Sixth Report of the Committee on
Standards in Public Life

Chairman: Lord Neill of Bladen, QC

Reinforcing Standards

Review of the
First Report of the Committee
on Standards in Public Life

Volume 1: Report

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The Seven Principles of Public Life

Selflessness

Holders of public office should act solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.

Integrity

Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might seek to influence them in the performance of their official duties.

Objectivity

In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

Accountability

Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

Openness

Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

Honesty

Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

Leadership

Holders of public office should promote and support these principles by leadership and example.

These principles apply to all aspects of public life. The Committee has set them out here for the benefit of all who serve the public in any way.

Committee on Standards in Public Life

Standards in Public Life

Chairman:
Lord Neill of Bladen QC

January 2000

Dear Prime Minister,

I am pleased to present the Sixth Report of the Committee on Standards in Public Life. It is unanimous.

The strength of this Committee is its ability to return to a subject and to review both progress in implementing recommendations and the effect of implementation. In this report, we have reviewed the recommendations of the Committee's First Report.

I believe that it is generally recognised that the Committee's First Report, produced under the chairmanship of Lord Nolan, was a seminal work which laid the foundations for current standards of ethical behaviour in public life. Its main recommendations related to Members of Parliament, Ministers, Civil Servants and Public Appointments to Quangos.

In the evidence which the Committee gathered for the present report we found general agreement that the process put in train by the First Report had been a success.

Our latest recommendations are designed to continue the momentum towards reform.

My colleagues and I commend this report to you.

Yours sincerely,

Patrick Neill

LORD NEILL OF BLADEN QC

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List of Recommendations and Observations

(Recommendations are identified by the prefix 'R' and Observations by the prefix 'O')

Chapter 3: Members of Parliament

R1. The Government should introduce its proposed legislation on the criminal law of bribery as soon as possible in order to remove any uncertainty regarding the scope of the statutory offence of bribery and to make clear that members of both Houses of Parliament, acting in their capacity as members, and those who bribe a member of either House of Parliament fall within its scope.

R2. Where a complaint is made to the Parliamentary Commissioner for Standards alleging criminal conduct by an MP and the complaint is neither malicious nor frivolous, then the Parliamentary Commissioner should report to the Committee on Standards and Privileges with a recommendation that the matter be referred to the police for further investigation.

R3. ***'Trial' procedure in serious, contested cases***

1. Where

   (a) the Parliamentary Commissioner finds a *prima facie* case against an accused MP, the alleged facts of which, if true, would amount to serious misconduct, but

   (b) the alleged facts are disputed by the accused MP,

   the Parliamentary Commissioner should report to the Committee on Standards and Privileges with a recommendation that the case be referred to a disciplinary tribunal consisting of a legal chairman sitting with either two or four MPs who should be of substantial seniority.

2. Before making a decision about whether to accept the Parliamentary Commissioner's recommendation, the Committee on Standards and Privileges should allow the accused MP an opportunity to make representations in respect of that decision.

3. If the Parliamentary Commissioner's recommendation is accepted, the accused MP should be provided with financial assistance to enable him or her to fund legal representation at the hearings of the tribunal.

4. The tribunal should be governed by procedures which satisfy the *''minimum standards of fairness''*, as defined by the Nicholls Committee.

5. The tribunal should both act as fact-finder and decide whether, on the basis of the facts found, the charges against the accused MP are proved.

6. The tribunal should report its conclusions to the Committee on Standards and Privileges and, assuming no appeal is being lodged, the Committee should consider what penalty (if any) should be recommended to the House of Commons.

R4. ***Appeal procedure in serious, contested cases***

1. An accused MP who receives an adverse ruling from the first instance tribunal should have a right of appeal and should be entitled to financial assistance to pursue that appeal.
2. The appeal should be heard by an *ad hoc* appellate tribunal, possibly a retired senior appellate judge sitting alone.
3. If the appeal is dismissed, the Committee should report the result of the appeal to the House of Commons along with any recommendation as to penalty.

R5. ***'Trial' and appeal procedure in other contested cases***

1. In cases which, in the opinion of the Parliamentary Commissioner, do not warrant a referral to the full tribunal, the Parliamentary Commissioner should make a recommendation to the Committee on Standards and Privileges accordingly. The Committee should decide whether to uphold the recommendation of the Commissioner on the basis of the Commissioner's report and of the representations (if any) by the accused MP.
2. In those cases that remain with the Parliamentary Commissioner, the Commissioner should investigate the complaint and, on the basis of the facts found, decide whether the complaint should be upheld or dismissed. The Commissioner's decision should be reported to the Standards and Privileges Committee which should, in turn, decide whether or not to adopt the Commissioner's report and what penalty (if any) should be recommended to the House.
3. In cases where an accused MP disputes the Commissioner's findings or conclusions, that MP should be able to appeal against the Commissioner's decision, such an appeal to be heard either by the Committee itself or by such *ad hoc* appellate body as it decides to appoint.

R6. ***Disciplinary procedure in non-contested cases***

In non-contested cases, whether serious or minor, the Parliamentary Commissioner should, in accordance with present practice, report the (undisputed) facts and conclusions based on those facts to the Committee on Standards and Privileges which, if it endorses the report, should recommend to the House of Commons what penalty (if any) should be imposed.

R7. The disciplinary proceedings of the House of Commons should be held in public but should not be broadcast. This recommendation as to hearings in public does not extend to the private deliberations of the Standards and Privileges Committee or of any disciplinary or appellate tribunal (which should remain private).

R8. The House of Commons should take measures in relation to the Committee on Standards and Privileges, with a view:

(a) to ensuring that a substantial proportion of its members are senior MPs, and

(b) to exempting the Committee from the convention that its chairman should be drawn from the Government benches.

R9. The ban on paid advocacy should be retained.

R10. The guidelines relating to the ban on paid advocacy, set out in the *Guide to the Rules relating to the Conduct of Members*, should be amended so as to make it possible for an MP who has a personal interest to initiate proceedings which relate in a general way (and not exclusively) to that interest, subject to the following safeguards:

- the MP is prohibited from engaging in 'paid advocacy' on behalf of that interest;
- he or she is required to register and declare the interest in accordance with the guidelines;
- he or she must identify his or her interest on the Order Paper (or Notice Paper) by way of an agreed symbol when initiating a debate.

Chapter 4: Ministers

R11. Paragraph 123 of the Ministerial Code should be amended to make it clear that a Minister, having had the advice of his or her Permanent Secretary on potential conflicts of interests, must take full responsibility for any subsequent decision.

R12. No new office for the investigation of allegations of ministerial misconduct should be established.

R13. The final three sentences in section 1 of the Ministerial Code should be redrafted to clarify the role of the Prime Minister. It will be for the Prime Minister to determine the precise wording but we suggest the following text:

> It will be for individual Ministers to judge how best to act in order to uphold the highest standards. They are responsible for justifying their conduct to Parliament and retaining its confidence. The Prime Minister remains the ultimate judge of the requirements of the Code and the appropriate consequences of breaches of it.

R14. The presentation of section 1 of the Ministerial Code should be improved to reflect its importance as a statement of the ethical principles governing ministerial conduct. In particular the final three sentences, redrafted as suggested above, should be clearly distinguished from the preceding text.

Chapter 5: Civil Servants

R15. Permanent heads of department and heads of profession, in conjunction with the Centre for Management and Policy Studies, should ensure that there are training and induction opportunities for those appointed on secondments or on short-term contracts to middle management or senior Civil Service levels at which ethical issues within the public sector are examined.

R16. The arrangements for validating the performance of permanent heads of department and agencies against their personal objectives need to be subject to further scrutiny but should be structured to allow for some element of independent validation so as not to undermine political impartiality.

R17. A timetable for the implementation of the Government's commitment to a Civil Service Act should be produced as soon as possible. In particular a target date should be set for the process of consultation on the scope of such an Act.

Chapter 6: Special Advisers

R18. The Ministerial Code should be amended to reflect the fact that in certain circumstances more than two special advisers per Cabinet Minister may be appointed. The Prime Minister may wish to set out in the Code the criteria which should be applied if the limit is to be exceeded.

R19. The proposed Civil Service Act should contain a provision limiting the total number of special advisers that can be appointed within Government. Any increase beyond that figure should be made subject to affirmative resolution of both Houses of Parliament.

R20. Pending the enactment of the Civil Service Act, the Government should put before both Houses of Parliament for debate a limit on the total number of special advisers that can be appointed within Government.

R21. Any increase in the number of special advisers with executive powers should be subject to the same process of Parliamentary scrutiny as set out in recommendations R19 and R20 above for the overall number of special advisers.

R22. There should be a separate code of conduct for special advisers. The special advisers' code should:

(a) consolidate appropriate elements of the Civil Service Code, the Model Contract and paragraph 56 of the Ministerial Code, which sets out the duty to uphold the political impartiality of the Civil Service and other obligations;

(b) include a section on the direct media contacts of special advisers, making clear the nature of the role that they play in relation to the work of Civil Service information staff and in particular the role of the departmental head of information, as set out in the Guidance on the Work of the Government Information Service published in July 1997;

(c) be enforced by permanent heads of department.

R23. The Government should include in the contracts of employment of all future special advisers a clause requiring the special adviser to abide by the terms of the special advisers' code, and the Model Contract and the Civil Service Code should not apply to them. The Government should also ensure that existing special advisers abide by the terms of the special advisers' code.

R24. The special advisers' code should be included in the proposed Civil Service Act.

R25. Pending the enactment of the Civil Service Act, a draft of the proposed code should be tabled in both Houses of Parliament for debate.

Chapter 7: Lobbying and All-Party Groups

R26. There should be no statutory or compulsory system for the regulation of lobbyists. The current strengthening of self-regulation by lobbyists is to be welcomed.

R27. For Ministers, the basic facts about official meetings with external interests (which should include the date and time, the people involved and the general subject under discussion) should be recorded in their office diaries, which should be retained. The Ministerial Code should be supplemented accordingly.

R28. For civil servants including special advisers, the current guidance on lobbying should be strengthened, to ensure that a record is kept of the basic facts (which should include the date and time, the people involved and the general subject under discussion) of any contact with external interests in which those interests attempt to influence policy and decisions.

R29. The Cabinet Office should issue guidance on consultation, which would have as its objective a uniformly high and transparent standard of consultation on policy issues and decisions. This might be in the form of a Consultation Code, which would seek to ensure that departments meet the principles set out in the current Cabinet Office document on Best Practice in Written Consultation.

R30. The Register of All-Party Parliamentary and Associate Parliamentary Groups should be placed on the internet. The question of the ease of public access to information about All-Party Groups should be kept under review by both Houses.

Chapter 8: Sponsorship of Government Activities

R31. There should be no ban on sponsorship of government activities, subject to the implementation of recommendations R32, R33, R34, R35 and R36.

R32. The Cabinet Office should produce a set of principles (based on the current Cabinet Office guidelines but reflecting recommendations R33, R34, R35 and R36) to be followed by all departments that wish to attract private or voluntary sector sponsorship. Each of these departments should incorporate these principles in a more detailed practical document, appropriate to its own requirements.

R33. The Cabinet Office sponsorship principles should include a requirement that departments must satisfy themselves, before they begin to seek sponsorship, that any sponsorship is likely to produce significant net benefit for the department, at no detriment to the public interest. Departments should in particular examine rigorously whether: (a) particular activities should be excluded from sponsorship, and (b) particular types of company could be held to be unsuitable for consideration as sponsors on the grounds of potential conflicts of interest or inappropriate association.

R34. Each department which seeks sponsorship should identify an official, who would be responsible for ensuring that the relevant guidance on sponsorship is known and observed throughout that department. The official should liaise with other such officials across government departments to ensure high standards of propriety in relations with sponsors.

R35. There should be disclosure in departmental annual reports, and to the public on request, of the details, including the value received, of sponsorship of government activities by the private and voluntary sectors. For sponsorship valued at less than £5,000, the individual amounts need not be disclosed.

R36. In recording the value of sponsorship, the figure to be recorded should be the value of the sponsorship to the government department. Guidance on the correct way to record 'in-kind' sponsorship in such disclosures should be appended to the principles set out by the Cabinet Office.

Chapter 9: Public Appointments and Proportionality

O1. We welcome the announcement of the Commissioner for Public Appointments, Dame Rennie Fritchie, that she intends undertaking a review of the operation of the tier system and look forward to the report of her findings and conclusions.

O2. We also welcome the Commissioner's indication that she is to consider whether it would be appropriate to introduce a special category of appointments, designated 'expert' posts, to which different appointment rules should apply.

R37. The Secretary of State for Health should review the procedure governing reappointments to NHS bodies with a view:

(a) to re-introducing a system under which those seeking reappointment for the first time, who have been assessed as performing satisfactorily in their posts, can be reappointed without being compared to an external candidate;

(b) to ensuring that those seeking reappointment are kept fully informed about the progress of the reappointment process at all stages; and

(c) to ensuring that the reappointment process is undertaken at the appropriate stage and a decision on reappointment is made reasonably in advance (say, two months) of the end of the post-holder's term of office.

R38. The Secretary of State for Health should reconsider, with the advice of the Public Appointments Commissioner and following the Commissioner's scrutiny of the NHS appointments system (see O3 below), the appointments procedure in relation to NHS trusts and authorities with a view to setting up, if practicable, a less centralised appointments system than the present register system, subject to the need to maintain standards of performance and delivery across the NHS system.

O3. We support the announcement of the Commissioner for Public Appointments that she intends undertaking a scrutiny of the appointment procedure used for NHS appointments and look forward to the report of her findings.

O4. We welcome the work of the Commissioner for Public Appointments on developing measures to improve the balance of representation on the boards of public bodies and look forward to the report of her conclusions. As part of the objectives of her work, we invite her to consider

- how to improve the range of candidates from which public appointees are drawn, and
- how the concept of 'merit' can be reconciled with the need for a balanced and appropriately qualified representation.

Chapter 10: Task Forces

R39. An agreed definition of a task force should be established by the Cabinet Office, key elements of which should be that such a body has significant and plural outside membership and operates within a time frame of not more than two years.

R40. Using the agreed definition, a review should be conducted by the Cabinet Office to establish the number of task forces in existence and their current status and longevity.

R41. If it emerges that some task forces have been in existence for longer than two years, a decision should be made by the Cabinet Office, in conjunction with the commissioning department, as to whether the task force should be disbanded or reclassified as an advisory NDPB.

INTRODUCTION AND BACKGROUND

1.1 The Committee on Standards in Public Life was set up in October 1994 by the then Prime Minister, the Rt Hon John Major MP, against a backdrop of widespread public disquiet about standards in public life. The immediate anxiety had been the 'cash for questions' scandal – allegations against a small number of Members of Parliament (MPs) that they had accepted payments to raise questions in the House of Commons. It was also alleged that former Ministers were obtaining employment after leaving office with commercial firms with which they had had connections whilst in office, and that appointments to public bodies were being unduly influenced by party political considerations.

1.2 Reflecting the breadth of concern, the Committee was given wide 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.*

These terms of reference were extended in November 1997 by the present Prime Minister, the Rt Hon Tony Blair MP, to enable the Committee to undertake an enquiry into the funding of political parties.

The First Report

1.3 The Committee, under the chairmanship of the Rt Hon the Lord Nolan, was asked to produce its first report within six months. In order to make its task more manageable, it concentrated on three areas: the House of Commons, central government (Ministers and civil servants) and executive Non-Departmental Public Bodies (NDPBs), including National Health Service (NHS) bodies. The objectives of the report were, essentially, two-fold:

- to rebuild public confidence in the holders of public office; and
- to restore some clarity and direction wherever moral uncertainty had crept in.

1.4 The First Report was published in May 1995. It contained four general recommendations and 55 recommendations specifically relating to the three areas of concern.

1.5 The first general recommendation was that the principles underpinning standards in public life should be restated. These principles, as formulated by the Committee, have become known as the Seven Principles of Public Life. They are: selflessness, integrity, objectivity, accountability, openness, honesty and leadership. (We set them out fully on the inside front page of this report.) They have come to be widely regarded as the touchstone for ethical standards in public life and they inform every aspect of the Committee's thinking.

1.6 The other general recommendations were that:

- all public bodies should draw up Codes of Conduct incorporating the Seven Principles;
- internal systems for maintaining standards should be supported by independent scrutiny;

- more should be done to promote and reinforce standards of conduct in public bodies, particularly through guidance and training, including induction training.

1.7 The 55 specific recommendations are set out in Appendix I to this report. Their scope was radical and their impact far-reaching. They included the introduction of a Code of Conduct governing MPs, the creation of the offices of Parliamentary Commissioner for Standards and the Commissioner for Public Appointments, a ban on MPs entering into agreements with multi-client consultancies and the tightening of the rules on the registration of interests by MPs, a revision of the Ministerial Code relating to conduct, an extension of the business appointment rules to Ministers and special advisers, and the development of 'whistle-blowing' procedures in the Civil Service. Almost all the recommendations were accepted (an exception being that Parliament did not ban agreements with multi-client consultancies).

The Purpose and Scope of the Present Enquiry

A review of the First Report and new concerns

1.8 A distinctive feature of this Committee is that it is a standing committee. It is a feature which is essential to our task of promoting the highest standards of propriety in public life. This is because, on the one hand, it allows us to monitor and review the implementation of our previous recommendations and, on the other hand, it enables us to conduct enquiries into new subjects as the focus of public concern shifts from one area of public life to another.

1.9 Our present enquiry encompasses both our 'review' and 'fresh enquiry' functions. Initially, our principal task was to review the implementation of the recommendations contained in the First Report relating to MPs, Ministers, civil servants and 'proportionality' in public appointments.[1] Whilst gathering evidence, however, it became clear that other, related areas had to be considered. Although the recommendations of the First Report had resolved a number of very important problems, new issues were emerging which fell within the generality of the subject matter which we were considering. In this report therefore – unlike the First Report – we consider such matters as the status and regulation of special advisers and rules governing the sponsorship of government activities, as well as the lobbying of Ministers and civil servants.

