**COMMITTEE ON STANDARDS IN PUBLIC LIFE**

**CABINET OFFICE CONSULTATION ON TRANSFORMING PUBLIC PROCUREMENT**

**Background on Committee**

1. The Committee on Standards in Public Life is an independent, non-departmental public body sponsored by the Cabinet Office that advises the Prime Minister on arrangements for upholding ethical standards across public life. The Committee has no investigative powers and does not comment on individual cases. See **Annex A** for the Committee’s remit and current membership.

1. In its first report in 1995, the Committee articulated the Seven Principles of Public Life, commonly referred to as the Nolan Principles: selflessness, integrity, objectivity, accountability, openness, leadership and honesty. These principles apply to all holders of public office, including those who are elected or appointed, and those in the private sector providing public services.

**Introduction**

1. The Committee is grateful for the opportunity to submit evidence to the Cabinet Office for its consultation on public procurement. The Committee has responded to questions on principles, transparency and limited tendering.
2. The Committee has reviewed these matters twice previously and commented on and made recommendations about the government’s commissioning activity, including procurement. The key points of these reports are summarised in paragraphs 8-16 below.
3. The Committee has not yet received a formal response from the government to either of our reports. In light of recent findings from the [National Audit Office](https://www.nao.org.uk/wp-content/uploads/2020/11/Investigation-into-government-procurement-during-the-COVID-19-pandemic.pdf) and the House of Commons’ [Public Accounts Committee](https://committees.parliament.uk/publications/4607/documents/46709/default/), and the recent [High Court Judgment](https://goodlawproject.org/update/the-judgment-is-in/?utm_source=Twitter&utm_medium=social%20media&utm_campaign=uc%20win%20tw%201902) on procurement during the pandemic, the Committee expects to see responses to those reports as soon practicably possible.
4. The Committee set out the need for transparency in public procurement in these reports, presaging current criticism. This lack of transparency of covid-19 procurement contracts has now been criticised in reports by the NAO and the Public Accounts Committee.
5. The Committee would also like government to note its current review of the standards landscape, [Standards Matter 2](https://www.gov.uk/government/collections/standards-matter-2); the emerging findings of which strongly reinforce the need for the Nolan Principles to be thoroughly embedded in public life. The Committee hopes that this consultation can lead to the first steps in doing so.

**2014 and 2018 reports on ethical standards for public service providers**

1. In 2014, the Committee undertook a [review into departmental commissioning activity and the ethical standards of public service providers](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/336976/2902536_CSPL_EthicsInPractice_acc.pdf). It found that government departments were not well equipped to support ethical conduct by public service providers. Notably the report recommended that the Cabinet Office should:
	1. reinforce the message that the Nolan Principles apply to any organisation delivering public services;
	2. ensure that ethical standards reflecting the Nolan Principles are addressed in contractual arrangements; and
	3. develop guidance on how value for money could be aligned with high ethical standards.

1. In 2018, the Committee published a [follow up report](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/705884/20180510_PSP2_Final_PDF.pdf) charting progress since 2014. It found that government had made some improvements in managing the ethical conduct of contractors but that the civil service had made limited progress on introducing formal measures to reinforce the application of ethical standards in public service delivery.

1. We did not find any compelling evidence that ethical considerations were sufficiently incorporated into service delivery design, contractor selection or formal contract management processes. We also found that departmental boards spent little, if any, time reviewing ethical considerations, often delegating those issues “down the line”; and that departments lacked clear lines of accountability when contracts failed.

1. Notably that report recommended that:
	1. commissioners of services should set out the ethical behaviours expected by government of public service providers as part of their commissioning process;
	2. public service providers should set out their plans for embedding high ethical standards in their service delivery approach as part of the commissioning process;
	3. accounting officers should provide assurance that high ethical standards are part of achieving value for money in their annual accounts; and
	4. government should hold a public consultation on extending the Freedom of Information Act 2000 (FOI Act) to include information held by private companies relating directly or indirectly to the performance of a contract with government for the delivery of public services.
2. The Committee would like assurance from the Cabinet Office that ethical considerations will be sufficiently incorporated into public procurement processes going forwards.

**2020 report on artificial intelligence and public standards**

1. In 2020, the Committee published a [report on AI and public standards](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/868284/Web_Version_AI_and_Public_Standards.PDF). The report examined the existing regulatory framework for AI in the public sector, and made recommendations to government and others about regulation and good governance.

1. As in 2014 and 2018, we found that ethical considerations were not sufficiently embedded within AI procurement processes. Public officials and private service providers told us that provisions for ethical standards are often considered midway through the development of an AI system and are not typically written into tenders or contracts.

1. The Committee is of the view that ethical considerations, including transparency, should be injected early into the procurement cycle and considered at each stage of the process from planning through contract award and performance to give them the best chance of surviving the life of the contract.

