and scrutiny. We passionately believe that better governance and scrutiny leads to more effective decision-making, reduced risk and ultimately improved outcomes.

Our work spans local and national government, the wider public sector and voluntary and private sectors. We focus on behaviours and culture, as well as governance policy, design and practice.

Consultation Questions:

Question 1: Standards of Conduct in the UK

A. How well do you think ethical standards - as enshrined by the Seven Principles of Public Life - are upheld in public life today?

Ethical standards are considered important. They are a key component of all local authority constitutions. In the third sector strengthened expectations around ethics are seen as central to good governance.

In central government profile and commitment are more mixed, although there has been renewed focus following the collapse of Carillion, particularly in private sector organisations delivering public service or projects. We are currently working with a number of private sector organisations (Mears PLC, ENGIE UK, Skanska UK and Storengy) seeking to improve ethical standards and committed to transparency and scrutiny of their progress.

In large institutional settings specific ethical standards can be subsumed within broader conversations about organisational values. This has benefits – it ties ethics into the wider range of behaviours expected of conscientious public servants. But it can mask the importance of personal responsibility and accountability. The lack of day-to-day focus on the “Seven Principles” has also led to a balkanisation of the landscape, whereby organisations and sectors have evolved different language to describe similar concepts. This can hinder understanding and make expectations around ethical behaviour more opaque.

The importance of ethical standards seems less central in contracting. Contractors, trading companies and other providers operate in public life – as do others delivering services of a public nature – but there is confusion over whether they should be subject to these standards. In local government, confusion over conflicts of interest and standards of behaviour and performance have been a contributory factor to recent controversies around commercial activity.

B. Do you believe that there have there been any notable shifts in approaches or attitudes to ethical standards in public life in recent years?

There is a renewed focus on the standards regime in local government. In the third sector, personal and professional ethics has had a higher profile in recent years. As referenced earlier, post-Carillion there was an increased profile in the private sector.

The challenge lies in translating this increased interest and focus into practical action. A sense persists that standards are about basic technical requirements – the declarations of interests, basic financial propriety – rather than broader cultural considerations. Behaviours and attitudes are often not central to the debate.

There is also a significant role for commissioners to drive improvements in ethical standards. Until a true value is placed on high ethical standards as part of the procurement process, it will continue to be a mixed response.

C. What do you see as the most significant threats to ethical standards in public life today?

The biggest threats are around, in a time of crisis, good governance and the ethical behaviours being seen as inconvenient blocks to necessary action.

The pandemic has led to public bodies putting in place workarounds and short term changes to make operational delivery of critical services possible. In doing so there is the risk that the principles of ethical behaviour have been side-lined in the interests of “getting things done”. This may have been more about the removal of safeguards than poor behaviour itself, but it increases risk for the future. Looking ahead, the increased financial and demand pressure on public services and therefore decision-makers, may be seen as a reason not to focus time and effort on promoting and supporting ethical standards.

Question 2: The Seven Principles of Public Life

- A. Do the Seven Principles of Public Life accurately describe the appropriate ethical responsibilities for those in public roles, including both political and non-political officeholders?**
- B. Would you amend or replace any of the principles or their descriptors? If so, how?**

The Principles have stood the test of the past 25 years – they are ubiquitous and well understood. They continue to reflect the gamut of issues that office-holders need to have regard to. The central issue is about highlighting those office-holders to which the principles may apply. In 1994 the demarcation between public and private were arguably starker – now it is easier to envisage the existence of individuals working in private entities who could be considered holders of “public office” in its broadest sense. Any revision could be about changing the language to talk more about those involved in activity of a public nature, or involved in public service in a broader sense. A change in wording of the principles themselves would risk their dilution, and/or disagreement about meaning.

Question 3: The UK's arrangements for regulating standards

- A. Are you confident that the UK's arrangements for regulating ethical standards are robust and effective?**

Our comments here are restricted to local government although we consider they may have wider applicability.

The removal of technical, and particularly legal, expertise in local authorities on standards issues is a concern. Monitoring Officers in local authorities may lack the authority to lead on local standards

issues. A lack of sanctioning power in the existing local authority standards regime presents significant additional problems.

In local authorities, there is no consistent approach to assure ethical standards for senior officers. Some are subject to external regulators and chartered institutes but some (notably Chief Executives / Heads of Paid Service) are not, and poor ethical standards at the most senior level are difficult to identify and tackle.

B. Are there any areas of public life where regulation on issues of ethical standards is not strong enough?

Question 4: Best practice in standards regulation

- A. What makes an effective standards regulator?
- B. Do the UK's standards regulators have the right powers and remit to act effectively?
- C. Should the independence of standards regulators be enhanced and protected, and if so, how?

We have limited awareness of examples from other jurisdictions to make clear comments on this.