Advisory NDPBs

1.10 In June 1998, the Government announced that this Committee's recommendations in relation to executive NDPBs should, where practicable, be extended to advisory NDPBs.[2] At the outset of our present enquiry we did not plan to consider advisory NDPBs, despite this extension, but envisaged undertaking a more general review of its impact in a separate enquiry. Our first witness (and a former member of the Committee), Professor Anthony King, persuaded us, however, that if we were to limit our enquiry to executive NDPBs only we would fail to address an issue of pressing public concern – namely, a perception of an

[1] Committee on Standards in Public Life, *First Report*, Cm 2580 (1995), referred to hereafter as the First Report, also included recommendations in relation to propriety in public appointments to executive NDPBs and NHS bodies. These matters were reviewed in the Committee's Fourth Report, *Review of Standards of Conduct in Executive NDPBs, NHS Trusts and Local Public Spending Bodies* (London: Stationery Office, 1997) and have not, therefore, been included in the present enquiry.

[2] This announcement was made in a document entitled *Quangos: Opening the Doors*.

indiscriminate spread of the full panoply of the Nolan public appointment procedures to all NDPBs, irrespective of type. To the extent that we consider this issue (in Chapter 9), we have included advisory NDPBs in this enquiry.

Devolved institutions

1.11 One of the most important constitutional developments to have occurred since the publication of the First Report is the devolution of power to the Parliament in Scotland, and Assemblies in Wales and Northern Ireland. We indicated in our consultation paper that because the devolved institutions would have been in existence for only a very brief period by the time we were to take oral evidence (in June and July 1999), we would hold hearings in London only. We remain of the view that it would not have been appropriate for us to include the devolved institutions in the scope of our present enquiry. That said, we have maintained a keen interest in developments in the devolved institutions.

Evidence Gathering

Written evidence

1.12 In March 1999, we published an Issues and Questions paper in which we set out the principal areas on which we intended to focus and raised 28 questions relating to those areas. Copies of the paper were sent to a wide range of public office-holders and organisations (including national libraries and national and local newspapers) and were made available, free of charge, to anyone requesting a copy. Over 80 written submissions were received from a variety of individuals and organisations.

1.13 In order to discover more information about the practical operation of the public appointments system, we undertook a survey of main government departments, a selected number of executive NDPBs and NHS bodies.[3]

1.14 Written submissions and responses to questionnaires (save those which we were asked to treat as confidential or those which we considered might be defamatory) are published in the CD-Rom which is included in Volume 2 of this report.

Public hearings

1.15 Between 18 June and 15 July 1999, the Committee took evidence at seven full days of public hearings. A list of witnesses who gave oral evidence, either on their own behalf or in a representative capacity, is set out in Appendix II. The transcripts of evidence given at the public hearings are published in Volume 2 of this report (and in the CD-Rom accompanying Volume 2). References in this report to the transcript are in terms of the day of the public hearing and indicate whether the evidence was taken in the morning or the afternoon (for example, 'Day 2 (pm)').

Acknowledgements

1.16 We would like to record our thanks to those who took the time and trouble to make a written submission, either in response to the consultation paper or to one of the questionnaires. We thank in particular those who, in addition, appeared before us to give

[3] See Appendices IX and X.

oral evidence. We were fortunate to receive evidence from a wide range of well-informed witnesses whose experience and insights have proved extremely valuable.

THE FRAMEWORK FOR DEBATE

Developments since the First Report

2.1 We have set out in Chapter 1 the background to this report, including an account of the recommendations made in the First Report. It is clear that a great deal was achieved. Our task for this report is to gauge the effect on the ground of our recommendations and then to consider what new concerns have arisen. We begin by looking at the major political developments over the past four to five years which provide the context for our study.

2.2 As our predecessors commented, it is very difficult to measure in concrete terms whether there has been an increase or a decline in overall standards in public life in any one period. But perceptions and beliefs, while not hard evidence, do matter greatly in forming public attitudes. We found general agreement among the academic and editorial commentators who gave evidence to us that standards had improved:

> *The Nolan process can be regarded as a success, in that public confidence appears to have risen and there are generally fewer scandal/sleaze stories or rows in Parliament.*
>
> *My view . . . is that there were real problems of confused ethical standards and some genuine abuses. From the perspective of nearly five years later, some of these problems were less structural than cyclical and in part to do with the very long period that one party had been in power . . . The problems* [since May 1997]*, both apparent and real, are at a much lower level, with a few exceptions.*
>
> (Mr Peter Riddell, Assistant Editor, *The Times*)[1]
>
> *I think that the Committee and the reports . . . and the implementation of their recommendations have made a substantial difference, not only to the way in which public life in this country is perceived but to the actual practice of it.*
>
> (Mr Peter Preston, former Editor-in-Chief, *The Guardian*)[2]
>
> *The enhanced and utterly welcome sensitivity towards questions of probity and transparency in appointments that emerged in the mid-1990s has been sustained throughout.*
>
> (Professor Peter Hennessy, Queen Mary and Westfield College, London)[3]

2.3 Many politicians who gave evidence spoke of the impact that the 'sleaze' scandals that led to the establishment of our Committee had had on them. They also generally agreed that there had been a substantial improvement over the past five years.

> *Things are a great deal less fevered. There is . . . a sort of residual sense of slight shock still at the position in which we found ourselves in the last Parliament, and very much a feeling that we have to be careful guardians of our probity and of our reputation while*

[1] Day 1 (pm).
[2] Day 6 (pm).
[3] Day 3 (am).

fully recognising the deep natural scepticism of members of the British public when it comes to viewing their politicians.

(The Rt Hon Margaret Beckett MP, President of the Council and Leader of the House of Commons)[4]

I think standards have improved. I think they have improved because the issue is much higher up the agenda . . . and the procedures for dealing with the much clearer standards that are set now are themselves much tougher . . . What emerged in the middle 90s was a great surprise to me . . . but it certainly damaged the reputation of Parliament and politicians, and I think gradually that reputation for probity is coming back.

(The Rt Hon Jack Straw MP, Home Secretary)[5]

I think that standards of public life in this country are very high and I do not think they have noticeably declined during my time in politics.

In the 1980s we had the explosion of political consultancy of an American kind, which, with hindsight, was obviously an accident waiting to happen. That gave rise to serious questions about the behaviour of some Members who behaved very badly . . . The key thing – I do not want to be too blasé – is to ensure that we are correct in believing that standards of public life here are higher than in any other Western democracy.

(The Rt Hon Kenneth Clarke MP)[6]

I . . . think . . . there has probably been an increase in standards as a result of having more formalised rules more clearly enforced. But you pay a price for that: people are more aware of the failings.

(The Rt Hon Alan Beith MP, Deputy Leader, Liberal Democrat Party)[7]

2.4 We pick several strands out of these comments. First, standards themselves are considered to be better defined. This suggests our predecessors' anxieties about the existence of *''grey areas''* – the air of moral vagueness – have been addressed. The procedures are clearer, which suggests that the structures and systems that have been put in place are beneficial. The problems are fewer: *''Things are on a much more even keel than they were''* (Lord Butler of Brockwell, former Cabinet Secretary).[8]

2.5 But there are also some clues as to why the crisis of confidence in 1994 arose. There were various external pressures, such as the rise of lobbying and political consultancy. There was the intense media interest in all matters of conduct, sexual and financial, of public figures. A lack of rigour about standards may also have become more prevalent within Parliament, though it was the behaviour of particular individuals which did such damage to the whole system.

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[4] Day 5 (am).
[5] Day 5 (pm).
[6] Day 2 (pm).
[7] Day 5 (pm).
[8] Day 5 (am).

2.6 Mrs Beckett MP also pointed to one of the constancies of British political life – *''the deep natural scepticism of members of the British public when it comes to viewing their politicians''*.[9] We believe she is right in her instinct that no Parliament or Government, however much enhanced in their reputation for probity, can afford to ignore this factor. As events in the political arena since our public hearings have proved, the subject of 'sleaze' can rapidly return to newspaper front pages and the public eye.

2.7 It might be said that it has always been so. But one of the Seven Principles – Openness – has made it harder for any Parliament or Government to be complacent. The general public can now consult the revised Register of Interests and the Code of Conduct of Members of Parliament. The Ministerial Code is a published document. So is the Civil Service Code and the Model Contract for Special Advisers. The guidance from the Advisory Committee on Business Appointments is public and the Committee issues an Annual Report.

2.8 Openness has therefore increased knowledge and it has also increased expectations. While there may be less of a fevered atmosphere, the debate about *''the vinegary little problem of standards in public life''*[10] continues apace. This has been evident to us from the number of changes, and the speed of their introduction, which have taken place during the course of the Committee's inquiries. Before considering specific aspects of the debate in the following chapters, we consider briefly how the political framework may have changed in the last five years.

The Political Framework

2.9 In May 1997 a Labour Government was returned to power, with a large parliamentary majority. As the Rt Hon Dr Cunningham MP, the then Chancellor of the Duchy of Lancaster, reminded us in his evidence,[11] the Labour Party had made it clear in Opposition that, if elected, they would wish to strengthen the centre of government and maintain their emphasis on effective communications. The drive towards modernisation was also well heralded. So also were significant constitutional changes such as devolution of power to Scotland, Wales and Northern Ireland, the reform of the House of Lords and legislation on Human Rights and Freedom of Information.

2.10 It is in this political context that several of the developments which we consider in this report should be seen. For example, one effect of devolution has been that some of the procedures concerning conduct at Westminster, which are different from those created for the devolved institutions, have been the subject of comparison, both favourable and unfavourable. The so-called 'Lobbygate' affair in Scotland in autumn of 1999 was one example of this effect.[12]

2.11 Another example, which we consider in Chapter 5, are the changes envisaged for the Civil Service in the *Modernising Government* White Paper[13] and confirmed in Sir Richard

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[9] Day 5 (am).

[10] *Evening Standard*, 13 October 1999.

[11] Day 2 (pm).

[12] In the autumn of 1999 there were allegations in the media that lobbyists were offering privileged access to Ministers in the Scottish Executive. The allegations were heard before the Standards Committee of the Scottish Parliament and found to be unwarranted.

[13] *Modernising Government* White Paper, Cm 4310 (March 1999).

Wilson's Report to the Prime Minister of December 1999.[14] One of the proposals is the opening up of the Civil Service to a wider range of talent by a greater number of outside appointments and short-term contracts. A parallel development is the considerable increase in task forces and review bodies which supplement traditional Civil Service advice by bringing together advisers from the private sector, whether from business, pressure groups or voluntary organisations. Usually such advisers are not recruited as a result of any competitive appointment process. The marked increase in the number of ministerially appointed special advisers, and the effect on the 'terms of trade' between Ministers and civil servants, is another development which we review in Chapter 6.

2.12 It is clearly outside our terms of reference to pass judgement on the efficacy of these changes in the machinery of government. We cannot, however, and should not avoid considering their potential impact on standards in the public service, and the ethical values inherent in public service. As part of the drive towards modernisation, we accept that those values may require re-examination and, if necessary, expansion. The 'eternal verities' upon which Civil Service values are founded date from the nineteenth and early twentieth centuries. It is reasonable to ask whether they will suffice for the twenty-first century.

2.13 Many of our witnesses reinforced the view that standards in public life are very high in this country and that the result is a greater freedom from corruption and malpractice than in most other democracies. The well-publicised developments that led to the resignation of the European Commission in 1999 have shown how a lack of attention to appointment processes, conflicts of interest and the availability of perks can bring the whole culture of a public institution into disrepute.

2.14 As an example of public sector values, we point to the principle of Objectivity, described in the list of Seven Principles at the beginning of this report as *''the making of choices, including public appointments, on merit''*. It was the cardinal principle established for the Civil Service by the Northcote-Trevelyan report of 1854[15] and later expanded to cover public appointments, such as those to Non-Departmental Public Bodies and National Health Service Trusts. With the present Government's emphasis on diversity, there is a lively debate as to how to achieve representativeness, without losing the principle of merit. Suspicions have been voiced that the growth in the number of task forces may have resulted from a wish to circumvent the public appointment process and to appoint those who are likely to have 'sound opinions'. We look at this in Chapter 10, keeping in mind the principle expressed by one commentator, Professor Hennessy, that *''merit and patronage don't mix''*.

2.15 Two of our chapters relate to those in the most public positions of all, Members of Parliament and Ministers. Here again it is necessary to consider whether changes to the political framework have impacted on their respective roles. With the election of the Labour Government with a large parliamentary majority, it is frequently observed by political commentators that this could have the effect of increasing further the power of the Executive in relation to Parliament.

2.16 Several witnesses referred to a perception that the ability of MPs to control the Executive has been declining for some years. The volume and complexity of governmental business — both UK and European — and the growth of constituency casework all

[14] Report to the Prime Minister by Sir Richard Wilson, Head of the Home Civil Service, Cabinet Office, December 1999.

[15] *Report on the Organisation of the Permanent Civil Service*, London (1854).

contribute to this effect. Mr Clive Soley MP, Chairman of the Parliamentary Labour Party, said: *''We have allowed MPs to become too unimportant in the process . . . MPs* [are] *less effective . . . in holding the Executive to account and carrying out their national and international role in Parliament.''*[16]

2.17 His remarks were picked up by Lord Melchett, Executive Director of Greenpeace UK, who was talking about the amount of access he seeks to Members of Parliament:

> *It is difficult to approach back-bench MPs on many of [our] issues. They are of such complexity and detail that it is very hard to get individual MPs to grapple with them, given the pressure on them from their constituency obligations, as Clive was saying, and their lack of resources.*[17]

2.18 If this perception is correct, there are several implications for our study. The first is the effectiveness of Parliament in making Ministers accountable for their conduct (as distinct from their accountability for policy decisions and actions), through the Ministerial Code. We consider this in Chapter 4. The second is the shift in focus away from the issue of paid advocacy by MPs, which formed a major part of our First Report, to the issue of lobbying those who decide or influence policy, that is to say, Ministers, special advisers and civil servants. Interestingly, Lord Melchett added after his remarks quoted above: *''In this respect, I have found special advisers a significant improvement in the sense that you can at least talk to somebody who knows what you are talking about''*.[18] We consider this in Chapter 6.

2.19 Essentially, if the Executive is seen as the part of the system that influences policy, it is access to that influence that becomes the key issue. We found this to be the common thread in many of our considerations. It is the perception that lobbyists secure privileged access for their clients that leads to pressure for their regulation. Another way in, some argue, is through the business membership of task forces: it has been suggested that some companies might expect privileged access in some form or even a *quid pro quo*. In addition, the growing practice of government departments seeking sponsorship from business interests leads to the concern that such businesses are securing a foot in the door ahead of rival interests.

2.20 In conclusion our evidence suggests that there has been a shift from allegations of direct financial reward for dubious ethical practice to allegations of **privileged access**, the exercise of undue influence through political, social or business contacts or the donation of money or any other means of gaining preferential treatment. As before, a key feature is the impression of secrecy. And so, as in 1995, when the Committee's First Report was published, the remedies should include transparency and open procedures. This in turn leads to the ongoing debate about the Government's proposed legislation on Freedom of Information.

2.21 This then is the framework within which our specific enquiries have been conducted.

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[16] Day 1 (am).
[17] Day 1 (am).
[18] Day 1 (am).

MEMBERS OF PARLIAMENT

3.1 In our First Report, we made clear our belief in the importance of maintaining the highest standards of propriety in the House of Commons:

> *The House of Commons is at the heart of our democracy. The standards of conduct observed by its Members are crucially important to the political well-being of the nation . . . It is vital for the quality of Government, for the effective scrutiny of Government, and for the democratic process, that Members of Parliament should maintain the highest standards of propriety in discharging their obligations to the public which elects them. It is also essential for public confidence that they should be seen to do so.*[1]

3.2 As a result, we proposed that the office of Parliamentary Commissioner for Standards should be established, responsible for advising members on, and playing an independent role in the enforcement of, the House of Commons' rules in respect of the conduct of Members of Parliament (MPs). The House of Commons adopted this proposal and, in December 1995, Sir Gordon Downey took up office as Parliamentary Commissioner for Standards. He was succeeded by Ms Elizabeth Filkin in February 1999. We have no doubt that the establishment of this office has made a significant contribution to the promotion of, and public confidence in, standards in the House of Commons.

3.3 Our view was confirmed by Mr Clive Soley MP, Chairman of the Parliamentary Labour Party, who, when asked about the reputation of politicians, said in evidence to us:

> *I think that it is improving – not least because of the activities of the Committee on Standards and Privileges, the Parliamentary Commissioner and so on.*[2]

3.4 Similarly, the Rt Hon Robert Sheldon MP, Chairman of the House of Commons Committee on Standards and Privileges, said:

> *There has undoubtedly been an improvement in the standards applying to Members of Parliament. They are very much aware of the much more rigorous oversight of their activities than they were before, and this Committee played a fundamental part in establishing that.*[3]

Mr Sheldon added, however:

> *There is a time lag as far as the public are concerned and there is the problem of the media, who tend to make more of some of these cases than perhaps the facts warrant.*[4]

3.5 Mr Sheldon's less sanguine comment about the public perception of the standard of conduct of MPs is reflected in the cautious response of Professor Anthony King, a former member of this Committee, when asked about public confidence in politicians. He observed that there had been *''remarkably little survey research on the subject''* and that *''one cannot therefore say with any confidence that there has been a considerable bounce back in terms of*

[1] First Report, p 20, paras 1 and 2.
[2] Day 1 (am).
[3] Day 6 (am).
[4] Day 6 (am).

public confidence. One can say with some confidence that there has certainly been no subsequent deterioration. At the very least, the situation has stabilised.''

3.6 As we have already noted,[5] Mr Peter Riddell, Assistant Editor of *The Times*, shared Professor King's caution. He was prepared, however, to suggest that, although a causal link was hard to prove, the First Report recommendations in relation to MPs could be regarded as successful.

3.7 We are not surprised that there is a lag in the public perception in the improvement of standards in the House of Commons. Although we are confident that the views of Mr Soley MP and Mr Sheldon MP are correct, the role of rival politicians in publicising all possible allegations of misconduct for short-term political gain and the contribution of the media can obscure the progress that has been made.