1. We said in the report that government should set out the ethical behaviours expected of public service providers as part of the commissioning process or where contracts are extended; and that adherence to those standards should be part of the evaluation process and be given an appropriate weighting – ie. companies that show a commitment to ethical standards should be scored more highly than those that do not. This would help ensure that suppliers who think about ethics have a competitive advantage. In doing so, the government could leverage its purchasing power in the market to incentivise public service providers to be more ethical.

**Proposed principles of public procurement**

1. We are glad to see that the proposed principles for public procurement are broadly consistent with the Principles of Public Life. We agree that procurement decisions should be made in the public interest and with integrity, objectivity and transparency.

1. We are glad to see that the “value for money” principle is not narrowly defined as “best price” and that it involves an assessment of the procurement to provide confidence about its probity. However, it should be made explicit in the revised Green Book that high ethical standards are part of achieving value for money; and that if suppliers do not demonstrate high ethical standards consistent with the Principles of Public Life, they may be scored less highly during the commissioning process. The Committee also believes that guidance should be provided on how value for money can be aligned with high ethical standards.

1. The Committee takes the view that the starting point must be an articulation of the expected standards by commissioners and an acceptance of those standards by public service providers.

**Transparency**

1. Transparency in public procurement is central to the integrity and accountability of the system – procurement processes and buying decisions must be sufficiently transparent so they can be scrutinised and the right people can be held to account for spending public money.

1. The Committee recognises the impact of covid-19 on public procurement (see paragraphs 26-29) but our concerns around the transparency of government contracts and the performance of outsourced public services predate the pandemic.

1. In 2018 the Committee found that while the government had made some commitments to enhancing transparency in contracts for services, departmental contract management information was insufficiently well organised and aggregated so as to make collating key data straightforward – i.e. a member of the public would find it hard to locate and read most contracts for public services, including to know their value. This has a deleterious effect on good governance and transparency.

1. We are also concerned that the exclusion of private service providers from the scope of the current FOI Act means that government and users are unable to examine the credibility of service providers’ ethical frameworks and performance against those frameworks.

1. For instance, we were told in 2018 that commissioners often did not have access to the cultural and behavioural information required to perform ‘ethical due diligence’ tests before commissioning services or while managing contracts. This does not make government well-equipped to make the best decisions about procurement and service delivery, having due regard to all relevant considerations, which is what the principle of transparency requires.

1. In the interests of increasing transparency and accountability, the Committee recommends consideration by the government of a consultation on the applicability of the FOI Act to private service providers.

**Limited tendering**

1. In responding to the covid-19 crisis, government has had to make decisions quickly and on the basis of changing or incomplete evidence. The Committee recognises that procurement decisions may need to have been made quickly under the negotiated procedure without prior publication designed for use in emergencies.

1. However, in light of recent reports on government procurement during the pandemic, the Committee is increasingly concerned about the lack of transparency around buying decisions that has left the government open to accusations of poor value for money, conflicts of interest and preferential treatment of some suppliers. This undermines public trust in government procurement and the use of public money.

1. Notwithstanding what might have been considered necessary during the current crisis, it cannot become the new normal for standards not to be upheld or proper process to be followed.

1. Any change to procurement procedures must not undermine the Nolan Principles, including transparency, or the public’s confidence in its institutions. If the government is to retain limited tendering as a standard procedure in the case of crisis, the Committee would like assurance that the right checks and balances exist within the system to ensure decisions are being made in the public interest and in accordance with the Principles of Public Life.

**Committee on Standards in Public Life, March 2021**

**Annex A**

**Committee on Standards in Public Life: Background**

The Committee on Standards in Public Life is an independent, advisory Non-Departmental Public Body (NDPB). The Committee was established in October 1994, by the then Prime Minister, with the following terms of reference:

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

The Principles of Selflessness, Objectivity, Integrity, Accountability, Openness, Honesty and Leadership remain the basis of the ethical standards expected of public office holders and continue as key criteria for assessing the quality of public life.

The remit of the Committee excludes investigation of individual allegations of misconduct.

On 12 November 1997, the terms of reference were extended by the then Prime Minister:

*To review issues in relation to the funding of political parties, and to make recommendations as to any changes in present arrangements.*

The Committee’s terms of reference were further clarified following the Triennial Review of the Committee in 2013. The then Minister of the Cabinet Office confirmed that the Committee:

S*hould not inquire into matters relating to the devolved legislatures and Governments except with the agreement of those bodies. Secondly the Government understands the Committee’s remit to examine “standards of conduct of all holders of public office” as encompassing all those involved in the delivery of public services, not solely, those appointed or elected to public office.*

Committee membership as January 2021:

* Lord Evans of Weardale KCB DL, Chair
* Rt Hon Dame Margaret Beckett DBE MP
* Dr Jane Martin CBE
* Professor Dame Shirley Pearce DBE
* Monish Shah
* *[Vacancy]*
* Rt Hon Lord Stunell OBE
* Rt Hon Jeremy Wright QC MP

The Committee’s work is supported by a Research Advisory Board, chaired by Professor Mark Philp.