Question 5: Creating ethical cultures

A. How can the Seven Principles best be embedded within a public sector organisation's working culture?

Ethical behaviour is about day to day activity. It should be a natural way to work; people should not consciously think about "being ethical" (although they should of course think about the ethical consequences of their decisions).

Consistent and understandable systems for decision-making, an approach where people work collaboratively and proportionate and supportive oversight is a fact of life, will all be conducive to ethical behaviours.

It also helps where those in leadership positions continually describe how ethics is important – not in standalone statements but woven into the way that they model behaviours for others to follow.

Services and systems need to be designed to make ethical behaviour normal, and to make working against the grain of ethics a challenge – essentially to make it necessary to consciously choose to act unethically.

Alongside this there needs to be a culture of openness, and a supporting system and process, which encourages and enables people to raise concerns about ethical infringements and be confident that they will be listened to, action taken, and where appropriate lessons learnt.

B. What are the most significant obstacles to embedding high ethical standards in a public sector organisation?

A sense that ethical behaviours will emerge of their own accord, and that normal recruitment and HR processes will "weed out" poor behaviours, is a main obstacle. Generally, minimising the challenge and its importance will always lead issues to fester. Treating ethical behaviour as a standalone matter or as an HR issue (or an issue about "governance compliance") will also tend to encourage worse behaviours.

Obstacles can also be created if there is a perception that concerns are not listened to or action up. Leading to disengagement and potentially an impact on behaviours.



Response to CSPL Review on Standards Landscape

1. My response is based both on my broader observations about the landscape on standards in public life and my specific experience as Commissioner for Public Appointments since April 2016. The following also reflects my work undertaking the triennial review of the role of the CSPL for the Cabinet Office in 2013.
2. I want to comment on the relevance of the Seven Principles of Public Life; the role of Codes in reinforcing standards; the accountability and appointment of independent regulators; and the boundaries between regulated and unregulated appointees. (To avoid repetition, I will not be going in detail into specific issues about public appointments which I set out in a letter to the Committee, published on November 4th, 2020.)
3. The Seven Principles of Public Life have stood the test of time in that they have been endorsed by successive governments and are generally seen as remaining relevant today. This is despite the haphazard way in which they were drawn up. But they do not cover all aspects of conduct, at least explicitly. At my request, 'Fairness' was added to the principles on public appointments in the Government's Governance Code which took effect in January 2017. This is intended to ensure fairness and equal treatment of all candidates. It is more explicit than Objectivity as in the Seven Principles. In my 2013 review of the CSPL, one of the submissions highlighted the need for office holders to be assiduous.
4. Codes of conduct are useful as reference points both for those in public life - whether in government or as regulators - and for members of the public and candidates for public appointments. The Governance Code on Public Appointments is the guideline by which I judge the conduct of competitions for public appointments. All Codes contain a tension between their spirit and letter. In practice, much depends on how the Codes are interpreted and the key to the implementation of the Governance Code is applying it flexibly and proportionately. While the Code's specific provisions can be an important backstop when an overt breach arises, life is seldom so clearcut and there are ambiguities. For instance, in the world of public appointments, there are two central principles - selection of appointable candidates through fair and open competition including a robust independent element on assessment panels, and the close involvement of ministers in expressing preferences and making the final selection. So the process can be viewed as either constrained open competition or constrained political patronage. Most of the time there is a broadly acceptable balance recognising the rights of an elected government but this can lead to, and has led more recently to, misunderstandings about what is an inherently political process. In this context, the frequent use of the term 'politicisation' is confusing and misleading since politicians are, and have always been, central to the process. The question is how that political role is exercised and whether it affects the process of fair and open competition to

find appointable candidates. The same point applies to the decisions affecting other independent regulators.