Members of Parliament and the Criminal Law

Bribery

3.8 In our First Report, we recommended that the Government should take steps to clarify the law relating to the bribery of an MP. (We suggested that this task could usefully be combined with the consolidation of the statute law of bribery, currently embodied in the Prevention of Corruption Acts 1889 to1916.)[6] As a result, in December 1996 the then Government published a document entitled *Clarification of the Law Relating to the Bribery of Members of Parliament*; and in March 1998, the Law Commission published a report entitled *Legislating the Criminal Code: Corruption*. The Law Commission recommended that the common law offence of bribery and the statutory offences of corruption should be replaced by a modern statute.[7]

3.9 In March 1999, the Joint Committee on Parliamentary Privilege, under the chairmanship of the Rt Hon the Lord Nicholls of Birkenhead, published a report in which it recommended that members of both Houses of Parliament should be brought within the criminal law of bribery.[8] (We shall refer to this as 'the Nicholls Report' and to the Joint Committee as 'the Nicholls Committee'.)

3.10 In evidence, both to the Nicholls Committee[9] and to this Committee, the Home Secretary, the Rt Hon Jack Straw MP, stated that the Government supported the inclusion of members of both Houses of Parliament within the scope of a consolidated offence of bribery. A number of our witnesses shared this view. For example, Mr Robert Sheldon MP said that he agreed with the conclusion of the Nicholls Committee (subject to *''minor differences''*).

3.11 In our First Report, we were concerned that doubts should be resolved as to whether the courts had jurisdiction in cases of bribery of, or the receipt of a bribe by, an MP. We are well aware of the complexity of the issues relating to the debate about whether MPs, acting in their capacity as MPs, should be brought within the scope of the criminal law of bribery. It

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[5] See para 2.2 above.

[6] As recommended in the *Report of the Royal Commission on Standards of Conduct in Public Life* (London: HMSO, Cmnd 6524, 1976), p 24, para 87. The Royal Commission was chaired by the Rt Hon the Lord Salmon.

[7] *Legislating the Criminal Code: Corruption* (Law Com No 248, 1998). MPs were specifically excluded from the remit of the Law Commission report.

[8] HL Paper 43-1 and HC 214-1 (1998–99), p 47, para 167. The Salmon Report (see fn 6 above) includes a similar recommendation (p 99, para 311).

[9] HL Paper 43-II and HC 214-II (1998–99), p 42.

is amply demonstrated by the depth and detail of the Nicholls Report. We have not attempted to cover the same ground as the Nicholls Committee: we believe to do so would be a wholly unnecessary duplication of work. We fully support the conclusions of the Nicholls Committee (see paragraph 3.9 above); and we welcome the decision of the Home Secretary to implement that conclusion. We urge him to do so at the earliest opportunity.

> ***R1. The Government should introduce its proposed legislation on the criminal law of bribery as soon as possible in order to remove any uncertainty regarding the scope of the statutory offence of bribery and to make clear that members of both Houses of Parliament, acting in their capacity as members, and those who bribe a member of either House of Parliament fall within its scope.***

Misuse of public office

3.12 In our Third Report, on Local Government,[10] we recommended that the penalty of surcharge (to which local councillors and paid local government officers are liable in the event of losses to the local taxpayer caused by either unlawful expenditure or wilful misconduct) should be abolished and a new statutory offence of misuse of public office created (which would apply to all holders of public office). The recommendation has been taken forward by the Home Office, which set up an inter-departmental working group to study the issues in detail and to make recommendations. We welcome the positive response of the Home Office to our recommendation.

3.13 The reference in the Nicholls Report to the new statutory offence is brief. This is because when the report was published the ingredients of the new offence were not known. As a result, the Nicholls Committee formed no conclusions as to whether MPs should be brought within the scope of the new offence as well as the offence of bribery.[11] In evidence to us, the Home Secretary indicated that he intended that the new offence should apply to MPs.

3.14 Like the Nicholls Committee, we do not know the ingredients of the new offence of misuse of public office, save that the Home Secretary has made clear that it is to be framed very widely. We believe that it would not be appropriate for us to make any comment on the offence at this stage, except, given its likely breadth, we would urge the Home Secretary to ensure that:

- proper safeguards (including a requirement that prosecutions should have the consent of either one of the Law Officers or the Director of Public Prosecutions)[12] against potential abuse are in place;

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[10] Committee on Standards in Public Life, *Standards of Conduct in Local Government in England, Scotland and Wales* (London: HMSO, Cm 3702, 1997).

[11] HL Paper 43-I and HC 214-I (1998–99), p 51, para 187.

[12] In our consultation paper on the proposed statutory offence of misuse of public office, we favour the consent of the Director of Public Prosecutions. The Nicholls Committee recommended that the new bribery offence should require the consent of the Attorney General (the Nicholls Report, p 48, para 173).

- there is a clear distinction between the sorts of conduct by MPs which would fall under the new statutory offence and the sorts of conduct which would continue to be dealt with by the House of Commons itself;

- the accountability of MPs to Parliament is not diminished so as to damage the authority of Parliament.

Procedure for Hearings and Appeals in the House of Commons

3.15 In the late 1990s, the disciplinary procedures in the House of Commons have been the subject of a great deal of debate, both within and outside of Parliament, as a result of the Neil Hamilton case. During the course of our enquiry, we heard a wealth of evidence about those disciplinary procedures from a range of well-informed witnesses. They included the Leader of the House (the Rt Hon Margaret Beckett MP), the Chairman of the Standards and Privileges Committee (the Rt Hon Robert Sheldon MP), the present Parliamentary Commissioner for Standards (Ms Elizabeth Filkin) and the former Parliamentary Commissioner (Sir Gordon Downey), a number of very experienced MPs and former MPs (including Mr Neil Hamilton) and other commentators. On the basis of their evidence, we have reflected on the disciplinary procedures in the House of Commons and, in the following paragraphs, offer our advice on their reform.

3.16 Whether or not our recommendations are implemented, or some different disciplinary mechanism adopted, is a matter solely for the House of Commons, on the advice of the Committee on Standards and Privileges. The House will, however, be subject to the constraints of (a) satisfying public opinion that any procedure is both fair and rigorous and (b) satisfying the requirements of natural justice and those mandated by Article 6 of the European Convention on Human Rights (the Convention).[13]

3.17 Article 6 of the Convention sets the minimum acceptable standards of fairness for any tribunal determining criminal charges against an individual. There is a technical issue whether a charge of serious misconduct against an MP would constitute a criminal charge for the purposes of the Convention. As for incorporation of the Convention into the law of the United Kingdom, section 6 of the Human Rights Act 1998 expressly excludes either House of Parliament or any person exercising functions in connection with proceedings in Parliament from the duty not to act in a way which is incompatible with a Convention right. Nevertheless, the case of *Demicoli* v *Malta*[14] has demonstrated that punishment by Parliament of contempts against it may be subject to review by the courts, and the Nicholls Committee rightly proceeded on the basis that the minimum standards of fairness set out in Article 6 should apply to a charge of serious misconduct against an MP.[15] (In Appendix III to this report, we consider in more detail the implications of the Human Rights Act 1998 on disciplinary procedures in Parliament.)

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[13] The full title of the Convention is the European Convention for the Protection of Human Rights and Fundamental Freedoms.

[14] (1992) 14 EHRR and Vol 2 (Evidence) p 109.

[15] See p 76, para 284, of the Nicholls Report: *''Although proceedings in Parliament are excluded from the Human Rights Act 1998 and from the jurisdiction of United Kingdom courts, they may nevertheless be within the jurisdiction of the European Court of Human Rights. the existence of this jurisdiction is a salutary reminder that, if the procedures adopted by Parliament when exercising its disciplinary powers are not fair, the proceedings may be challenged by those prejudiced. It is in the interests of Parliament as well as justice that Parliament should adopt at least the minimum requirements of fairness.''*

3.18 In our Issues and Questions paper, we noted that *''in most cases the arrangements which were put in place as a result of the recommendations in the First Report appear to have worked well''*.[16] Our perception was based, in part, on the valedictory comments of Sir Gordon Downey who, in July 1998, said that he believed that *''the disciplinary system* [in the House of Commons] *has worked well''* and that it would *''be a mistake to uproot it''*.[17] The evidence which we received during our enquiry confirmed our preliminary perception. For example, the present Parliamentary Commissioner, Ms Filkin, said:

> *I do not at the moment see that the process of self-regulation that the House has set up is flawed. It seems to me that it is the right way of going about things and keeping things in proportion.*[18]

Professor Anthony King said:

> *If the Neil Hamilton case had not arisen, so far as I know there would have been no complaints at all about the way in which the system has worked.*[19]

3.19 The one area about which we sounded a note of caution in our Issues and Questions paper was the ability of the House of Commons to deal with serious, contested allegations. We were not surprised to find that the evidence confirmed that view as well.

3.20 In March 1998, the Committee on Standards and Privileges in the House of Commons published a consultative document entitled *Appeal Procedures: A Consultative Document*.[20] The final report was published in November 1998.[21] In that report, the Committee noted that *''in the overwhelming majority of cases . . . there has been no substantial disagreement with the Member concerned over facts''*; it had, however, happened in the case of Mr Neil Hamilton, former MP for Tatton, and it was desirable *''that an appropriate procedure for resolving the matter should be laid down in advance''*, should another disputed case arise.[22]

3.21 On a number of occasions during our enquiry, witnesses raised concerns about Mr Hamilton's case. Ms Filkin said that it was a case that had *''taught everybody lessons''*. Inevitably, we had to consider what our witnesses said about Mr Hamilton's case with some care, although it is as well to repeat what we told witnesses at our public hearings, that it is not our function to re-open Mr Hamilton's case or to pronounce on whether the conclusions of the Parliamentary Commissioner, the Committee on Standards and Privileges and, eventually, the House of Commons in relation to his case were the correct conclusions. Our role is only to consider procedures generally, and Mr Hamilton's case provides an illustration of Parliamentary self-regulation in the case of a serious, contested allegation against an MP.

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[16] Issues and Questions, para 2.5.

[17] Appendix to the *Nineteenth Report of the House of Commons Select Committee on Standards and Privileges*, HC 1147 (1997–98), p vi.

[18] Day 6 (am).

[19] Day 1 (am).

[20] *Thirteenth Report of the House of Commons Committee on Standards and Privileges*, HC 633 (1997–98). In a letter to prospective witnesses, set out in Appendix 1 to the report, the Clerk of the Committee explained the reason for the consultation exercise: *''In 34 out of 35 cases reported on by the Commissioner the Members concerned did not seek an appeal hearing on the Commissioner's findings, and the Committee had no difficulty in reaching conclusions on the evidence produced by the Commissioner. The Committee has decided to assess its own role in relation to inquiries conducted by the Commissioner in order to make sure that clearly understood procedures are in place should the question of an appeal against the Commissioner's findings arise on some future occasion.''*

[21] *Twenty-first Report of the Committee on Standards and Privileges*, HC 1191 (1997–98).

[22] HC 1191, p v, para 6.

Classification of allegations

3.22 We took the view that the starting point for our review of Parliamentary self-regulation should be a classification of allegations. We suggest the following:

A. allegations of misconduct amounting to a criminal offence (*criminal cases*);

B. allegations of serious misconduct not amounting to a criminal offence, the facts of which are in dispute (*contested allegations of serious misconduct*);

C. allegations of other misconduct, the facts of which are in dispute (*contested allegations of other misconduct*);

D. any allegation of misconduct not amounting to a criminal offence, the facts of which are not in dispute (*non-contested cases*);

E. malicious or frivolous allegations of misconduct (*malicious or frivolous cases*).

We have considered each of these categories in turn, although our principal concern rests with category B (*contested allegations of serious misconduct*).

A. Criminal cases

3.23 There could be occasions when allegations of criminal misconduct against MPs are taken directly to the police. The handling of such allegations will be a matter for the police, and we shall not comment further on how it should be done.

3.24 Our concern is confined to those cases of alleged criminal conduct that are brought initially to the attention of the Parliamentary Commissioner. We believe that in the first instance, it should be a matter for the Parliamentary Commissioner – if necessary, after having taken expert legal advice – to decide whether a complaint (which is neither malicious nor frivolous)[23] involves an allegation of criminal conduct and should, therefore, be referred to the police. The Parliamentary Commissioner should then report to the Committee on Standards and Privileges. If the Parliamentary Commissioner has concluded that the complaint does involve an allegation of criminal conduct, we would then expect the Committee to agree with the Commissioner's conclusion and endorse a recommendation that the matter should be referred to the police without delay.

3.25 We anticipate that only on the rarest of occasions will a reference to the police be necessary. When recommending that offences under the criminal law of corruption should extend to MPs, the Nicholls Committee made clear its belief that such offences covered only the most serious sorts of conduct:

> *It is perhaps worth stressing the appreciable gap between corruption and the disciplinary matters which Parliament normally considers. Carelessness, forgetfulness, misinterpretation of the rules of registration and declaration, or even flagrant disregard of them, is usually a long way from corruption . . . The comprehensive manner in which we have dealt with this aspect of our inquiry should not obscure the important fact that we have been dealing with 'an extremely rare type of case'.*[24]

[23] See paras 3.56 and 3.57 below.

[24] HC 1191, p 50, para 184.

3.26 The Nicholls Committee advised that the practical impact of extending the scope of the law of corruption should not be overstated: *''We anticipate there will be few prosecutions of members, because we believe there are few instances of corruption of members.''*[25]

> ***R2. Where a complaint is made to the Parliamentary Commissioner for Standards alleging criminal conduct by an MP and the complaint is neither malicious nor frivolous, then the Parliamentary Commissioner should report to the Committee on Standards and Privileges with a recommendation that the matter be referred to the police for further investigation.***

B. Contested allegations of serious misconduct

3.27 Both the evidence which we have received and the consultation exercise of the Committee on Standards and Privileges relating to appeal procedures (see paragraph 3.20 above) suggest that procedures governing contested allegations of serious misconduct are the main cause of concern about the present arrangements in the House of Commons. By 'serious' case we mean a case which, if proved against an MP, could result in the House of Commons imposing a substantial penalty and be likely to have a significant and detrimental effect on the accused MP's reputation and livelihood. Although such cases are likely to be rare, we take the view that the adequacy of a system of justice has to be tested by how it handles its most difficult cases.

3.28 We divide our consideration of the House of Commons disciplinary procedures in these sorts of cases into the 'trial' and appeal stages.

B.1 'Trial' stage

3.29 In our First Report, we recommended that in cases where the Parliamentary Commissioner found a *prima facie* case but could not agree a remedy with the MP complained about, the Parliamentary Commissioner should refer the complaint to a sub-committee of seven very senior members of the Committee on Standards and Privileges for further investigation. We recommended that the sub-committee should be able to call on the assistance of specialist advisers, that its hearings should be in public and that its procedures should be in accordance with natural justice.

3.30 The Standards and Privileges Committee did not accept this recommendation, adopting instead the following practice:

> *Having received and investigated a complaint, the Commissioner reports to the Committee findings as to the facts of the case and an opinion as to whether the rules have been breached. The Committee broadly reviews the Commissioner's procedures and evidence; reaches a conclusion on whether the rules have been breached; assesses the gravity of any breach; and recommends what penalty if any should be imposed. The imposition of any penalty is a matter for the House.*[26]

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[25] HL Paper 43 and HC 214, p 47, para 168.

[26] HC 1191 (1997–98), p v, para 5.

3.31 The report, published in November 1998, of the Committee on Standards and Privileges on disciplinary procedures in the House of Commons, although entitled *Appeal Procedures*, nevertheless includes important comments on the first instance 'trial' procedure as well. In it, the Committee sets out what it believes to be the disadvantages of our recommendation for an investigative sub-committee. These were that:

- senior MPs would not have the time to devote to a long and complicated inquiry;
- select committees were not particularly well equipped to carry out such inquiries;
- any inquiry conducted by politicians would be perceived as partial, party-political, or lacking in objectivity and independence;
- the involvement of a sub-committee of the Committee on Standards and Privileges at the first instance stage could compromise the possible role of the Committee at the appeal stage.[27]

3.32 Rather than having an investigative sub-committee, the Committee on Standards and Privileges suggested that *''in serious cases the Commissioner might invite the Committee to appoint a legally qualified assessor who would assist in the investigation and (where appropriate) share responsibility for the findings.''*[28]

3.33 We have significant reservations about this proposal. First, in our Issues and Questions paper we noted our concern that the legally qualified assessor should *''share responsibility for the findings''*. We suggested that extending the role of legal adviser to fact-finder was a departure from the precedents set by other professional disciplinary bodies (where the role of legal assessor is confined to legal advice only). The evidence we have received has not allayed this concern.

3.34 Secondly, there is the (by no means theoretical) point to consider in relation to the role of the Parliamentary Commissioner as the 'trier' of an MP involved in a serious, contested case. One of the roles of the Parliamentary Commissioner is to tender advice to MPs on such matters as the registration of relevant interests. Other aspects of conduct may be the subject of advice from the Parliamentary Commissioner. It could well happen that a disputed case could involve an area of conduct on which the Parliamentary Commissioner had already tendered advice in the same or similar circumstances. The requirement mandated by Article 6 of the European Convention on Human Rights for an impartial and independent tribunal might well be compromised in such circumstances.

3.35 Thirdly and most importantly, we believe that the Committee's proposal fails to meet the criterion of fairness which the Committee itself applied as a measure of the effectiveness of any investigation procedure. We believe also that it fails to meet the *''minimum requirements of fairness''* set out in the Nicholls Report.

3.36 In its report, the Nicholls Committee said:

> *While fairness is fundamental to any disciplinary procedure, the more serious the consequences, the more extensive must be the safeguards if the procedure is to be fair. . . . In dealing with specially serious cases, we consider it is essential that committees of*

[27] HC 1191, p vii, paras 13 and 14.
[28] HC 1191, p vii, para 16.