5. Many of the Codes governing public life are non-statutory - established and amended by Orders in Council which also govern the appointment of office holders. There is, in practice, a spectrum of powers in interpreting Codes from the entirely advisory such as the Ministerial Adviser, via the semi-independent, to the statutorily independent such as the Civil Service Commissioner, where the 2010 legislation clearly defines the position of civil servants and their appointment. In January 2017, the role of the Commissioner for Public Appointments changed following the Grimstone Review, with control over the Governance Code for Public Appointments moving from the Commissioner to ministers. With this shift, the Commissioner for Public Appointments has had a more consultative role, with the ability to make independent assessments about competitions, and to speak out about non-compliance with the Code. However, the Commissioner cannot demand the re-running of competitions, the removal of appointees, and has no role in the final selection of appointees. Similarly, the House of Lords Appointments Commission can privately advise but ultimately cannot prevent a Prime Minister from making appointments. Such decisions should be, and always have been, for ministers in an elected government accountable to parliament. That was the view adopted by the Government following the Grimstone Review. But this also means we should consider a clearer and more explicit definition of the role of Codes laying out standards in public life and setting out the powers of regulators who enforce them. Ideally, this should be via statute. The present position means that the powers of ethical regulators are less than they often appear and are assumed to be. Moreover, the powers and the Governance Code can be altered at the instigation of the executive via Orders in Council without any parliamentary involvement - though this has not happened so far to the 2017 Code. This lack of clarity can lead to mistaken views and expectations about the role and powers of regulators. For instance, it is still not uncommon to see references in advice from officials, and in public information for candidates, to 'OCPA's Governance Code', rather than the Government's Code, four years after the Grimstone changes were implemented. Continuing public, let alone official, confusion underlines the need for greater clarity. The role and powers of the Commissioner in deciding public appointments are often exaggerated in social media.
6. The way that regulators are appointed should also be reviewed. At present, most are chosen solely by ministers, like other public appointees, though they are generally subject to pre-appointment scrutiny by a House of Commons Select Committee. This can, and should be, a demanding process but it is advisory and the views of a Select Committee can be, and have been, over-ruled by a Secretary of State. The final choice of an independent regulator lies with a Secretary of State. Admittedly, some posts either involve a specific parliamentary veto such as the head of the Office for Budget Responsibility or are made, jointly or wholly, by a Commons committee, such as the chair of the Electoral Commission. And judges are appointed by the Judicial Appointments Commission. There is a case for a clearer distinction between public bodies which are essentially delivering on the policies and priorities of central government and regulators and constitutional watchdogs whose justification and existence lies in their independence from the executive. (The Institute for Government

proposed explicit distinctions and lines of accountability between different types of public bodies in its still relevant 2010 report 'Read Before Burning'). There should be a stronger guarantee of independence in the appointment of regulators whose role is not to implement the policies of the government of the day but to scrutinise them to uphold standards of public life. The natural tension in the public appointments process, described above as 'constrained open competition' or 'constrained political patronage', is arguably harder to manage and defend in the case of independent regulators. Recently, there has also been controversy over the position of chairs of public bodies who are members of the House of Lords and whether or not they should retain a party whip. This issue is outside my remit as Commissioner but the absence of consistency in taking a party whip has muddled the debate over demonstrating their independence.

7. A final area which should be considered by the CSPL is those areas of public life which are largely unregulated or regulated inadequately. The Committee has already expressed views on the lack of clarity in the enforcement of the Ministerial Code. In the area of public appointments, there has been controversy over the growing number of often short-term appointments made at ministerial discretion to task forces and the like. Of course, there has recently been a need to respond quickly to the demands of the Coronavirus pandemic, and there could obviously be other challenges in future that require a similar exercise of ministerial discretion without the time for a full competition. But there needs to be clarity over the lines of accountability in such appointments. Similarly, the non-executive members of departmental boards are chosen by a mixture of competition and direct ministerial appointment, but without any external check or regulation and the Government has not explained these appointment processes in detail. The public, and media, often assume that such appointments are regulated and subject to a formal Code but they are not. This lack of clarity can fuel lack of public confidence about the way such bodies are appointed and run. Just as there is a published list of appointments which are regulated by the Commissioner for Public Appointments, so it would be useful to have a public list of non-civil service appointments made by ministers.

Rt Hon Peter Riddell, CBE, Commissioner for Public Appointments, February 2021.



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The Lord Evans of Weardale KCB DL
Chair, Committee for Standards in Public Life (CSPL)
By email: public@public-standards.gov.uk

Dear Lord Evans

15 March 2021

Response to CSPL Review on Standard Landscape

1. You have invited me, as Chair of the independent Advisory Committee on Business Appointments (ACOBA), to submit evidence as part of your current review into standards. My response is based on my insight from my first year in post at ACOBA, but it also reflects on my experience in public life over many years. I also I enclose a copy of the most recent Annual Report¹, which sets out ACOBA's role and remit; and how it approaches its work.
2. The current standards system, of which business appointments are part, relies on a number of rules and codes - regulated by a plethora of independent bodies and regulators. The various codes of conduct across the public sector are underpinned by the Seven Principles of Public Life which are a helpful benchmark to measure the appropriateness of behaviour. However, they are a set of principles that can and will be interpreted differently by different audiences. This provides for grey areas between the spirit of the underpinning principles and the letter of the various rules and codes which seek to encourage and secure compliance. Whilst there is value in the UK's current system, it must be made clear to the public, and the individuals concerned, exactly how the Government holds individuals to account in respect of their responsibility to act with honesty and integrity.

What is ACOBA?