> *both Houses should follow procedures providing safeguards at least as rigorous as those applied in the courts and professional disciplinary bodies.*[29]

3.37 The Nicholls Committee set out the *''minimum requirements of fairness''* for the accused MP. These are as follows:

- a prompt and clear statement of the precise allegations against the member;
- adequate opportunity to take legal advice and have legal assistance throughout;
- the opportunity to be heard in person;
- the opportunity to call relevant witnesses at the appropriate time;
- the opportunity to examine other witnesses;
- the opportunity to attend meetings at which evidence is given, and to receive transcripts of evidence.[30]

As for the standard of proof, the Nicholls Committee said:

> *In determining a member's guilt or innocence, the criterion applied at all stages should be at least that the allegation is proved on the balance of probabilities. In the case of more serious charges, a higher standard of proof may be appropriate.*[31]

3.38 In serious, contested cases, we believe that the accused MP should be afforded the procedural safeguards set out above, including a requirement that an allegation should be proved to a high standard of proof. We recommend therefore that in such a case, the Committee on Standards and Privileges should be invited by the Parliamentary Commissioner, when reporting her findings of a *prima facie* case against the accused MP, to refer the case to an investigative tribunal.

3.39 In fairness to the accused MP, we believe that he or she should have an opportunity to make representations at the meeting of the Committee on Standards and Privileges at which the decision to refer his or her case to the tribunal is considered. We do not envisage any avenue of appeal from that decision.

3.40 Again as a measure of fairness, we believe that when cases are referred to the tribunal, the accused MP should be given financial assistance to fund his or her legal representation.

3.41 It is likely that a contested case will involve a range of complex legal issues – conflicts of evidence, legal debates on procedural and substantive points, issues relating to the onus of proof and so forth – which will be difficult for non-lawyers to control and decide. For this reason, we propose that the investigative tribunal should be chaired by an independent lawyer of substantial seniority.

3.42 We recognise, however, that a lawyer may lack the necessary background knowledge as to Parliamentary procedure, the conventions governing the registration of interests and so forth. This raises the question as to who else should form part of the tribunal.

3.43 In paragraph 3.31 above, we noted that the Standards and Privileges Committee had taken the view that our recommendation in favour of a sub-committee would be unworkable

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[29] HL Paper 43 and HC 214, p 75, para 281.

[30] Ibid.

[31] Ibid.

because of the time-consuming nature of complex investigations. In oral evidence, Mr Sheldon MP indicated that he remained of the same view. He said of the recommendation: *''it would be impossible. It cannot be done.''* We are sympathetic to Mr Sheldon's position. We fully understand that the members of the Committee on Standards and Privileges already have a very full workload and that it may not be reasonable to expect them to take on any more. Yet we would be surprised and somewhat dismayed if it should turn out to be the case that no MPs would be willing to serve.

3.44 We agree with the Committee on Standards and Privileges that *''except . . . in the case of criminal charges Members should, so far as possible, be judged by their peers.''*[32] We therefore propose that the first instance tribunal should consist of a legal chairman sitting with either two or four MPs (making a total membership, including the chairman, of either three or five persons) and that they should be MPs of substantial seniority.

3.45 If MPs are unable or unwilling to participate in their own disciplinary procedures, then it is difficult to avoid the conclusion that Parliamentary self-regulation in this area is unworkable. We acknowledge that it is possible that a contested case could be very time-consuming. We think it likely, however, that such cases will be very rare; and, on the rare occasions that they do arise, then, in our view, MPs should be prepared to devote whatever time is needed to ensure procedural fairness at the first instance stage.

[32] HC 1191, p vi, para 9(b).

R3. 'Trial' procedure in serious, contested cases

1. Where

(a) the Parliamentary Commissioner finds a prima facie *case against an accused MP, the alleged facts of which, if true, would amount to serious misconduct, but*

(b) the alleged facts are disputed by the accused MP,

the Parliamentary Commissioner should report to the Committee on Standards and Privileges with a recommendation that the case be referred to a disciplinary tribunal consisting of a legal chairman sitting with either two or four MPs who should be of substantial seniority.

2. Before making a decision about whether to accept the Parliamentary Commissioner's recommendation, the Committee on Standards and Privileges should allow the accused MP an opportunity to make representations in respect of that decision.

3. If the Parliamentary Commissioner's recommendation is accepted, the accused MP should be provided with financial assistance to enable him or her to fund legal representation at the hearings of the tribunal.

4. The tribunal should be governed by procedures which satisfy the "minimum standards of fairness"*, as defined by the Nicholls Committee.*

5. The tribunal should both act as fact-finder and decide whether, on the basis of the facts found, the charges against the accused MP are proved.

6. The tribunal should report its conclusions to the Committee on Standards and Privileges and, assuming no appeal is being lodged, the Committee should consider what penalty (if any) should be recommended to the House of Commons.

B.2 Appeal stage

3.46 The Committee on Standards and Privileges, in its report on appeal procedures, recommended that an MP should be able to appeal against a first instance decision in cases where the Committee was satisfied that the appeal was neither frivolous nor unsubstantiated. The Committee proposed a system under which if the appeal related to a procedural matter only, then the appeal would be by way of a review of procedures by the Committee itself, and if the appeal related to a finding of fact, then a re-hearing would be conducted by an external appellate body comprising three individuals (one an experienced lawyer). The appellate body would be free to determine its own procedures. Its role would be confined to determining the facts and it would be for the Committee on Standards and Privileges to decide whether the rules of the House had been breached.

3.47 In our Issues and Questions paper we made the following comment in response to this proposal:

> *This division of responsibility is most unusual. In general, experience has shown that the fact-finding exercise carried out by a judicial body is inextricably linked with the legal rule*

or statutory provision which has to be satisfied or shown to be infringed (as the case may be). Facts are not found in the abstract.[33]

Our view remains the same.

3.48 We agree with the Committee on Standards and Privileges that an accused MP should have a right of appeal in cases involving an allegation of serious misconduct. We have considered the disciplinary procedures of a number of professional bodies and have noted that in nearly all cases a right of appeal exists.[34] Although the House is not concerned with establishing breaches of the criminal law, we have also borne in mind the provisions of Article 14.5 of the International Covenant on Civil and Political Rights (ratified by the United Kingdom on 20 May 1976) and of Article 2 of Protocol No 7 of the European Convention on Human Rights (yet to be ratified by the United Kingdom), which require that everyone convicted of a criminal offence by a tribunal shall have the right to have the conviction or sentence reviewed by a higher tribunal. As at the 'trial' stage, we believe that an MP should be given financial assistance to fund his or her legal representation on appeal.

3.49 We do not take the view that an appeal should extend to a full re-hearing of a case (a possibility apparently contemplated in some circumstances by the Committee on Standards and Privileges). We believe that an appeal should be founded on the written record of what transpired at the first instance hearing, including the full transcript of evidence. Witnesses should not themselves be recalled and oral testimony would arise only if the rigorous rules for the admission of fresh evidence were satisfied.

3.50 We believe that the appeal should be heard by an *ad hoc* appellate tribunal, possibly a retired senior appellate judge sitting alone. If the accused MP is unsuccessful on appeal, the case would return to the Committee on Standards and Privileges, which would, in turn, recommend any penalty to the House of Commons. In the usual way, the imposition of the penalty would ultimately be the responsibility of the House.

R4. Appeal procedure in serious, contested cases

1. An accused MP who receives an adverse ruling from the first instance tribunal should have a right of appeal and should be entitled to financial assistance to pursue that appeal.

2. The appeal should be heard by an* ad hoc *appellate tribunal, possibly a retired senior appellate judge sitting alone.

3. If the appeal is dismissed, the Committee should report the result of the appeal to the House of Commons along with any recommendation as to penalty.

C. Contested allegations of other misconduct

3.51 We considered whether an accused MP should have the right to elect the full tribunal procedure in all contested cases, whether a minor or a serious case. We concluded that they should not. Our reasons are practical. The requirements of the tribunal procedure will, undoubtedly, be burdensome. We believe, on the one hand, in cases where an MP, if found to be in breach of the Code, is likely to suffer serious consequences (in terms of reputation,

[33] Issues and Questions, para 2.18.

[34] See Appendix IV.

livelihood and so forth), that burden should be accepted by members of the House of Commons. On the other hand, the rigour of the disciplinary procedure should be commensurate with the seriousness of a case. In cases where the allegation is of a minor infringement of the Code, then we believe that these should be dealt with by the Parliamentary Commissioner.

3.52 We appreciate that it is likely that any accusation of a breach of the MPs' Code of Conduct will be keenly felt by most MPs, who will, at the very least, be concerned about the effects of local publicity of the alleged breach on the support they attract in the constituency. Therefore, in parallel with those (serious) cases which the Parliamentary Commissioner recommends should be referred to an investigative tribunal, we think that in all other contested cases which the Parliamentary Commissioner recommends should remain with her, an accused MP should be given an opportunity to make representations as to which tribunal should hear his or her case.[35] The Committee on Standards and Privileges will then make a final decision on the basis of the Parliamentary Commissioner's advice and on any representations by the accused MP.

3.53 In those cases which are not referred to the full tribunal, the Parliamentary Commissioner should be responsible for investigating the allegation, deciding the facts and concluding whether the accused member is in breach of the Code. It would be the responsibility of the Commissioner to ensure that fair procedures were followed. The findings of fact and conclusions should then be reported to the Committee on Standards and Privileges. The Committee on Standards and Privileges would then decide whether to accept the Commissioner's report and what (if any) penalty should be recommended to the House of Commons.

3.54 In cases where an accused MP disputes the Commissioner's findings or conclusions, we recommend that the MP should be able to appeal against the Commissioner's decision, such appeal to be heard either by the Committee on Standards and Privileges or by such *ad hoc* appellate body as it decides to appoint.

R5. 'Trial' and appeal procedure in other contested cases

1. In cases which, in the opinion of the Parliamentary Commissioner, do not warrant a referral to the full tribunal, the Parliamentary Commissioner should make a recommendation to the Committee on Standards and Privileges accordingly. The Committee should decide whether to uphold the recommendation of the Commissioner on the basis of the Commissioner's report and of the representations (if any) by the accused MP.

2. In those cases that remain with the Parliamentary Commissioner, the Commissioner should investigate the complaint and, on the basis of the facts found, decide whether the complaint should be upheld or dismissed. The Commissioner's decision should be reported to the Standards and Privileges Committee, which should, in turn, decide whether or not to adopt the Commissioner's report and what penalty (if any) should be recommended to the House.

3. In cases where an accused MP disputes the Commissioner's findings or conclusions, that MP should be able to appeal against the Commissioner's decision, such an appeal to be heard either by the Committee itself or by such* ad hoc *appellate body as it decides to appoint.

[35] See para 3.39 above.

D. Non-contested cases

3.55 In non-contested cases, the Parliamentary Commissioner should report the (undisputed) facts and her conclusions based on those facts to the Committee on Standards and Privileges, which, if it endorses her report, should decide its recommendation to the House of Commons as to the penalty that should be imposed. Obviously, no question of appeal arises.

R6. Disciplinary procedure in non-contested cases

In non-contested cases, whether serious or minor, the Parliamentary Commissioner should, in accordance with present practice, report the (undisputed) facts and conclusions based on those facts to the Committee on Standards and Privileges, which, if it endorses the report, should recommend to the House of Commons what penalty (if any) should be imposed.

E. Malicious or frivolous cases

3.56 Given the politically-charged environment within which MPs work, it is likely that ill-founded complaints will be made from time to time in order to discredit the accused MP. It would be naïve to think otherwise. When asked during our enquiry what she did about such complaints, Ms Elizabeth Filkin, the present Parliamentary Commissioner, said:

> *I may not take on complaints where I do not believe there is adequate* prima facie *evidence, so I reject many complaints where I come to the view that they are malicious, ill-founded or whatever. I do not entertain them. Therefore, there are good safeguards to prevent that happening, I hope.*[36]

3.57 We support the Parliamentary Commissioner in her robust dismissal of malicious or frivolous complaints. Further, if the ill-founded complaint has received publicity, we would encourage the Parliamentary Commissioner, with the consent of the MP against whom the allegations were made, to publicise her judgment about the complaint.

Broadcasting Proceedings

3.58 The Standing Orders of the House of Commons allow a select committee to 'admit strangers' during the examination of witnesses, if the committee so orders.[37] Usually, if a committee passes such an order, it has no power to exclude broadcasters (otherwise than by going into private session). Exceptionally, the Committee on Standards and Privileges can pass an order to admit strangers but, at the same time, exclude broadcasters.[38] The great majority of evidence taken by select committees in the House of Commons is heard in public,[39] and part of the Neil Hamilton case was televised. The present Chairman of the Committee on Standards and Privileges, Mr Robert Sheldon MP, however, expressed concern to us about the televising of his committee's proceedings and said that recent

[36] Day 6 (am).

[37] Standing Order No 125.

[38] Standing Order No 149(8).

[39] *Erskine May's Treatise on The Law, Privileges, Proceedings and Usage of Parliament*, Twenty-second ed (Butterworths, London: 1997), p 644.

evidence sessions of the committee had been held in private. Mr Peter Riddell of *The Times* said that he thought that *''television had a negative impact: it encouraged partisan role-playing''*. In contrast, Mr Hamilton told us that although he had been against televising the proceedings of the House of Commons, he had now completely changed his view as regards the televising of the disciplinary proceedings of the House.

3.59 We acknowledge that whether the proceedings of the Committee on Standards and Privileges or of the investigative tribunal should be in public or in private, and whether or not they should be broadcast, is a matter for the Committee to decide. In making recommendations about the disciplinary procedures of the House of Commons, however, our principal concern has been to promote the highest standards of fairness, especially in the most serious cases. To this end, we think it important that we express our disquiet about the effect of the televising of part of the proceedings of the Committee on Standards and Privileges in the case of Mr Hamilton. We raised this issue with the Committee in our response to their consultation paper on appeals procedures.[40]

3.60 Whilst we would support the view that proceedings – like a hearing in court – should be in public[41] (unless there is very good reason to the contrary), and that the transcripts of proceedings should be published, we are against their being broadcast. Our reasons for this conclusion are twofold: first, we fear that the presence of the television cameras or microphones would adversely influence the manner in which the proceedings were conducted, and, second, we anticipate that the broadcasting of the proceedings would be done selectively, with the concomitant risk that an unbalanced picture of the case might be presented to the viewing and listening audience. We believe that the broadcasting of proceedings could, potentially, be detrimental to the fairness of those proceedings (to both the accused MP and to the House of Commons).

R7. The disciplinary proceedings of the House of Commons should be held in public but should not be broadcast. This recommendation as to hearings in public does not extend to the private deliberations of the Standards and Privileges Committee or of any disciplinary or appellate tribunal (which should remain private).

Composition of the Committee on Standards and Privileges

3.61 On 6 November 1995, the House of Commons replaced the Committee of Privileges and the Select Committee on Members' Interests with the Committee on Standards and Privileges. The Committee on Standards and Privileges consists of eleven MPs. In accordance with the convention governing all select committees in the House of Commons, the committee has a majority of government members.

3.62 In the course of taking evidence, we received a variety of comments about the present composition of the Committee on Standards and Privileges. Some were favourable, some

[40] In a letter dated 12 June 1998 and published as Appendix 2 to the Committee's report on appeal procedures, HC 1191 (1997–98).

[41] In our First Report, we recommended that the sub-committee of seven very senior members of the Committee on Standards and Privileges should have hearings which would normally be in public (p 44, para 104).

unfavourable. Observations about and criticisms of the composition of the committee principally concerned four linked issues:

- an allegation that committee members had a tendency to discharge their function as committee members in a partisan way;
- the decline in the number of members of significant seniority sitting on the committee;
- the decision in 1997 by the Rt Hon Ann Taylor MP, then Leader of the House of Commons, not to become chairman of, or serve on, the committee, as her predecessors in that office had done;
- the erosion of the collective memory of the committee.

Alleged partisanship

3.63 Mr Clive Soley MP, Chairman of the Parliamentary Labour Party, suggested to us that partisanship on the Committee was an inevitable and acceptable part of the political environment of the committee:

> *There will always be some element of partisanship, just as there may be one member who feels sympathetic towards another member who they must of necessity know. Frankly, if you do not face that and hope that the committee will be mature enough to deal with it properly, the only alternative . . . is to abandon self-regulation.*[42]

3.64 The Rt Hon Sir Archibald Hamilton MP, however, was critical of the Standards and Privileges Committee which he considered to be *''intrinsically biased and partisan''*. Mr Peter Riddell noted that the old Privileges Committee, had included *''a number of very senior MPs''* who had *''a wealth of experience''*; he regretted that the membership of the Committee on Standards and Privileges differed and that it had *''become too partisan''*.

3.65 The Chairman of the Committee, Mr Robert Sheldon MP, denied the accusation of partisanship: *''*[The Committee on Standards and Privileges] *does not divide on party lines''*. Mr Paul Tyler CBE MP, Liberal Democrat Chief Whip, and Mr Alan Beith MP, Deputy Leader of the Liberal Democrats, rejected the suggestion that members of the Standards and Privileges Committee had become more partisan but warned that there was *''always a danger''*. Similarly, the Rt Hon Sir George Young Bt MP, Shadow Leader of the House of Commons, questioned the rationale for having a Government majority on the committee and warned that there was *''obviously''*, as a result, *''a risk of politicisation''*.