¹ ACOBA's Annual Report can also be found on the website here:
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/962428/ACOBA_Annual_Report_for_publication_2018-2020_final.pdf

3. As you will be aware, the Committee operates within the wider business appointment system which the Government has made it clear it favours, over a statutory one, to allow permeability between the public and private sectors, whilst managing propriety. The Government's Business Appointment Rules (the Rules) are a set of principles designed to protect the integrity of the Government. The Rules themselves are set by the Government and all aspects of the Rules, including their content, amendment and enforcement are the responsibility of the Government.
4. It is the personal responsibility of individuals to follow the Rules and manage the propriety of their outside appointments, whilst following the Rules, a requirement which is set out in the various codes of conduct². All applicants are expected to uphold the highest standards of propriety and act in accordance with the Seven Principles of Public Life. It is also the responsibility of the Government to foster a culture that supports this - where senior figures lead by example, demonstrating high standards of propriety with clear systems and processes to underpin this. Civil servants - at all levels - and new Ministers need to be made more aware of the expected standards, principles and the various rules that apply; from their induction to the moment they leave public service.
5. ACOBA is not a regulator nor a watchdog. It has a very specific and defined role within the Government's business appointments system - to apply the Government's Rules at the most senior levels of the Government, whilst government departments do so at all other levels for officials. In doing so ACOBA considers the risks associated with the actions and decisions an individual has made during their time in office, alongside the information and influence they may offer the employer, based on the evidence provided by the applicant and their former department. To mitigate potential risks to the integrity of the Government associated with appointments, ACOBA will apply delays, conditions and restrictions; as should departments.
6. ACOBA's 'approval' of any role is in these terms *only* - that it be subject to a number of conditions to manage risks identified under the Rules. It is not approval of the role in any other respect. For example, it is not a commentary or view on whether the individual is appropriately skilled for the role; nor on whether it might conflict with other roles they may hold, for example as an MP or for another organisation³.
7. It is perhaps unsurprising the Government supports⁴ a system that is broadly compliant and requires significantly less resources than any alternative systems that could be envisaged. Whilst there are some examples of non-compliance, these remain a small percentage of the casework and applications that ACOBA is aware of. ACOBA's transparency regime is closely monitored by the media and members of the public with an interest. Most media reporting

² The Ministerial Code, the Civil Service Management Code, The Code of Conduct for Special Advisers, the Queen's Regulations and the Diplomatic Service Code

³ The exception to this is where the applicant has an ongoing role within the Government - in that potential conflicts under the Rules in relation to any ongoing roles within the Government will be considered.

⁴ Read the Government's response to the Public Administration and Constitutional Affairs Committee's report: [Managing Ministers' and officials' conflicts of interest: time for clearer values, principles and action](https://publications.parliament.uk/pa/cm201719/cmselect/cmpubadm/731/73102.htm) here: <https://publications.parliament.uk/pa/cm201719/cmselect/cmpubadm/731/73102.htm>

on outside appointments is driven by ACOBA's own publication of its decision on its website. However, neither ACOBA or the Government can know what we do not know, and this gap in information is often highlighted by critics of the system as evidence of a problem. The benefits and costs of any significant changes to the system must be balanced against the benefits of the current system, which has strong evidence of overall compliance. I should also take this opportunity to make it clear that contrary to popular belief, ACOBA can and does tell applicants when an application to take on an outside role is unsuitable. Only if that advice were ignored would ACOBA make that public; our experience is that applicants overwhelmingly accept ACOBA's advice.

8. There are some issues with the Government's current approach that I think should be explored, and I will outline those below - namely around: transparency and best practice at departmental level, including some possible gaps in the system; the complexity of the system; and the lack of sanctions. Given the significant public scrutiny of those holding and leaving public office, the Government must do more to demonstrate how it holds individuals to account in respect of their responsibilities to act without impropriety. Having a system is simply not enough if it cannot be understood by those who it is set up to assure; members of the public must be able to see the system working.

Where should consideration for improvement be focussed?

- **Scope of the rules - best practice and transparency**

9. I am not convinced the Rules or the business appointments system as a whole are visible enough to be understood widely. ACOBA is the most visible part of the system, advising the most senior, and therefore often the most high profile, applicants. Recognising this, ACOBA has increased transparency by publishing increasingly detailed information. However, transparency must increase right across the system.
10. ACOBA has been taking a number of steps to increase its transparency:
 - Being transparent about its risk-based approach that will allow ACOBA to offer prompt, predictable and consistent advice on appointments that are unremunerated or unrelated to an applicant's work in government and concentrate attention on more complex cases.
 - Where there are significant risks, for example where applicants possess commercially sensitive information from their time in government, it will be clear to applicants that it is not always possible to mitigate the associated risks by applying conditions or a delay. In such cases ACOBA will advise that it is inappropriate for an ex-minister/ex-civil servant to take up such a role.
 - Applicants and departments are required to provide clear evidence to demonstrate a role they wish to take is appropriate for someone who held their position in government. Submissions will be published alongside ACOBA's advice.
 - Where ACOBA is made aware that an individual has failed to seek advice or may be acting in a manner contrary to advice received, we will refer this to the Government and, where relevant, write to the employer. This correspondence will be published in full by ACOBA.

- Any failure to comply with ACOBA's advice will be taken into consideration as part of the vetting process in awarding honours.
11. The vast majority of cases fall to departments for consideration if officials make an application under the Rules⁵. It is now a requirement that all departments ensure their Audit and Risk Committees monitor issues relating to the Rules at regular intervals. This is a welcome addition to the governance arrangements within the business appointment system, and at departmental level (and followed a recommendation made by ACOBA to the Public Administration and Constitutional Affairs Committee (PACAC)⁶⁷). However, it is far from clear how this is being applied and monitored within departments; and there is no aggregated data or reporting available to demonstrate how the Rules are applied below ACOBA.
 12. This lack of clarity and transparency can fuel a lack of public confidence about the business appointments system as well as raise questions and concerns about particular appointments, which may be wholly unjustified. ACOBA, with the right resources, could be well placed to share best practice, raise awareness and transparency on the Rules across government and publicly. I have raised this with the Cabinet Office as either a permanent solution, or as an enabler for a longer term policy.
 13. Government departments and arm's length bodies, at the very least, should increase the information available on how the propriety of outside appointments are managed - bringing a greater degree of clarity to how the principles in the Rules are put into practice. This echoes PACAC's previous recommendation that the Cabinet Office should publish aggregated data in relation to the applications that departments considered from members of the Senior Civil Service below SCS 3, to allow public scrutiny of practice across individual departments.
 14. The Rules and any guidance that accompanies them should be clear about the expectations they set, removing the risks of any misunderstanding and to help move away from a culture of entitlement that exists in some departments. It is not a given that individuals should move seamlessly in and out of the public and private sectors, only that they should do so where there is limited risk to the integrity of the Government.
 15. PACAC previously recommended that the Rules should be amended to include '*....a clearly defined principle that at a minimum, public servants should avoid taking up appointments within a two year time period that relate directly to their previous areas of policy and responsibility when they have had direct regulatory or contractual authority within a particular sector.*' Whilst I understand the Government's reticence to

⁵ Whilst ACOBA considers applications from former ministers, it only considers applications at the most senior levels from officials (members of the Civil Service, the Military, the Diplomatic Service and the Intelligence Services).

⁶ You can access ACOBA's evidence to PACAC here:

<http://data.parliament.uk/WrittenEvidence/CommitteeEvidence.svc/EvidenceDocument/Public%20Administration%20and%20Constitutional%20Affairs%20Committee%20/The%20role%20and%20effectiveness%20of%20ACoBA%20and%20the%20Independent%20Adviser%20on%20Ministers%E2%80%A0%20Interests/written/40856.html>

⁷ <http://data.parliament.uk/WrittenEvidence/CommitteeEvidence.svc/EvidenceDocument/Public%20Administration%20and%20Constitutional%20Affairs%20Committee%20/The%20role%20and%20effectiveness%20of%20ACoBA%20and%20the%20Independent%20Adviser%20on%20Ministers%E2%80%A0%20Interests/written/40856.html>

unreasonably bar individuals from changing careers and, for example, working in the voluntary sector - there are ways to make improvements here without doing so. Consideration should be given to making it explicit in the Rules, and in employment contracts, that it is not appropriate for individuals to work in areas they have had direct regulatory or contractual responsibilities. This need not preclude individuals from carrying out valuable work or making use of their skills and experience gained in office - where it can be demonstrated it is not a risk to the integrity of the Government; and nor would it require a statutory framework.

- **Remit - the complexity of regulation - demystifying**

16. The landscape is muddled and it cannot be clear to most outsiders who is responsible for what and who is accountable to whom. Within the business appointments system, there are overlapping areas of standards where ACOBA has no role and remit, where other independent bodies are responsible - which is often misunderstood.
17. For example, any conflict that occurs between the outside interests of a member and their duties in either the House of Commons or the House of Lords is governed by the various mechanisms in place:
 - The Code of Conduct for MPs⁸
 - The Parliamentary Commissioner for Standards
 - The Commons Committee on Standards
 - Code of Conduct for Members of the House of Lords⁹
 - The House of Lords Commissioner for Standards
18. Many of the applicants subject to advice from ACOBA are former ministers, who may continue to serve in either House. The public can be confused by the various rules that govern outside appointments which is unsurprising. For example, media coverage often refers to ACOBA in the context of MPs' second jobs despite that being a matter for Parliament; or where a former minister sits in the House of Lords and receives advice from ACOBA with a number of restrictions, including a ban on lobbying - for an application to work with a consultancy firm which has a lobbying arm to its business.
19. Arm's length bodies, where employees are not employed under the Civil Service Management Code are not subject to the same Rules. This includes some regulators and the Government's own departmental non-executive directors. Whilst there can be equivalent arrangements in