Decline in seniority

3.66 In her written submission, the Rt Hon Ann Widdecombe MP, Shadow Home Secretary, said:

> *I believe that it is imperative that all members of the Committee have substantial experience of being Members of Parliament. When I was serving on the Committee earlier this Parliament, newly elected MPs were sitting and pronouncing without the benefit of any experience to inform their decisions. It is not only important for members*

[42] Day 1 (am).

of the Committee to be able to assess evidence but for them to have a real feel of how Members of Parliament operate and what they are likely to know or not know.[43]

3.67 The Rt Hon Margaret Beckett MP, President of the Council and Leader of the House of Commons, took issue with the allegation that the membership of the committee was not sufficiently senior:

Seven of the members have been in the House for 16 years or more, and two of them since 1964. I know the other four are newer members, but the average length of service of those seven is 23 years compared with under 10 for the House as a whole. So I do not myself take the view that it is justified to argue that . . . the committee is not comprised of sufficiently senior people.[44]

3.68 None the less, we put to Mr Sheldon MP that it seemed odd that his committee had included four new MPs elected in 1997, given that the committee dealt with matters which were so bound up with the traditions of the House, Mr Sheldon replied: *''I agree with you entirely. I was very surprised myself to see so many new Members – the odd new Member I understand''*. Mr Sheldon went on to say, however, that, in practice, the new arrangement had *''not worked out badly''*.

Leader of the House no longer chairman

3.69 For the Committee of Privileges, the predecessor of the Committee on Standards and Privileges, the practice had been that the Chairman was Leader of the House and other members included the Attorney General, the Shadow Leader of the House, and other senior members of the House, mostly Privy Counsellors. In 1997, the Rt Hon Ann Taylor, then Leader of the House of Commons, decided not to become chairman of the Committee on Standards and Privileges, nor to serve on it. The Law Officers who are members of the House of Commons may attend the Committee, take part in deliberations and receive papers.[45] In practice, however, the Law Officers no longer attend.

3.70 We heard arguments for and against the Leader of the House being chairman of the Committee on Standards and Privileges. Mr Peter Riddell, for example, in his book entitled *Parliament under Pressure* (published in 1998), suggested that the presence of the Leader of the House, whilst giving the committee the authority of that office and the benefit of the experience of the office-holder, could exacerbate the partisanship of the committee. In evidence, however, he said:

I think it is a pity that the Leader of the House does not chair [the Committee on Standards and Privileges]*, with the Shadow Leader as what the Americans would call a ranking minority member. It ought to be a smaller Committee, composed mainly of senior members. I think that what has happened to it is unfortunate in that way, and it has become too partisan.*[46]

3.71 The Rt Hon Sir George Young Bt MP, Shadow Leader of the House of Commons, using his experience as a member of the Select Committee on Modernisation of the House of

[43] Written evidence (17/83). Dated 19 July 1999.
[44] Day 5 (am).
[45] Standing Order No 149(9).
[46] Day 1 (pm).

Commons, a committee chaired by the Leader of the House, suggested that the presence of the Leader of the House could cause difficulties:

> *on Modernisation, . . . there is sometimes a tension when something comes forward, not from the Committee but from the Government, to change how the House operates. Some of the recommendations have come through the Leader of the House as a member of the Government and that imposes some tension within the Committee . . . Although I have never sat on the Standards and Privileges Committee or its predecessor, my view from just talking around is that having a neutral non-Leader has probably helped.*[47]

Erosion of collective memory

3.72 In his valedictory memorandum, Sir Gordon Downey commented that the Committee on Standards and Privileges was *''at a disadvantage because its composition has so little continuity with the former Committee; and none at all with the Select Committee on Standards in Public Life''*.[48] Sir Gordon reiterated the point in evidence:

> *it . . . would have been helpful if there had been a greater degree of continuity from the past . . . There would be merit in achieving a greater degree of consistency from one Parliament to the next if at all possible and there would be merit in having greater weight on the Committee by having more senior members with long experience of the House.*[49]

Reform options

3.73 It is important that MPs and members of the public should have confidence in the authority, effectiveness and impartiality of the Committee on Standards and Privileges. We have received evidence to suggest that that confidence has to some extent been declining and for this reason we urge the House of Commons to consider what measures can be taken to strengthen it. In recommending reform, we stress that we level no criticism at the current membership of the committee and our following remarks should not be construed as such.

3.74 We received a number of suggestions for reforming the composition of the Committee. Sir Archibald Hamilton MP suggested that the Committee should include at least one Law Lord and several Privy Councillors from the House of Lords. Sir George Young Bt MP questioned whether a committee which was not charged with delivering a manifesto commitment but with *''trying to maintain order and discipline within the House of Commons''* should have a Government majority, a view echoed by the Lord Newton of Braintree OBE. Mr Paul Tyler CBE MP suggested that the Committee should be chaired by a Deputy Speaker.

3.75 The proposal that the Committee should include members of the House of Lords strikes us as constitutionally anomalous and we do not support it. Nor do we recommend a return to the practice of having the Leader of the House as chairman of the Committee. Not only is there conflicting evidence about the benefits of such a practice, but we understand

[47] Day 6 (am).
[48] HC 1147, p vii.
[49] Day 7 (pm).

that, given the greater workload of the Standards and Privileges Committee compared with the old Privileges Committee, it would create impossible demands on the time of the Leader. We do, however, recommend that consideration be given to encouraging more MPs of substantial seniority to sit on the Committee.

3.76 We also recommend that consideration be given to exempting the Committee from the general convention that its chairman should be drawn from the Government benches. A number of committees depart from this practice: for example, the Public Accounts Committee is traditionally chaired by a senior Opposition Member with some former ministerial experience in the Treasury, the Statutory Instruments Committee and some departmental select committees are chaired by the Opposition. Whilst we believe that the Government should retain its majority on the Standards and Privileges Committee, we are inclined to the view that the chairman should be a senior member drawn from the Opposition benches. In making this recommendation we intend no adverse comment about the present chairman of the Committee. We make the recommendation because we think that it provides a measure which would counter criticism of the Committee that it is (or is perceived to be) partisan.

R8. The House of Commons should take measures in relation to the Committee on Standards and Privileges, with a view:

(a) to ensuring that a substantial proportion of its members are senior MPs, and

(b) to exempting the Committee from the convention that its chairman should be drawn from the Government benches.

Guidelines Relating to the Ban on Paid Advocacy

3.77 In our First Report, we considered whether we should recommend a ban on all forms of advocacy in the House of Commons by MPs pursuing the interests of those with whom they held consultancy or sponsorship agreements. We decided against doing so on the ground that it would be impracticable given the consultancy and sponsorship arrangements which existing MPs already had in place. We also took the view that Parliament needed to debate the matter further and to establish the facts. However, as an immediate practical step, we made the following recommendation:

> *The House should prohibit Members from entering into any agreements in connection with their role as Parliamentarians to undertake services for or on behalf of organisations which provide paid Parliamentary services to multiple clients or from maintaining any direct or active connections with firms, or parts of larger firms, which provide such Parliamentary services.*[50]

3.78 The House of Commons Select Committee on Standards in Public Life, set up to consider the recommendations contained in our First Report, took the view that definitional difficulties (for example, the distinction between single and multi-client consultancies) presented an insurmountable obstacle to implementing our recommendation. The Select Committee went on to make recommendations based on three principles: a prohibition on

[50] First Report, Recommendation 3.

paid advocacy, strict regulation governing paid advice, and transparency in all paid activities related to Parliament.[51]

3.79 Following a recommendation of the Select Committee, on 6 November 1995, the House passed an amendment to a Resolution, passed in 1947, on paid advocacy. The 1947 Resolution states:

> *That it is inconsistent with the dignity of the House, with the duty of a Member to his constituency, and with the maintenance of the privilege of freedom of speech, for any Member of the House to enter into any contractual agreement with an outside body, controlling or limiting the Member's complete independence and freedom of action in Parliament or stipulating that he shall act in any way as the representative of such outside body in regard to any matters to be transacted in Parliament; the duty of a Member being to his constituency and to the country as a whole, rather than to any particular section thereof.*

In 1995, the House agreed that the following words should be added to the 1947 Resolution:

> *and that in particular no Member of this House shall, in consideration of any remuneration, fee, payment, reward or benefit in kind, direct or indirect, which the Member or any member of his or her family has received, is receiving or expects to receive:*
>
> *(i) advocate or initiate any cause or matter on behalf of any outside body or individual, or*
>
> *(ii) urge any other Member of either House of Parliament, including Ministers, to do so,*
>
> *by means of any speech, Question, Motion, introduction of a Bill, or amendment to a Motion or Bill.*

The operation of the ban on paid advocacy

The distinction between 'initiation' of and 'participation' in Parliamentary proceedings

3.80 The MPs' *Code of Conduct* is accompanied by guidelines on its application. The guidelines draw a distinction between, on the one hand, the operation of the ban on paid advocacy and the initiation of proceedings and, on the other hand, the operation of the ban in relation to participation in proceedings which have been initiated by another. In neither case – whether initiation or participation – are MPs permitted to engage in paid advocacy.

3.81 As regards the 'initiation' of Parliamentary proceedings, the guidelines state that:

> *When a Member has received, is receiving or expects to receive a pecuniary benefit from a body (or individual) outside Parliament the Member may not initiate any parliamentary proceeding which relates specifically and directly to the affairs of that body (or individual); any client of such a body (or individual); any group, sector, category or organisation whose affairs and interests are substantially the same as those of the outside body (or individual).*[52]

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[51] *Second Report of the Select Committee on Standards in Public Life*, HC 816 (1994–95), p vii, para 18. The Report was published on 31 October 1995.

[52] *The Code of Conduct together with The Guide to the Rules Relating to the Conduct of Members*, para 58, sub-para 1.

3.82 As regards 'participation', the guidelines are more relaxed.[53] An MP who has received (is receiving or expects to receive) a pecuniary benefit from a body (or individual) can participate in any Parliamentary proceedings and speak freely on matters which specifically and directly relate to the affairs of that body (or individual or client of such body or individual, and so forth). Freedom to participate is subject only to the requirements (a) that an MP should not seek, when participating, to confer benefit exclusively on the body (or individual), and (b) that the pecuniary benefit is properly registered and declared (according to the guidelines).

3.83 The reason for the distinction between participation and initiation is explained in the guidelines:

> *The Select Committee* [on Standards in Public Life] *emphasised that its intention was that 'no limitation on Members' freedom of action which we recommend interferes with* [Members'] *ability to inform themselves on matters of public concern or with the performance of their paramount duty to represent the interests of their constituents and those of the public generally'.*[54] *Consequently it envisaged that, while the advocacy rule would restrict a Member's ability to initiate proceedings, there would be fewer restrictions placed upon participation in debate . . .*[55]

Problems with the operation of the guidelines on 'initiation' and 'participation'

3.84 In November 1998, Sir Gordon Downey expressed concern that some aspects of the rules relating to advocacy and declaration were not being well observed by MPs.[56] He highlighted in particular the application of the rules to overseas visits paid for by a host country or by groups whose interests are identified with the host country. In response to the memorandum, the Standards and Privileges Committee issued a report in which it reiterated the rules on advocacy and declaration in relation to overseas visits.[57]

3.85 We received evidence that the problem remains a live one. Ms Filkin told us that MPs had had difficulty with the practical application of the advocacy rule, especially in relation to accepting invitations from overseas governments and following up visits by initiating parliamentary proceedings based on the visit. She said that the Standards and Privileges Committee were aware of the difficulty but, unfortunately, *''have so far been unable to devise a satisfactory formula for distinguishing such proceedings from the sort of funded advocacy they wished to prohibit.''*

3.86 The issue at the centre of this debate is whether MPs who have gone abroad, at the expense of a foreign government, and have, therefore, acquired knowledge about the country visited are being prevented from using that knowledge to greatest effect. The Leader of the House, Mrs Margaret Beckett MP, suggested that there was a perception in the House of Commons – even amongst some of the most senior and experienced members – that the House was *''getting into a position where knowing something about an issue disqualifies you from taking part in the discussion.''* Yet the guidelines to the MPs' *Code of Conduct*

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[53] Ibid, para 58, sub-para 2.

[54] *Second Report of the Select Committee on Standards in Public Life*, HC 816 (1994–95), para 20.

[55] *The Code of Conduct together with The Guide to the Rules Relating to the Conduct of Members*, para 60.

[56] In a memorandum dated 11 November 1998. Appendix to *First Report of the Committee on Standards and Privileges*, HC 257 (1998–99).

[57] *First Report of the Committee on Standards and Privileges*, HC 257 (1998–99).

specifically acknowledge the benefits of overseas travel: *''the knowledge obtained by Members on such visits can often be of value to the House as a whole.''*[58]

3.87 Mr Robert Sheldon MP similarly expressed concern that the advocacy rule could prevent the most knowledgeable from making as significant a contribution to the work of the House as they would otherwise have done.

3.88 When asked about this effect of the advocacy rule, Ms Filkin pointed out that although MPs might be prohibited from 'initiating' proceedings, *''they are often not prohibited from participation; there is much more freedom on participation.''*

3.89 We can see the force of the argument that the ease with which the guideline on initiation can be circumvented as a result of the less exacting guideline in relation to participation mitigates the effect of the initiation guideline. This very fact calls into question, however, whether the more stringent guideline is necessary.

Changing the guidelines governing overseas visits

3.90 We found the evidence about the operation of the advocacy rule troubling. Clearly the business of Parliament should be conducted by people who are able to contribute expertise and experience.[59] It was never the intention of this Committee that the rule should operate – or be perceived as operating – so harshly and, potentially, to the detriment of the House.

3.91 We considered whether the problem that emerged in evidence was a result of a misunderstanding of the guidelines relating to the advocacy ban or whether, more fundamentally, it had arisen because the guidelines required more significant amendment. Certainly we received evidence of some misunderstanding of the guidelines amongst MPs. Ms Filkin told us that:

> *There is no doubt that some Members have considerable fears about the working of the advocacy rule and worry about it a lot. When people consult us we can often set their minds at rest that a lot of the things that they believe they cannot do they can do, because they have not been fully informed about what the rules actually say.*[60]

3.92 We note that the operation of the advocacy rule in relation to overseas visits is subject to a number of qualifications. For example, not all overseas visits are registrable and, if not registrable, they are not subject to the advocacy rule at all. The guidelines set out a number of exempted 'categories of visits' (generally, visits which *''are mainly paid for from United Kingdom public funds or which involve reciprocity of payment with other Governments or Parliaments'').*[61] Visits to a United Kingdom dependency at the expense of the Government of that territory, although registrable, are exempt from the advocacy rule.[62] And, although MPs who have received hospitality from a foreign Government cannot initiate or advocate in a debate an increase in United Kingdom financial assistance to that Government or initiate proceedings which seek to bring specific and direct benefit to that Government, they can:

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[58] *The Code of Conduct together with The Guide to the Rules Relating to the Conduct of Members*, para 63(d).

[59] In our First Report, we made a similar point in connection with our recommendation that MPs should be able to have paid employment outside of Parliament (Recommendation 1). We said (p 23, para 20): *''As well as having Members with continuing outside interests, it is important that the House of Commons should continue to contain Members from a wide variety of backgrounds.''*

[60] Day 6 (am).

[61] Category 6 of registrable interests. See para 28 of *The Guide to the Rules relating to the Conduct of Members*.

[62] *The Guide to the Rules relating to the Conduct of Members*, para 62(7).

having declared their interest, raise matters relating to their experiences in the country either in a speech or by initiating any other proceedings. Similarly they could raise matters relating to the problems of the country generally, or make use of any local insight they have obtained into regional problems . . . or information they have obtained on local developments or initiatives.[63]

3.93 Bearing in mind the complexity of the rules relating to overseas visits, we considered whether the criticisms we heard about the advocacy rule could be met simply by suggesting that the guidelines be re-drafted to make them more 'user-friendly' and less susceptible to misunderstanding. We decided that this was not the solution and that more significant amendment of the guidelines was needed. We take the view that MPs who have undertaken any overseas visit, irrespective of how it is funded, should not be precluded from initiating proceedings (subject to rules governing registration and declaration, and the ban on paid advocacy). We believe that overseas travel is an indispensable method of information gathering that enables MPs – and, in particular, opposition front-bench spokesmen and women – to make a significant contribution to the work of the House of Commons.

3.94 In proposing the removal of the restriction on initiation of proceedings in relation to all overseas visits, we are not compromising the prohibition on paid advocacy but rather suggesting a change in the guidelines on how that prohibition should be effected. Further, we endorse the thought expressed in the guidelines that MPs should, in accepting an invitation to undertake a foreign visit, be mindful of the reputation of the House. We would also expect MPs to honour the rule that the acceptance of any invitation should not involve any obligation which could act as a fetter on an MP's independence and freedom of action in Parliament.

Changing the guidelines in relation to 'initiation' generally

3.95 Although the principal complaint made to us about the operation of the guidelines on initiation was in relation to overseas visits, it was logical for us to go on to consider the broader issue of whether restrictions on initiation should be removed altogether, in respect to all personal interests, in favour of a general rule along the lines of that currently governing participation.

3.96 In recommending in the First Report a ban on agreements between MPs and multi-client consultancies, we were concerned to avoid a situation in which MPs could be presented as participating in 'a hiring fair'. We retain that concern. On the other hand, we are anxious that the rules should not unnecessarily inhibit the ability of MPs to become well informed and to use their expertise and experience effectively. Bearing in mind the evidence that we have heard about the present guidelines on 'initiation' and the ban on paid advocacy, we believe that they are operating unnecessarily harshly and that they should be amended. We recommend that the ban on paid advocacy should remain in place, but that the restriction on initiation should be removed and the guidelines relating to participation extended to include both participation and initiation. The effect of this would be that an MP who had a personal interest would be permitted to initiate proceedings in the same way that he or she is able to participate in proceedings under the current guidelines, but that MP (a) would not be able to engage in 'paid advocacy' or seek to confer benefits exclusively on a particular individual or body and (b) would be required to register and declare the benefit in

[63] Ibid, para 63(d).

accordance with the guidelines. We recommend a further safeguard (c) that, reinforcing present practice regarding the declaration of interests when tabling a written notice, in addition to registration and oral declaration, the MP would also be required to identify his or her interest on the Order Paper (or Notice Paper) by way of an agreed symbol.

R9. The ban on paid advocacy should be retained.