⁸ 'MPs can receive payment for Parliamentary advisory services as long as any such positions are declared on the Register of Interests. Some MPs hold advisory positions for consultancies where they have been recruited to advise on political matters and Parliamentary procedure, or have established political consultancies themselves.' MPs Outside Interests, Committee for Standards in Public Life, July 2018

⁹ 'Outside employment which involves being paid to provide advice on Parliamentary affairs or how to influence Parliament is prohibited for Members of the House of Lords, Members of the Scottish Parliament and Members of the Welsh Assembly.' MPs Outside Interests, Committee for Standards in Public Life, July 2018

place¹⁰, there is no standard requirement to make an application or publish the outcome of any consideration or decisions made upon leaving public office (unlike Senior Civil Servants). The public and media often assume that such appointments come within ACOBA's remit, but they do not. The guidance and transparency regime I talk about in paragraphs 13 and 14 should seek to make the landscape clear.

20. The Office of the Registrar of Consultant Lobbyists (ORCL) administers the statutory Register of Consultant Lobbyists. The Register is based on the power of transparency - in this instance transparency of those seeking to lobby Ministers and Permanent Secretaries on behalf of a third party. Under the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014 (the Act) a person must not carry out consultant lobbying unless on the Register. This regime sits alongside the Rules which state that, as a general principle, there will be a ban on lobbying Government after individuals leave office; and allows for amendments to be made to that.
21. It is stating the obvious that it is damaging to the integrity of Government if former officials and ministers leaving office are seen to trade on their time in Government - to be paid for access to and or to influence the Government. ACOBA makes it explicit that lobbying the Government to unfairly benefit a new employer on leaving office is inappropriate and unacceptable. However, there is no blanket ban or statutory requirement not to lobby the Government on leaving office; and former ministers and officials (and the companies they may seek to work for) can be added to the Register without issue. It should be made easy for the public to understand how the Government protects its interests by preventing improper lobbying, for example - it could be made clear that applications to work with lobbying firms will not be accepted for a certain period of time.

- **Compliance and lack of sanctions**

22. Perhaps the most significant criticism of the Government's business appointment system is the lack of sanctions. Whilst it is a requirement to follow the rules under the various codes of conduct, this is not always clear in ACOBA's experience. Further, CSPL has previously noted the lack of clarity in the enforcement of the Ministerial Code - there is no clear sanction imposed by the Government for failures to comply with the Rules.
23. In respect of ACOBA's role here, breaches (such as failures to seek advice before taking up an outside role) are made public. The court of public opinion can be a useful tool - very few individuals, or their employers wish to be found acting contrary to the high standards expected of officials. However, despite the shame and damage to reputation that can occur to an individual as a result of this transparency, likewise the high profile nature of these cases can damage the reputation of the system as a whole. Whilst I must stress failures to comply account for a small percentage of ACOBA's overall caseload - consideration must be to the consequences of infringing or defying the Rules.

¹⁰ It is for sponsoring departments to agree with arm's length bodies how they will address propriety of outside appointments and it will differ between bodies

24. The Government is introducing a consultation process with ACOBA, when vetting nominations received for a former Minister or senior civil servants to receive an honour. Therefore, compliance with the Rules will be taken into consideration as part of the Honours and Appointments Secretariat's existing vetting process. When considering what more could be done, this is a helpful starting place - for example could this be extended to cover consideration where an individual seeks to return to any role in public office where appointed by the Government?
25. It should be an explicit post-employment contractual obligation to adhere to the Government's Rules and make clear what the sanction will be.

The Rt Hon Lord Pickles

Yours ever
Sirie Pickles

Institute for Government response to Committee on Standards in Public Life
'Standards Matter 2: Public Consultation'

About this response

This response to the CSPL's consultation, *Standards Matter 2*, was compiled by Tim Durrant, Associate Director at the Institute for Government (IfG) and sent on behalf of the IfG.

The Institute is an independent think tank working on making government more effective. High standards across all of public life are important to the effective working of government and we would be happy to discuss our thoughts on this, and the CSPL's review in general, in more detail if that would be helpful.