R10. The guidelines relating to the ban on paid advocacy, set out in the Guide to the Rules relating to the Conduct of Members*, should be amended so as to make it possible for an MP who has a personal interest to initiate proceedings which relate in a general way (and not exclusively) to that interest, subject to the following safeguards:*

- *the MP is prohibited from engaging in 'paid advocacy' on behalf of that interest;*
- *he or she is required to register and declare the interest in accordance with the guidelines;*
- *he or she must identify his or her interest on the Order Paper (or Notice Paper) by way of an agreed symbol when initiating a debate.*

MINISTERS

4.1 In its First Report, the Committee made recommendations concerning Ministers in the following areas:

- the Ministerial Code (which was then entitled Questions of Procedure for Ministers (QPM)) and the investigation of cases of alleged impropriety;
- business appointments rules for Ministers;
- a departmental register of hospitality.

4.2 The majority of evidence we received on Ministers concerned the first of these three areas. This chapter is concerned solely with that area. The question of business appointment rules is considered in Chapter 11.

The Ministerial Code

Background

4.3 In its First Report, the Committee concluded that the ministerial code which existed at that time (QPM) failed to offer a coherent series of principles of practical guidance to Ministers. The Committee recommended that the Prime Minister should commission *''the production of a document drawing out from QPM the ethical principles and rules which it contains to form a free standing code of conduct or a separate section within a new QPM''*.[1] The Committee offered a draft code setting out the essential principles which should govern the conduct of Ministers. The Government of the day accepted this recommendation in its formal response to the First Report (1995).[2]

4.4 Because of the convention that QPM is only reissued when a new Administration comes into office, the revisions accepted by the Conservative Government in 1995 were not promulgated until after the election of the Labour Government in May 1997. When the document was reissued in July 1997 under the new title 'the Ministerial Code',[3] the Committee's recommendations were reflected in the first section 'Ministers and the Crown'. Because of its importance, we set out this section in Appendix VI to this report.

4.5 Section 1 of the Code ends with three sentences that stem from a recommendation of this Committee. We had recommended that in order to reflect the involvement of the Prime Minister, QPM should read:

> *It will be for individual Ministers to judge how best to act in order to uphold the highest standards. It will be for the Prime Minister to determine whether or not they have done so in any particular circumstance.*[4]

4.6 The Government rejected the specific wording of this proposal. The text in section 1 of the Ministerial Code (see Appendix VI to this report) contained a different formulation:

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[1] First Report, Recommendation 13.

[2] *The Government's Response to the First Report from the Committee on Standards in Public Life*, Cm 2931, July 1995.

[3] The Ministerial Code, July 1997.

[4] First Report, Recommendation 12.

> *It will be for individual Ministers to judge how best to act in order to uphold the highest standards. They are responsible for justifying their conduct to Parliament. And they can only remain in office for so long as they retain the Prime Minister's confidence.*

4.7 We return later to the significance of this departure from the recommendation in our First Report (paragraphs 4.74–4.78).

4.8 The reissue of the Ministerial Code in 1997 contained another significant addition. Although not the first Prime Minister to publish the Ministerial Code (Mr Major had published in 1992), Mr Blair was the first to provide a Foreword. The full text is as follows:

> *In issuing this Code, I should like to reaffirm my strong personal commitment to restoring the bond of trust between the British people and their Government. We are all here to serve and we must all serve honestly and in the interests of those who gave us our positions of trust.*
>
> *I will expect all Ministers to work within the letter and spirit of the Code. Ministers will find the Code a useful source of guidance and reference as they undertake their official duties in a way that upholds the highest standards of propriety.*
>
> *I have decided to publish this document because openness is a vital ingredient of good, accountable Government. And we will extend openness further through a Freedom of Information Act.*
>
> *I believe we should be absolutely clear about how Ministers should account, and be held to account, by Parliament and the public. The first paragraph of the Code sets out these responsibilities clearly, following the terms of the House of Commons Resolution on Ministerial Accountability carried last March.*
>
> *I commend the code to all of my Ministerial colleagues.*

4.9 The effect of the Foreword is to underline the status of the Code as the Prime Minister's document, written not only as guidance for Ministers but also as a pledge to the public.

4.10 In our Issues and Questions paper, we asked whether the Ministerial Code operated satisfactorily or whether any further amendments were required. Although few witnesses commented in detail on the need for amendments, we believe from our own scrutiny of the document that it is not a clear piece of presentation. Because of its history, it is an accretion over many decades of prime ministerial guidance on personal conduct, instructions on how Cabinet business should be conducted and important matters of ministerial accountability to Parliament. Its ten sections range from the all-important first section 'Ministers of the Crown' (see Appendix VI) to the more mundane tenth section on 'Ministerial Pensions'. En route it takes in Ministers' relations with the Government, Parliament, their departments, the Civil Service, their constituency and party interests, their approach to the presentation of policy and the conduct that is expected in relation to overseas visits, hospitality and their private interests. In short, as we said in our First Report, it is a *''miscellany''*.[5]

4.11 There is no doubt that the Ministerial Code is taken very seriously by Ministers and all who are affected by its operation. However, we do not believe that its importance as a document is reflected in the way it is ordered and presented. In particular section 1 remains

[5] First Report, p 49.

an awkward amalgam of the doctrine of collective responsibility, Parliamentary resolutions and general principles. The effect is not quite the equivalent of a *''free-standing code of conduct''* for which we called. The last three sentences quoted in paragraph 4.6 above, which we consider to be of fundamental importance, are not distinguished from the preceding text and do not therefore have the prominence they deserve.

4.12 We return to the drafting and presentation of section 1 of the Ministerial Code at the end of the chapter.

The Handling of Allegations of Ministerial Misconduct

4.13 The issue that most concerned our witnesses was how the Prime Minister should investigate, or have investigated on his behalf, any alleged breaches of the Code. The difficulties inherent in investigating allegations of ministerial misconduct have been illustrated by a number of cases to which our witnesses drew attention. The lessons to be drawn from the case of Mr Jonathan Aitken, former Chief Secretary to the Treasury, were explicitly or implicitly mentioned by Mr Peter Preston, former Editor-in-Chief of *The Guardian*, Professor Peter Hennessy and both the former Cabinet Secretary, Lord Butler, and the present Cabinet Secretary, Sir Richard Wilson. Within the lifetime of the present Government, there have also been the resignations of the Rt Hon Peter Mandelson MP, when Secretary of State for Trade and Industry, Mr Geoffrey Robinson MP, former Paymaster General, and Mr Ron Davies MP, former Secretary of State for Wales.

4.14 As always we make the point that our role is to consider procedures generally, not whether the right course of action was taken in any particular instance. Nevertheless, the history of the Ministerial Code has been that of a document that reflects lessons learnt from previous experience. To that extent, we need to look at past cases as being illustrative of wider questions.

The present approach

4.15 When Mr Preston gave evidence, he posed the question – who is the guardian or keeper of the Code? He suggested that codes exist first to give guidance to a particular group on their behaviour but, second, to provide reassurance to the public as to how such a group is expected to behave.[6]

4.16 We believe the only answer to Mr Preston's question can be – the Prime Minister. Sir Richard Wilson agreed with this: the Prime Minister is the author (except in the purely drafting sense) and the potential amender of the Code. To use his words, it has the Prime Minister's *''personal imprint''*.[7]

4.17 Mr Preston then took us on to the next question – to whom should any complaint about an alleged breach of the code be addressed? It is possible for Members of Parliament (MPs) to call Ministers to account for their conduct in either House through procedures such as Parliamentary Questions or motions for debate. Members of the public might approach their constituency MP to see if the MP were prepared to take the matter up on their behalf. Or they might complain directly to the Prime Minister.

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[6] Day 6 (pm).

[7] Day 7 (am).

4.18 If a complaint is made directly to the Prime Minister, an immediate question of handling arises. Clearly, the Prime Minister with his or her many responsibilities would need some assistance in investigating the substance of any allegation. And he or she needs to be protected against attempts to use allegations against Ministers as a means of gaining political advantage. How is that to be achieved? It is here that our witnesses had varying views.

4.19 Mr Preston described his experience of the present situation in the context of his complaint about the conduct of Mr Aitken. At the time of his complaint, the relevant edition of the Code was the 1992 edition of QPM.

Mr Preston said:

> *Sir Robin Butler, the then Cabinet Secretary, did not appear to think that guardianship of the Code was his responsibility; equally the Prime Minister's Office refused to take the matter further when I tried to pursue it because Sir Robin was said to have already investigated it. This was a somewhat circular and frustrating business.*

4.20 Subsequently, after our First Report had been published, it emerged that

> *Sir Robin had passed his findings in the matter of my complaint to Mr Aitken for his comments, and that Mr Aitken had substantially altered the Butler text which was then passed back to me. So we appear to have the very unhappy situation of the Minister against whom the complaint was laid effectively drafting his own response to that complaint.*[8]

4.21 A similar instance of the apparent 'circularity' of the present arrangements was given to us by Sir George Young Bt MP, Shadow Leader of the House of Commons. This concerned his allegation of a breach of the Ministerial Code by the (then) Minister of State at the Foreign and Commonwealth Office, Mr Tony Lloyd MP:

> *If the instance does not go under the Prime Minister's nose, how does he know whether the Ministerial Code . . . is actually being implemented. If you write to Number 10, they send it off to the Department and then surprise, surprise, the letter from the Minister found that no offence has been committed.*
>
> *It does seem to me that there is something missing here. If the Prime Minister has told people to do this and somebody alleges that they have not, the Ministers should not be judge and jury in their own case.*[9]

4.22 The sense of *''something missing''* was highlighted by another of our witnesses, Mr Peter Riddell, Assistant Editor of *The Times*:

> *At present, problems of conflict of interest go to the relevant Permanent Secretary, but that puts them in an invidious position . . . being asked to endorse the actions of Ministers when they are not in a position to conduct investigations . . . Permanent Secretaries have to accept the word of their Ministers and are unable to challenge them.*[10]

4.23 The invidiousness of the position of senior civil servants was endorsed by a number of our witnesses. Professor Anthony King said: *''I am increasingly of the view that the Cabinet*

[8] Day 6 (pm).
[9] Day 6 (am).
[10] Day 1 (pm).

Secretary should never be asked to conduct an investigation into a matter of any complexity or sensitivity.''[11] The Rt Hon David Davis MP said:

> *It is questionable whether the Cabinet Secretary's involvement in dealing with allegations of financial or other irregularities is appropriate. In essence the Cabinet Secretary can do little more than ask a Minister if he is guilty of an allegation. Then he must decide whether or not to believe him. That puts the Cabinet Secretary in a difficult position.*[12]

4.24 The former and present Cabinet Secretaries who gave evidence to us put a little more flesh on the bone of what their role is when the Prime Minister asks them to investigate an allegation of ministerial misconduct.

4.25 Lord Butler said:

> *An awful lot has been invested in the word 'investigation'. There are certainly limits to what the Cabinet Secretary can do but it is not true that the Cabinet Secretary is entirely confined to speaking to the Minister concerned. Very often there is evidence in the official papers. That is where the evidence may lie . . . The Prime Minister may well want facts from officials on some matters, and one official may be the Cabinet Secretary.*[13]

4.26 Sir Richard Wilson said:

> *In principle the role of the Cabinet Secretary is to provide the Prime Minister with the best support and advice . . . I do not think it is the job of any civil servant to investigate a Minister in the sense of going in there and conducting a CID operation. We are not investigators, we do not have the skills and we have still to be able to work with Ministers after whatever one is talking about has been resolved.*
>
> *What the Cabinet Secretary can do, if the Prime Minister wants that, is first of all talk to the Minister concerned and find out what the Minister says to the allegation and report that back to the Prime Minister. I think that is a perfectly proper thing for a Cabinet Secretary to do . . . It is also proper for a Cabinet Secretary, if the Prime Minister asks it, either himself or through someone else to look at papers, investigate what the files say, to go through and talk to officials of the department concerned and get their account of what lies behind a particular situation. That again is something which he can report to the Prime Minister.*[14]

4.27 Both he and Lord Butler emphasised the point that there is no one single answer. This is because of what Lord Butler called *''almost an infinity''* of types of cases. Both also emphasised that the options included seeking the advice of people other than the Cabinet or Permanent Secretary. Sir Richard Wilson again:

> *There may be all sorts of different ways in which the Prime Minister could react and he needs someone to talk it through. It is not just the Cabinet Secretary who can give help, there are other people who can give help too and give the Prime Minister some thought and advice on how this situation is best handled.*

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[11] Day 1 (am).
[12] Day 5 (am).
[13] Day 5 (am).
[14] Day 7 (am).

4.28 When Lord Butler and his predecessor, Lord Armstrong, gave evidence to this Committee for its First Report, they indicated the range of people, other than the Cabinet Secretary, to whom the Prime Minister might turn. Lord Butler drew a distinction between allegations of criminal conduct (with which the police should deal), party political matters (which would be for the Chief Whip) and official matters for which the Prime Minister might turn to the Cabinet Secretary.[15] In his evidence this time, Lord Butler made it clear that those were only some examples chosen to illustrate that there were distinct types of cases. He mentioned the further example of the Scott inquiry into the Arms-to-Iraq affair, where *''something much more substantial and judicial was needed''*. Another player in past cases has been the Attorney General.

4.29 From this evidence, a clear picture emerges of a highly flexible, diverse process whose principal characteristic is, in Lord Butler's words, that *''one solution does not fit all. The whole essence of the approach is that there is a great range''*. In his view, this was the correct approach: *''the Prime Minister ought to have a wide range of instruments at his or her disposal.''*[16]

4.30 His view was supported by Professor Anthony King: *''I do not believe that any one person or institution should play that role* [of investigator]*. The Prime Minister will have to make a judgement in every case, as to how it is handled.''*[17]

Another approach

4.31 There is, however, a considerable body of opinion that an approach that is based on seeking advice from internal sources only is not sufficient. In Mr David Davis's words, *''in my view, there is a strong case for some sort of external adjudicator in matters relating to ministerial conduct''.*

4.32 The proponents of an external adjudicator use different terms to describe the post. The description that has gained currency is that used by Mr Peter Riddell, namely, an 'ethics commissioner'.

4.33 In his evidence to us, Mr Riddell gave us his view of what such a post would entail:

> *There is now a strong case for the creation of an ethics commissioner or office in government, separate from any individual department and answerable solely to the Prime Minister. He or she would act primarily as an adviser to Ministers on how to handle conflicts of interest, akin to the role of the Advisory Committee on Business Appointments (ACoBA). The latter has avoided most problems. The commissioner or office should also investigate allegations of misconduct and its reports could, if necessary, be published either to confirm or to clear the Minister concerned . . . Like ACoBA, the office and cost need not be large.''*[18]

4.34 Professor Peter Hennessy put forward a similar view:

> *I have now come to the view that we need a commissioner. It cannot be the parliamentary one because this is an executive matter. This is within the Crown loop*

[15] First Report, Vol II, p 263, para 1286.
[16] Day 5 (am).
[17] Day 1 (am).
[18] Day 1 (pm).

rather than the legislative loop. I would be keen to see an ethics commissioner who had the status of the First Civil Service Commissioner. He or she would be . . . somebody who was a Crown servant, not a civil servant, who reported to Her Majesty the Queen, with copies to Parliament and everybody else admittedly.[19]

4.35 From the evidence given to us, it has been suggested that the post of an ethics commissioner would have the following features:

- the commissioner would be a Crown servant, appointed by the Queen
- would report to the Queen and the Prime Minister
- would deal only with cases referred by the Prime Minister
- would publish his/her advice to the Prime Minister
- would not have an executive role
- would produce an annual report
- could be summoned to the House of Commons to give evidence to a Select Committee.

4.36 There is however a crucial confusion in some of the evidence put to us. It revolves round the question of whether the ethics commissioner is to fulfil a purely advisory role or also an investigative role.

Both an advisory and an investigative role

4.37 In the passage quoted above, Mr Riddell envisaged the commissioner having both advisory and investigative roles. An independent investigative officer or tribunal is also the arrangement envisaged by Mr Davis MP, Sir George Young Bt MP and Mr Preston. The latter spelt it out as follows:

Let's say there is a national case to be looked into. It is a pretty fraught political case; the Prime Minister sees it as a hot potato: it involves a Minister to whom he is deeply committed, like the other 96. He wants to take the heat out of the situation. More particularly, he wants to know whether this person deserves his confidence or has lost it. That is not necessarily done in terms of a quick, one-to-one interview. He may need to have a rather more careful look at the facts in that situation. That is crucially, I think, where this Commissioner person, who may already exist, has a role to play in order to be fair to everybody . . . Then it is for the Prime Minister to decide; it has to be the Prime Minister's decision. The question is, how does he make it and what advice does he get.[20]

4.38 This suggests an independent fact-finder with sufficient resources at his or her disposal to mount, if necessary, a major investigation.

4.39 We heard several arguments as to why such an arrangement was desirable:

- proper investigative resources would improve the quality of the factual basis upon which the Prime Minister can make a judgement (Sir George Young Bt MP);

[19] Day 3 (am).

[20] Day 6 (pm).

- it removes the complaint that Ministers provide their own defence, upon which they are then unchallenged – the 'circularity' point (Sir George Young Bt MP and Mr Preston);
- it would be fairer to Ministers (Mr Riddell, Mr Preston);
- it would provide an open system and one that was comprehensible to the public (Mr Riddell, Professor Hennessy and Mr Preston);
- although the process of investigation might take longer is some cases, this was not a crucial problem and was an inconvenience worth tolerating (Mr Davis MP, Sir George Young Bt MP and Professor Hennessy).

4.40 We also heard several arguments (Lord Butler and Sir Richard Wilson) as to why such an arrangement was not desirable:

- the power of the Prime Minister to recommend dismissal of a Minister to the Queen is at the heart of the matter – he must retain the right to talk to a Minister and makes his own judgement about confidence;
- it is for the Prime Minister to determine what system will enable him to carry out this role; an external investigative authority would fetter his ability to choose the appropriate mechanism – a flexible system is required;
- often, a speedy decision is required because of the highly political nature of the case – the tendency for an allegation to become a 'political football' would be increased;
- the system itself would become the subject of party political dispute, with technicalities becoming as important as the substance.