Tim Durrant
11 January 2021

Consultation Questions:

Question 1: Standards of Conduct in the UK

A. *How well do you think ethical standards - as enshrined by the Seven Principles of Public Life - are upheld in public life today?*

1.1 These standards continue to be broadly upheld: from our observations and conversations, most individuals in politics, the civil service and wider public life are committed to maintaining ethical standards. But at the same time, there are signs that some of the ethical norms that were reflected in, and reinforced by, the principles are losing their purchase. Examples from Whitehall include: failure to investigate alleged breaches of the ministerial code; the prime minister's decision not to act on his adviser's finding of a breach of the ministerial code; and procedural irregularities around planning and procurement, the latter particularly during the covid-19 pandemic, as discussed in a recent National Audit Office report.¹

B. *Do you believe that there have there been any notable shifts in approaches or attitudes to ethical standards in public life in recent years?*

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

1.3 The covid-19 pandemic has not *per se* caused a notable shift in approaches to ethical standards. But there is a risk that as exceptions to standards are potentially seen as more acceptable in the middle of a crisis, what is seen as a one-off during a crisis becomes the norm even after the crisis period has ended. Recent examples, including the concerns raised by the independent commissioner for public appointments over the politicisation of

public appointments, suggest that disregarding previously adhered-to standards may be becoming a trend.²

C. What do you see as the most significant threats to ethical standards in public life today?

1.4 One threat is the political polarisation noted above. Winning the argument has always been important in politics but this should not be achieved at the cost of maintaining standards. In recent years it appears that political leaders have become more willing to forgive certain behaviours among those who share the same view, and to criticise certain behaviours among those of different views, thus politicising discussion of standards. Examples include Labour's inadequate response to allegations of anti-Semitism within the party and Boris Johnson's decisions in relation to alleged breaches of the ministerial code.

1.5 Secondly, as many standards, particularly in political life, are enforced by informal structures and norms, the reduced power of these norms means that the standards themselves are under threat. Relying on goodwill and acceptance of unwritten rules only works when people in public life are willing to accept implicit limits on what they can do. If informal norms are not recognised, there is little that can be done to respond. This is particularly the case as much of that response comes from those outside the formal structures of public life – mainly the media, who, for example, have played an important role in covering allegations of bullying by the home secretary.

Question 2: The Seven Principles of Public Life

A. Do the Seven Principles of Public Life accurately describe the appropriate ethical responsibilities for those in public roles, including both political and non-political office-holders?

2.1 In our view, yes.

B. Would you amend or replace any of the principles or their descriptors? If so, how?

2.2 Given recent reports of bullying and harassment in both government and parliament, there is a case to be made for including 'courtesy and respect' as an explicit part of the description of at least one of the seven principles – probably under leadership. This is not intended to preclude spirited argument and disagreement, but to state explicitly that those in positions of power – particularly elected politicians – should not exploit their status to bully or intimidate colleagues or staff.

2.3 The descriptors – and references to the Seven Principles in other documents - should make clear that they apply in all parts of public life, including social media which did not exist when they were originally drawn up.

Question 3: The UK's arrangements for regulating standards

A. Are you confident that the UK's arrangements for regulating ethical standards are robust and effective?

3.1 Many of these arrangements work on trust and informal judgements, and often have a decision-making role for the person or group whose standards are being questioned,

meaning they are not as robust as they could be. As the arrangements for regulating standards have evolved in an ad hoc way, the current arrangements are fragmented, with gaps and overlaps in responsibilities. The mapping exercise conducted by the CSPL is helpful but also serves as a reminder that this is a complex landscape.

B. Are there any areas of public life where regulation on issues of ethical standards is not strong enough?

3.2 Taking various areas of public life in turn:

- Ministerial standards (including minister-civil service relationships): The prime minister is the ultimate arbiter of ministerial standards, which is clearly the right set-up as the prime minister leads the government and is the only one who can hire and fire ministers. But there are political incentives for him to support his ministers, so he is not a neutral judge in disputes about standards. The position of prime minister's adviser on the Ministerial Code was intended to introduce an element of independence to the prime minister's decision-making which would enable standards to be consistently applied by different holders of the office. This arrangement has been fundamentally undermined by Boris Johnson's decision to disregard the advice of Sir Alex Allan, and his subsequent resignation.
- The civil service: if a civil servant has concerns about standards, they face a conflict – concerns raised under the civil service code are initially handled by other civil servants, rather than via an independent route. If, as the cabinet secretary explained to PACAC recently following concerns about the then UK Internal Market Bill³, a civil servant believes something ministers are asking them to do contravenes the civil service code because it is against the law, their ultimate recourse is to ask ministers – the Law Officers – whether or not it is indeed against the law. This is clearly not an independent route for assessing the validity of that civil servant's concerns.
- Parliament: changes have been made to systems to improve how staff are treated, but, as numerous investigations in recent years have shown, it is clear that there are still problems. Alongside the need for the new systems to demonstrate consequences for the perpetrators of bad behaviour, there is a need for ongoing culture change to address the negative consequences of the power imbalance between politicians and their staff.
- There are sensible reasons why public procurement processes can be fast-tracked – particularly during a crisis, like the current pandemic – but concerns around covid-related procurement and public appointments show that the safeguards currently in place are not always sufficiently robust.