4.41 We give our view on these arguments below in paragraphs 4.59–4.71 but first set out our view on a secondary point, namely whether the independent investigative office outlined above could be held by the Parliamentary Commissioner for Standards.

4.42 Some of our witnesses thought it would make good sense in certain circumstances because of her existing experience *''in the very sensitive area of the overlap between propriety and politics''* (Professor King). The Parliamentary Commissioner herself said *''the offer would be there, but I am agnostic about it; it would only be if others thought that would be a wise way to proceed''*.[21]

4.43 Other witnesses such as Mr Riddell, Professor Hennessy, Lord Butler and Sir Richard Wilson were clear that it would not be appropriate for the Parliamentary Commissioner to be involved. Their views centred on the distinction between Ministers in their ministerial role rather than their role as MPs. Lord Butler elaborated:

> *Ministers are appointed by the Queen on the advice of the Prime Minister and Members of Parliament are elected and have a duty to the electorate. In those circumstances, it is necessary to have a more formal procedure that not only provides natural justice but observes those obligations to the electorate. It would be a mistake to confuse those roles.*

[21] Day 6 (am).

4.44 We agree with this and also observe the practical difficulty that not all Ministers are in the House of Commons. In our view, if an independent investigative office were to be established, it should not be held by the Parliamentary Commissioner for Standards.

4.45 We now turn to considering the other interpretation of what a commissioner or external office might do.

An advisory role only

4.46 In the passage from Mr Riddell's evidence quoted above (paragraph 4.33), he likened the commissioner's job to that of the Advisory Committee on Business Appointments (ACoBA). At a later point, however, he also drew attention to the parallels with part of the job of the Parliamentary Commissioner for Standards:

> *In practice, as with the Parliamentary Commissioner for Standards for back-benchers, it is as much an advisory role as anything else . . . I would see an office of government ethics essentially having an advisory role . . . There would be case law, there would be regulations: they would be able to refer to them. They would be able to advise the Prime Minister and say, 'This is the position. He or she has broken certain rules or hasn't broken certain rules,' and they could issue a report on it.*[22]

4.47 We think there is a danger of confusing the different roles of the Parliamentary Commissioner and ACoBA. The Parliamentary Commissioner is both an investigative and an advisory officer who reports to the House of Commons Standards and Privileges Committee.

4.48 ACoBA is a purely advisory body. Outgoing Ministers 'should' (but are not obliged to) seek the advice of the Committee on any appointment they wish to take up in the two years following their departure from government. It acts as an adviser only to Ministers, not as an adviser to any other authority.

4.49 The Committee has no investigative function: it acts on the information given it by the Minister in question and then consults the departments in which the Minister has served. Nor does it report to the Prime Minister though it issues an annual report. All approaches to the Committee are treated in strict confidence and the Committee's advice remains confidential if the appointment is not taken up. If the appointment is taken up, their advice is available for publication. In effect, therefore, it advises the Minister but leaves the Minister with the responsibility of taking the decision about the proposed appointment, and if necessary, taking the consequences.

4.50 We can see an argument for having a similar advisory body for Ministers in respect of some conduct issues. ACoBA is widely considered to have been a success in terms of removing public concern about Ministers taking up outside appointments after their term of office.[23]

4.51 Mr Riddell has argued that such a body, by building up precedents, would be able to give consistent advice in a way that he believes Permanent Secretaries cannot:

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[22] Day 1 (pm).

[23] See Chapter 11.

Such a proposal would be better for Ministers (providing them with consistent advice from a specialist) and for Permanent Secretaries (removing the need to advise their political masters) and would provide public reassurance.

4.52 However, Sir Richard Wilson believes there are good reasons for any apparent inconsistencies:

My experience is that every department has different kinds of business and needs a rather different approach to check what the Minister's interests are, how they relate to the business of the department.

4.53 For this reason, he rejected the suggestion that ACoBA should take on the role of advising on ministerial conduct:

I think that the person who should be responsible for giving the advice should be the permanent head of department because he or she is best placed to know what the business of the department is. I do not think the Advisory Committee on Business Appointments is well placed to know all the business of a department, of what conflicts could arise. If you asked the Advisory Committee on Business Appointments to do the job, the first thing they would have to do is to ask the Permanent Secretary for his advice.[24]

4.54 Although not explicitly stated in any of the evidence, it seems clear to us that an advisory body of any kind could only be asked to advise on one section of the Ministerial Code, namely the chapter on Ministers' Private Interests. It would not be appropriate for such a body to advise on Ministers' conduct in relation to Parliament or in relation to Cabinet business or departmental issues. We believe this to be in line with the Canadian system where the Ethics Counsellor administers the Conflict of Interest and Post-Employment Code for Public Office Holders.[25]

4.55 Although the parallel has been drawn with ACoBA, we see an important difference. ACoBA advises outgoing Ministers who, by definition, are shortly to cease in their appointments as Ministers of the Crown. The suggested advisory committee on conflicts of interest would be offering advice to incoming or existing Ministers. We have already said that it is at the heart of the Prime Minister's position that he must retain the right to form his own judgement about his confidence in ministerial colleagues. We do not think it desirable to restrict this right by interposing the judgement of an external committee nor to suggest extending the present role of ACoBA to perform such a function.

Advice from Permanent Secretaries

4.56 We agree with Sir Richard Wilson's view, given above in paragraph 4.53, that the permanent head of department is usually best placed to advise on conflicts of interest. However, we also agree with Mr Riddell that this can place Permanent Secretaries in a difficult position. As we heard in the evidence about the Cabinet Secretary's position, Permanent Secretaries have to accept the word of their Ministers and are unable to challenge them. They also have to maintain their daily working relationship with them. If a Minister claims that he acted properly because it was in accordance with the advice of his Permanent

[24] Day 7 (am).

[25] Conflict of Interest and Post Employment Code for Public Office Holders, Office of the Ethics Counsellor, June 1994.

Secretary, then the Permanent Secretary is in no position to contradict this publicly (where applicable) or to say the advice was given on the basis of an incomplete version of the facts.

4.57 Paragraph 123 of the Ministerial Code already states that Ministers should consult their Permanent Secretary because of the latter's personal responsibility as Accounting Officer of the department for financial propriety. The paragraph continues:

> *It is in the end for Ministers to judge (subject to the Prime Minister's decision in cases of doubt) what action they need to take; but they should record, in a minute to the Permanent Secretary, whether or not they consider any action necessary, and the nature of any such action taken then or subsequently to avoid actual or perceived conflict of interest.*[26]

4.58 We consider this passage adequately states the principle that Ministers should take responsibility for their decisions but we remain concerned that a Minister might claim in public, if difficulties arose, that he or she had only acted on the advice of the Permanent Secretary. We recommend that paragraph 123 should be amended to make it clear that this should not happen.

> ***R11. Paragraph 123 of the Ministerial Code should be amended to make it clear that a Minister, having had the advice of his or her Permanent Secretary on potential conflicts of interests, must take full responsibility for any subsequent decision.***

Our Findings

4.59 In formulating our conclusions, we revert to the evidence about the nature of the Code. It is the Prime Minister's document: he authorises and guides the drafting and contributes a personal Foreword to it. In the Foreword, he makes it clear that the Code constitutes his guidance on how he expects Ministers to behave. It is not a code in the sense of a set of rules that has the force almost of law. But it is a set of principles by which Ministers are expected to regulate their conduct.

4.60 If it is alleged that the code has been broken, there are two reasons why a Minister might conclude that he or she should resign. First, in Sir Richard Wilson's words *''the essence of the code is that if a Minister is seen to be very much acting against one of the principles then the Prime Minister might begin to lose confidence in him or her''.* Secondly, the Minister has to justify his or her behaviour to Parliament and retain the confidence of back-bench MPs.

4.61 We have said little about the question of accountability to Parliament as the majority of our evidence was concerned with how the Prime Minister assesses whether the Code has been broken. Nevertheless we recognise that Parliament is also an important adjudicator in the matter of ministerial misconduct. Ministers are members of one or other Houses of Parliament and are subject to the daily scrutiny of their colleagues. This scrutiny can be exercised by several means – Parliamentary Questions, enquiries of Select Committees and debates on motions in the House. All these methods are applied to questions of policy but can, albeit rarely, be applied to questions of conduct.

[26] The Ministerial Code, para 123.

4.62 The importance of a Minister's role in relation to Parliament is demonstrated by section 1 of the Ministerial Code. The first paragraph replicates the terms of the House of Commons Resolution on Ministerial Accountability passed in March 1997. It emphasises the duty of Ministers to account to Parliament and in doing so, to be as open as possible and to be accurate and truthful. As noted in paragraph 4.6 above, the chapter concludes by stressing Ministers' responsibility for justifying their conduct to Parliament, as well as retaining the confidence of the Prime Minister.

4.63 The accountability of members of the Executive to members of the legislature is an issue that is currently being debated in the devolved institutions in Scotland and Wales in the context of their respective constitutional roles. It is early days and the differences in approach, and reasons for them, are not yet clear but the Committee will watch developments with interest.

4.64 With the twin-faced nature of the Code in mind, we now turn to whether changes are required.

The role of the Cabinet Secretary

4.65 Lord Butler and Sir Richard Wilson gave us a full account of the Cabinet Secretary's role in the present system. We agree with Lord Butler that perhaps too much significance has been placed upon the word 'investigation'. It is clear from their evidence that in many circumstances it is wholly appropriate for the Cabinet Secretary to 'investigate' in the sense of collecting relevant information and advising upon it.

4.66 However, we think Sir Richard Wilson provided the crucial definition of the point at which the Cabinet Secretary's role stops. He said:

> *What I do not think that the Cabinet Secretary should do is ever claim to have gone into a situation, investigated, come up for certain with the answers and said he was satisfied that such and such was the case and he could underwrite the answer which this Cabinet Minister or other Minister had given him. That is a situation I would do my best to avoid.*[27]

4.67 In other words, the responsibility for the answer given by any Minister to an allegation must remain solely his or hers, and cannot be shared with a civil servant, however senior. We agree.

An external investigative authority

4.68 In any event, the Cabinet Secretary is only one of various sources of advice and information to whom the Prime Minister can turn. Amongst those also mentioned were the Attorney General, the Chief Whip and, in criminal cases, the police. This diversity was represented to us as one of the great strengths of the system and the direct result of the varied nature of the issues that arise. It would be in line with this argument to suggest that adding a purpose-made investigative unit, such as an ethics commissioner's office, to the Prime Minister's armoury of devices would serve to enhance his authority, not diminish it.

4.69 However, as was pointed out to us, allegations of ministerial misconduct take place in the forum of politics – what Mr Peter Preston described as *''the political fiery furnace''*.

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[27] Day 7 (am).

Elegant though the argument for an ethics commissioner might appear, we doubt that the practice would match the theory when exposed to political reality. As Lord Butler said:

> *If there were an ethics commissioner, there would be tremendous pressure to refer such cases to the commissioner. One can imagine the Opposition saying, ''If you have nothing to hide, why not refer the matter to the ethics commissioner?'' . . . I do not think that route would be suitable for all cases. It would become a party political game.*[28]

4.70 There is also the question of the speed with which the Prime Minister has to act. Although we accept that there have been instances where a long and thorough process, such as the Scott Inquiry, may have been appropriate, we agree with the several witnesses who mentioned the undesirability of leaving a Minister 'dangling in the air' while a long procedure unfolds.

4.71 At the heart of the matter is the power of the Prime Minister to determine the dismissal of a Minister. In Professor Hennessy's words, the Prime Minister is *''can-carrier-in-chief''*. It follows from that that he or she has the right to decide, in every case, how the allegation should be handled and to make his or her own judgement as to what would be the right course. We think it undesirable to make a recommendation that would fetter the Prime Minister's freedom in those respects and in our view, a new office of ethics commissioner or independent investigative officer would have that effect.

> ***R12. No new office for the investigation of allegations of ministerial misconduct should be established.***

Compliance with the Code

4.72 One criticism of the present approach does, however, cause us real concern and that is the 'circularity' problem highlighted by Mr Preston and Sir George Young Bt MP. Given that the essence of the Ministerial Code, as with any code, is that the person to whom it is addressed should take responsibility for their actions, it is clearly right that the first step should be to ask the Minister what is his or her answer to the allegation.

4.73 However, we see the difficulty if the impression is then created that the Minister has acted as *''judge and jury in their own case''*, as Sir George Young put it. As we discuss in para 4.17 above, a complainant can take the matter further. An MP would be able to raise the matter by tabling a Parliamentary Question or a motion for debate. A member of the public might raise the matter through their MP or write to the Prime Minister directly.

4.74 With this in mind, we looked again at what the Ministerial Code says about compliance. The final sentences of the first section of the Ministerial Code are the relevant ones. In our First Report, we suggested that these sentences should read:

> *It will be for individual Ministers to judge how best to act in order to uphold the highest standards. It will be for the Prime Minister to determine whether or not they have done so in any particular circumstance.*[29]

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[28] Day 5 (am).

[29] First Report, Recommendation 12.

4.75 In the event, the first sentence was accepted by the Government but the second sentence was replaced with two others so that the whole passage now reads:

> *It will be for individual Ministers to judge how best to act in order to uphold the highest standards. They are responsible for justifying their conduct to Parliament. And they can only remain in office for so long as they retain the Prime Minister's confidence.*[30]

4.76 We agree that it was correct to insert the reference to Parliament because of the twin-faced nature of the Code discussed in paragraphs 4.59–4.64 above. But our formulation concerning the Prime Minister was rejected because it was thought *''to go too far towards suggesting that the Prime Minister's relationship with his Ministerial colleagues is that of invigilator and judge''.*[31] That was therefore only made implicit in the last sentence.

4.77 We believe that this has diluted the clarity of the real position. The Code is a public document, widely regarded as a benchmark document that sets standards for ministerial conduct. The Prime Minister's Foreword, quoted in paragraph 4.8 above, states *''we should be absolutely clear how Ministers should account, and be held to account, by Parliament and the public''*. In our view, while the Parliamentary route is well defined by established procedures, the procedure for holding Ministers to account by the public is less clear but must chiefly lie through the Prime Minister.

4.78 Clearly this cannot be taken to mean that the Prime Minister should be drawn into adjudicating on every alleged breach, large or small, with all the temptations this would offer to political opponents. And it is right that Ministers must make their own judgement about their standards of conduct. But in the rare cases where that fails to happen, it seems to us inevitable that the Prime Minister will need to make a judgement. To that extent, the Prime Minister, as the custodian of the Code, is the ultimate judge of the requirements of the Code and the consequences of breaches of it.

R13. The final three sentences in section 1 of the Ministerial Code should be redrafted to clarify the role of the Prime Minister. It will be for the Prime Minister to determine the precise wording but we suggest the following text:

It will be for individual Ministers to judge how best to act in order to uphold the highest standards. They are responsible for justifying their conduct to Parliament and retaining its confidence. The Prime Minister remains the ultimate judge of the requirements of the Code and the appropriate consequences of breaches of it.

4.79 As well as recommending that the final three sentences of section 1 should be redrafted, we also recommend a review of the way the material in section 1 is presented. The original recommendation in our First Report was to *''draw out from QPM the ethical principles and rules which it contains to form a free-standing code of conduct or a separate section within a new QPM''.*[32] We also suggested the essential principles that should be spelt out.

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[30] See Appendix VI to this report.

[31] The Government's Response to the First Report from the Committee on Standards in Public Life, Cm 2931, p 3.

[32] First Report, Recommendation 13.

We saw this step as an important device for emphasising the relationship between ministerial conduct and the ethical principles which we had defined.

4.80 While we accept that all the constituent elements of our original recommendation have been reflected in section 1 of the Code, we believe that presentationally it would not strike the general reader as the equivalent of a code of conduct. In particular, the final paragraph is a jumble of additional directions, including the important three sentences that are the subject of our recommendation above. We recommend some revision.

R14. The presentation of section 1 of the Ministerial Code should be improved to reflect its importance as a statement of the ethical principles governing ministerial conduct. In particular the final three sentences, redrafted as suggested above, should be clearly distinguished from the preceding text.

CIVIL SERVANTS

Background

5.1 In a recent lecture, Professor Peter Hennessy gave a historical account of the development of the Civil Service.[1] As one who, by his own account, has *''long believed that the Gladstonian tradition of disinterested public service was the greatest single governing gift of the nineteenth to the twentieth century''*,[2] he takes the Northcote-Trevelyan Report of 1854 as his starting point. We also had occasion to consult the twenty-three pages of that report and noted how some of its assertions are still echoed in today's debate about the Civil Service:

> *It cannot be necessary to enter into any lengthened argument for the purpose of showing the high importance of the Permanent Civil Service of the country in the present day . . . It may be safely asserted that . . . the Government of the country could not be carried on without the aid of an efficient body of permanent officers, occupying a position duly subordinate to that of the Ministers . . . yet possessing sufficient independence, character, ability and experience to be able to advise, assist and, to some extent, influence, those who are from time to time set over them.*[3]

5.2 The reason for the Northcote-Trevelyan Report was the need to end a patronage system that had led to the appointment of *''men of a very slender ability and perhaps of questionable character to situations of considerable emolument''* in the Civil Service. Its main legacy was a regulated system of open recruitment based on selecting young men (between the ages of 19 and 25 was recommended) by public examination. The system was to be overseen by a body, created by an Order in Council, called the Civil Service Commission.

5.3 The other nineteenth-century legacy to the Civil Service was the principle of political impartiality – the notion of a permanent Civil Service able to transfer its loyalty (and its expertise) from one elected government to the next. Together with the evolution of rules for the control of public money and anti-corruption measures, the 'core values' of integrity, propriety, objectivity and appointment on merit were firmly established by the early twentieth century.

5.4 We were to hear more about these 'core values' as we took evidence. They were upheld in the *Modernising Government* White Paper, published in March 1999 which set out the Government's proposals on reforming the Civil Service.[4] But the passage in which they are contained makes it clear that they are not considered to be enough on their own:

> *And we must not jeopardise the public service values of impartiality, objectivity and integrity.* ***But*** *we need greater creativity, radical thinking and collaborative working. We must all . . . move away from the risk-averse culture inherent in government.*[5]

5.5 The Committee of Permanent Secretaries (now called the Civil Service Management Board), who carried forward the work on values for the whole Civil Service, have produced a

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[1] ''The British Civil Service: The Condition of Mr Gladstone's Legacy as the Century Turns'', Founder's Day Address, St Deiniol's Library, Hawarden Castle, 8 July 1999.