Question 4: Best practice in standards regulation

A. What makes an effective standards regulator?

4.1 In our view, the most effective standards regulators are:

- Independent: with the individual advisor/commissioner/chair appointed independently (with cross-party support where relevant) and having clearly defined – preferably in statute – powers. They should also not be beholden to government for their operating budget; Parliament, rather than the government, should be responsible for approving the budget for independent standards regulators. The regulator must also be able to choose what it works on and investigates, rather than relying on instructions from government, and be able to speak for itself, rather than being beholden to

government mechanisms and timetables, eg for publishing reports. This may also help improve public confidence in these regulators.

- **Credible:** Taking a consistent approach to potential standards breaches and having the ability to issue recommendations that the government must respond to within a certain time period.
- **Properly resourced:** in terms of both budget and staff – rather than relying on civil servants seconded from other parts of government, who may face a conflict of interests.

B. Do the UK's standards regulators have the right powers and remit to act effectively?

4.2 Taking certain regulators in turn:

- The prime minister's independent adviser on ministerial standards can only begin investigations when requested to do so by the prime minister and then relies on the cabinet secretary and his team to support the investigation, placing them in a very difficult position. Once the investigation has reported, there is also no fixed period in which the prime minister must respond to or act on its findings. Ministerial standards rely on political expectation – if the governing party expects their ministers to behave well, they will; if they consider achieving political goals more important than upholding both ethical and administrative standards, then those standards will suffer.
- The Civil Service Commission has statutory underpinning, independent staff and an independent appointment process – it is a good model for other regulators. However, it too must agree with the cabinet secretary when it will investigate allegations of serious breaches of the civil service code – so is still limited in what exactly it can investigate.
- The Office of the Commissioner on Public Appointments is limited to assessing appointments to public bodies, rather than all ministerial appointments (e.g. to departmental boards, or standalone appointments such as the various 'tsars' tasked with different aspects of the covid response).
- The Committee on Standards in Public Life itself has a clear remit, but this has been established by ministerial statements in parliament, rather than by legislation – meaning it could be easily changed/reduced by further such statements.

C. Should the independence of standards regulators be enhanced and protected, and if so, how?

4.3 The Institute agrees with the recommendation from the previous Public Administration select committee – as described in the CSPL's recent mapping exercise on standards regulators – that the independent adviser on ministerial standards should be able to initiate investigations and publish findings without being requested to do so by the prime minister or needing to consult the cabinet secretary. To do so, the adviser should have a small permanent staff available to him or her, rather than having to rely on the cabinet secretary and his secretariat, who are then placed in a difficult position.

4.4. A statutory underpinning is essential for regulators to be able to act without fear or favour of individual ministers – where it does not already exist, the government should create it. This statutory underpinning should ensure that the leader of a regulator is appointed independently of government – perhaps with the agreement of the relevant select committee, as is the case with the chairman of the Office for Budget Responsibility. The role

of the cabinet secretary in upholding standards should be set out in the civil service code and in the CRAG Act.

4.5 The Institute's Deputy Director, Dr Hannah White, argued in her evidence to the House of Commons Committee on Standards that the current code of conduct for MPs should be updated to cover behaviour, and that a single code for all parliamentarians, MPs and peers, should be considered.⁴

Question 5: Creating ethical cultures

A. How can the Seven Principles best be embedded within a public sector organisation's working culture?

5.1 The tone and approach of any organisation is set from the top – ministers, permanent secretaries or chief executives need to both say that they value high standards and model best behaviour in their everyday actions.

5.2 The fact that the prime minister writes the foreword to the ministerial code is welcome, but words need to be backed up by actions, including recognising those who do adhere to high standards, and holding those who do not meet sufficiently high standards to account.

B. What are the most significant obstacles to embedding high ethical standards in a public sector organisation?

5.3 Many public sector jobs are demanding and attract high degrees of scrutiny – so there can be an expectation or acceptance that due to stress or pressure, poor treatment of colleagues is seen as excusable. Senior leaders need to show that this is not the case.

5.4 The political polarisation noted above means that there is sometimes less agreement on the importance of fundamental principles and standards, and that the nature of those principles itself becomes politicised, meaning that people feel more empowered to question or disregard them.

5.5 While it is relatively easy to disregard standards for a short-term political advantage, it takes time and consistent leadership to embed and sustain them. It is much harder, and requires sustained and active effort, to rebuild the importance of these standards.

¹ For more detail see <https://www.nao.org.uk/report/government-procurement-during-the-covid-19-pandemic/>

² Peter Riddell's comments were covered at <https://www.civilserviceworld.com/news/article/watchdog-sounds-alarm-over-rising-political-bias-in-public-appointments>

³ See Simon Case's evidence at <https://committees.parliament.uk/oralevidence/1095/default/>

⁴ See Dr White's evidence at <https://committees.parliament.uk/oralevidence/1364/html/>