[2] Ibid.

[3] *Report on the Organisation of the Permanent Civil Service*, London 1854, p 3.

[4] *Modernising Government* White Paper, Cm 4310, March 1999.

[5] Ibid, p 55, emphasis added.

definitive statement of the vision and values.[6] Because of this work's concurrence with our own, we could not take account of it in our inquiry, but we understand that the traditional core values are included in the statement of vision and values and that the statement is intended to complement not supersede the Civil Service Code.

5.6 The Committee recognises the need for the Government to consider how the Civil Service, in line with most large institutions, should respond to a changing environment. We agree with Lord Burns when he said *''it is important that we do not attempt to put a ring-fence around the public sector and say that change should never happen''.*[7] It does not necessarily follow that core values established in the nineteenth and early twentieth centuries should be followed through to the twenty-first century. In our summary of the evidence that follows, we consider whether, and if so why, the traditional core values should be sustained and the effect of the Government's present programme of reform upon them.

The House of Lords Select Committee on the Public Service

5.7 The House of Lords Select Committee on the Public Service was appointed on 30 April 1996 under the chairmanship of the Rt Hon the Lord Slynn of Hadley *''to consider the present condition and future development of the Public Service in Great Britain with particular regard to the effectiveness of recent and continuing changes and their impact on standards of conduct and service in the public interest''*.[8]

5.8 For a number of reasons, the Select Committee did not issue its report until January 1998 and the debate on its recommendations took place in December 1998.[9] This delay meant that the evidence gathered by the Committee straddled the years in office of two Governments though many of the central issues were unaffected by the change. One particular part of the report is of key interest to us. The Committee invited evidence on the question: *''Is there a distinctive public service ethos; and if so what function does it serve, and where does it reside?''* It was a subject also addressed by many of the speakers in the December 1998 debate.

5.9 It is worth repeating one definition of 'public service ethos' that was offered to the Select Committee. Lord Armstrong of Ilminster, a former Cabinet Secretary, described it as

> *a portmanteau phrase which connotes not only the sense of and pride in serving the public and the public interest but also the qualities of integrity, of dispassionateness, of freedom from corruption, which have characterised and I believe continue to characterise our public services in this country.*[10]

5.10 The Select Committee also heard evidence that convinced them not only of the great importance of the Civil Service ethos, but also of its vulnerability. Lord Armstrong had added that it was *''a surprisingly hardy plant, but not indestructible. For those in charge of the public services, it is not enough to pay lip service to the public service ethos or take it for granted as something that will survive anything that is thrown at it.''*[11] Sir Christopher Foster and

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[6] Report to the Prime Minister by Sir Richard Wilson, Head of the Home Civil Service, Cabinet Office, December 1999.

[7] *Hansard* (HL) 3 December 1998, col 642.

[8] *Report of Select Committee on the Public Service*, HL Paper 55 (1997–98), p 11.

[9] *Hansard* (HL) 3 December 1998, cols 611–671.

[10] Written evidence quoted in the *Report of the Select Committee on the Public Service*, p 60, para 249.

[11] Ibid.

Mr Francis Plowden, in a joint submission to the Committee, drew attention to the importance of the Haldane principles of relations between Ministers and officials which helped to ensure propriety and probity.[12]

Core Values

5.11 In evidence to us, Professor Hennessy urged strongly that the preservation of the Civil Service core values was a matter of high importance. He alluded to *''the necessary schizophrenia of British political and public life at the centre whereby one distinguishes to the maximum degree possible what is political and what is governmental.''* Because of the difficulty of making such a distinction, he suggested that a permanent Civil Service was essential: *''The reason for tenured career civil servants . . . is that . . . under a constitution such as ours, which is largely without maps, one must have people who say 'This is not the proper procedure. This is short-cut time.' That requires people of considerable substance who have a sense of permanence. Ours is the last public service where that holds.''*[13]

5.12 We have frequent corroboration of this view from the many overseas visitors who meet the Committee and its Secretariat. As with many of our inheritances from the nineteenth century, we take for granted what many other countries are still trying to establish. It is easy to be complacent about the advantages that such long-held institutions offer. And it is easy to underestimate the damage that would follow if they were to be undermined.

5.13 Much of the debate centres on whether the Civil Service is at any one time in danger of being 'politicised', ie party politicised. Professor Hennessy acknowledged that direct or overt politicisation was *''extremely difficult to pin down''*. He suggested that it was more a matter of ensuring there were restraints against a tendency towards *''an unhealthy acquisition of over-mightiness at the centre''*. In his view, these restraints – *''the hosing-down mechanisms around the centre''* – were rather weak at the moment.[14]

5.14 Sir Richard Wilson drew attention to the different ways in which the word 'politicisation' can be interpreted:

- First, he suggested, the Civil Service is very politicised because it works in a political environment. He did not regard that as a problem at all.
- Secondly, there was the sort of politicisation that would occur if Ministers wished to interfere with the Northcote-Trevelyan approach of appointment on merit. He said that he would regard that as real politicisation and very serious and that it did not happen.
- Thirdly, there was the sort of politicisation encapsulated in the catch-phrase 'Is so and so one of us?' This, in his view, never related to Ministers asking about the party political view of civil servants. In his experience, *''that is always about whether so and so is somebody who will deliver what we want, whether they get up and make sure it happens''*.
- Fourthly, there would be politicisation if the Northcote-Trevelyan principle of a politically impartial service giving objective advice was altered to bring in on a large

[12] Ibid, p 61, para 254.
[13] Day 3 (am).
[14] Day 3 (am).

> scale a layer of people who would be political appointees to run the system. Categorically he said *''that has not happened''*.[15]

5.15 We agree that it is important to be clear as to what is meant by politicisation if a judgement is to be made as to whether such a phenomenon is occurring. Using Sir Richard's second, third and fourth interpretations, we examine the evidence that we have received on appointments, delivery of outcomes and the provision of impartial advice.

Appointments on Merit

5.16 The Civil Service Commissioners are the guardians of the principle of selection to the Civil Service being on merit on the basis of fair and open competition. Recruitment to the Senior Civil Service (SCS) requires their written approval before appointment can be made. In 1998-99 there were about 100 open competitions for SCS vacancies, of which 53 were chaired by the Commissioners. Recruitment below the SCS is the responsibility of departments, though they must follow the Commissioners' Recruitment Code and their practices are audited.[16]

5.17 The First Civil Service Commissioner, Sir Michael Bett, also has a personal role, not shared with the other Commissioners, of attending the Senior Appointments Selection Committee (SASC), which considers the basis on which senior appointments in the Home Civil Service are to be filled. He told us that in 1998-99, SASC considered appointments to 38 posts, of which nine were opened to outside competition. He had seen no need to date to comment to Ministers about the choice between internal appointment and open competition.

5.18 Sir Michael pointed out to us that *''for the past four years, under the previous government as well as this one, there has been pressure to bring people in from outside''*. Lord Waldegrave, who was Chancellor of the Duchy of Lancaster in the last Conservative government, confirmed this: *''When I was responsible for Civil Service reform at the time, under the Prime Minister, I was in favour of advertising the range of senior Civil Service jobs and the opening up of appointments to competition''.*[17] The *Stakeholder* magazine published a chart in September 1999 showing that of the 35 permanent secretaries, eight were from outside (or with substantial experience outside). However, it also showed that of the eight most recent appointments, three were not advertised and all were filled by an appointee whose background was a career in the Civil Service.[18]

5.19 The present Government has indicated that it wishes to accelerate the intake of people with other backgrounds and at various levels in the Civil Service. The *Modernising Government* White Paper states:

> *We will bring more people into the Civil Service from outside. We will hold more open recruitment competitions for people at various career stages. We will make greater use of short-term contracts. We will increase secondments to and from the public sector, the voluntary sector and the private sector.*[19]

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[15] Day 7 (am).

[16] Opening statement by Sir Michael Bett, First Civil Service Commissioner, Day 4 (am).

[17] Day 2 (am).

[18] *Stakeholder*, September 1999, pp 6–8.

[19] *Modernising Government* White Paper, p 61.

This suggests a considerable extension of previous practice that may result in significant changes to the composition of the Civil Service over the next few years.

5.20 The Committee understands the need to bring in people with special expertise from outside government and to refresh administrative methods with different experience from outside. Nevertheless the question remains of how the ethical values of the Civil Service are to be maintained if a substantial proportion of the appointments are made from sectors where different values may hold priority. We are conscious of sensitivities here. We agree with the former Cabinet Secretary, Lord Butler, that it would be insulting to suggest that business people are immoral and civil servants are moral and will be corrupted if people are brought in from business. He highlighted the real difference when he said:

> *Business men get used to worrying about the bottom line. Civil servants get used to worrying about equity of process. Both are necessary in modern government . . . It is possible to achieve a decent mixture of the two.*[20]

5.21 In reply to the point on maintaining the ethos of the Civil Service, the Rt Hon Dr Cunningham, the then Chancellor of the Duchy of Lancaster, told us:

> *It is not our intention that* [the ethos] *should suffer in any way at all . . . I think we can still say, happily, that throughout the world our Civil Service is renowned for its integrity, its impartiality, its honesty and its objectivity, and we do not intend to do anything that would undermine that ethos.*
>
> *In theory, of course, the ethos of any organisation must be vulnerable if it is neglected, undermined or deliberately worked against, but I do not see any evidence of that in respect of the Civil Service. I find the Civil Service robust. I think their favourite word for the situation is 'challenging'. It is our intention, as I have said, to do everything we can, while modernising it, to maintain its impartiality.*[21]

5.22 Yet there remain voices of caution. The Rt Hon David Davis MP, Chairman of the Public Accounts Committee and a Minister of State at the Foreign Office in the last Government, stressed the need to reinforce the sense of public service ethos in newly appointed staff. He saw less of a problem with secondments because of their temporary nature but drew attention to the potential problem with appointments on short-term contracts. In his view, the remedy lay in proper induction.

> *It should be a matter of course that they are given some degree of training as to what is expected of them. I do not suppose that people coming into the public service have read any of the Nolan or Sheldon reports . . . The Accounting Officer should . . . as part of his or her responsibilities, ensure in the early period that the standards that are required are understood not just in theory but in practice.*[22]

5.23 A similar point about induction was discussed at our hearings with Mr Mike Granatt, Head of Profession, Government Information and Communication Service (GICS), in the context of his description of the new foundation course that he had developed for information officers joining the GICS. He also explained how senior appointees to the GICS are met by him, briefed on their responsibilities and provided with written information. He said:

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[20] Day 5 (am).
[21] Day 2 (pm).
[22] Day 5 (am).

I don't think that in the past people have been greeted into the job in the way that I have suggested – because there has not been a need . . . But I think that you are right in suggesting that with a large turnover of people we have to take more care these days to make sure about it . . . The rules are there to make sure the business is done properly and effectively and swiftly. It is not there as a constraint in that sense. The constraint is to ensure that it is done properly. But it is not there to impede business.[23]

5.24 We agree strongly with the view that there is a balance to be struck between propriety and effectiveness. We were impressed by Mr Granatt's description of the induction processes devised for the GICS as being a practical step towards ensuring that the ethos of the public service is explained to appointees.

5.25 We believe that the Government will need to consider carefully how, in the context of widening the range of appointments, the public service ethos is to be sustained. One of the key ways this can be done is through good induction and training. This may sound mechanistic, but experience has shown that training plays a major part in delivering cultural change of the kind envisaged.

5.26 In our First Report, we recommended that *''there would be regular surveys in departments and agencies of the knowledge and understanding staff have of ethical standards which apply to them.''*[24] This recommendation has met with a disappointing response: to date, only four departments have conducted ethical surveys.

5.27 It may be that particular care and effort is required to make ethical issues seem relevant to staff. We do not propose to make detailed suggestions on this front. We note the creation of the Centre for Management and Policy Studies within the Cabinet Office, incorporating the Civil Service College.[25] The Centre will be reviewing its programme in the light of the decisions on the direction, purpose and values for the Civil Service that emanated from the Civil Service Management Board after its conference at Sunningdale in September 1999. Any such programme should include an element of training in ethical issues in the public sector for those appointed on secondments or on short-term contracts, both at middle management and Senior Civil Service levels.

R15. Permanent heads of department and heads of profession, in conjunction with the Centre for Management and Policy Studies, should ensure that there are training and induction opportunities for those appointed on secondments or on short-term contracts to middle management or senior civil service levels at which ethical issues within the public sector are examined.

Delivery of Outcomes

5.28 Governments place great emphasis on the delivery of responsive public services. The *Modernising Government* White Paper makes it clear that this emphasis also applies to the

[23] Day 3 (pm).

[24] First Report, Recommendation 28.

[25] The Director General of the Centre for Management and Policy Studies, Professor Ron Amann, was appointed in June 1999. From April 2000, the Civil Service College will cease to have separate agency status and will be brought within the structure of the CMPS.

delivery of policy outcomes. Every Permanent Secretary will be asked *''to ensure that their Department has the capacity to drive through achievement of the key government targets and to take a personal responsibility for ensuring that this happens''.*[26]

5.29 In the Action Plan for *Modernising Government*, published in July 1999, it is stated that *''the Government will ensure that Permanent Secretaries and Heads of Department have personal objectives, on which their performance will be assessed, for taking forward the Government's modernisation agenda and ensuring delivery of the Government's key targets.''* All Permanent Secretaries have now set relevant objectives.[27]

5.30 In our First Report, we expressed a particular concern that the impartiality of senior civil servants might be eroded by a perception that reward or promotion may depend on a commitment to ministerial ideology. The context for our concern at that time was the new performance pay arrangements. We recommended that they should be structured so as not to undermine political impartiality.

5.31 Sir Richard Wilson gave evidence to us as to how the arrangements for assessing the pay of Permanent Secretaries currently worked:

> *Every year at the beginning of the financial year each Permanent Secretary sets down on a piece of paper what he or she thinks their objectives should be for the year ahead, their personal objectives and they clear that with their Minister. So there are clear objectives for the purpose and the Cabinet Office is also involved in the process.*
>
> *At the end of the year, each Permanent Secretary then prepares a self assessment, that is to say an account of how in their own view they performed against those objectives. That account is then seen by the Minister who is invited, given an opportunity, to comment on it, though there is no requirement they should do so if they do not want to do so, and is then sent to me in the Cabinet Office. I submit it with all the Permanent Secretaries' papers together to the Committee which we have which is the Remuneration Committee. This Remuneration Committee which consists of myself, the Head of the Treasury and a number of outside experts sit down and work through these self-assessments and come to a view on what the salaries should be and come to a view on what recommendations should be made to the Prime Minister. The whole thing is then reported to the Prime Minister.*[28]

5.32 When asked if there had been any problems with the process, he said *''the whole process . . . is accepted by Permanent Secretaries. It has settled down remarkably well''.*

5.33 Although the current system does not seem to have thrown up the difficulties we foresaw in 1995, we are aware that a revision of the performance pay system is in train, following the *Modernising Government* White Paper and the Sunningdale Conference in September 1999. We understand that the new system for Permanent Secretaries' pay will include the following features:

- at the beginning of the year, Sir Richard Wilson will take the Prime Minister's mind on the proposed objectives before agreeing them with permanent heads of department/agencies;

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[26] *Modernising Government* White Paper, p 6.

[27] *Modernising Government* Action Plan, Cabinet Office, July 1999, p 20, para 58.

[28] Day 7 (am).

- one element in the objectives for each head of department/agency will be related to seeing through the *Modernising Government* White Paper reforms in their organisation;
- each department's business planning process, of which this forms part, will be supported by an element of external assessment, either by peer review (one Permanent Secretary scrutinising another's measures) or by external audit. This will introduce an element of independent validation.

5.34 We consider the principle of independent validation of performance measures to be an essential safeguard against any suspicion of politicisation arising from the *Modernising Government* White Paper proposals. We therefore welcome the proposals outlined above but given that they are still to be fully worked through, we think it necessary to re-state the need for continued vigilance in this area.

R16. The arrangements for validating the performance of permanent heads of department and agencies against their personal objectives need to be subject to further scrutiny but should be structured to allow for some element of independent validation so as not to undermine political impartiality.

The Provision of Impartial Advice

5.35 The Civil Service Code (set out in Appendix VII) spells out that *''civil servants should conduct themselves with integrity, impartiality and honesty. They should give honest and impartial advice . . . without fear or favour and make all information relevant to a decision available''*. The essence of sustaining such values is that civil servants must feel able to *''speak truth unto power''*, as Professor Peter Hennessy put it.[29] What this involves in practice was described by Lord Burns, the former Permanent Secretary of the Treasury, in the House of Lords debate on the Select Committee's Report:

> *The deal is that in return for the privilege of being involved in the policy debate and having a chance to put views – sometimes forcefully – officials will then do their best to make policies work and subsequently keep their personal views about the decision to themselves. The deal is that Ministers are willing to listen to advice even when it is uncomfortable and accept responsibility for the decisions they have taken.*[30]

5.36 The point was further elaborated in a leader in *The Times* of 31 August 1999:

> *Good policymaking does not ignore well-grounded objections or unpalatable facts . . . If the lesson that senior officials draw is that they risk penalties for telling the truth, they will take refuge in white lies . . . All governments need impartial professional advice.*[31]

5.37 The formal position on ministerial responsibility for respecting the advice of the Civil Service and upholding its impartiality is set out in the Ministerial Code:

> *Ministers have a duty to give fair consideration and due weight to informed and impartial advice from civil servants, as well as to other considerations and advice, in reaching*

[29] Day 3 (am).
[30] *Hansard* (HL) 3 December 1998, col 642.
[31] *The Times*, 31 August 1999.

policy decisions; a duty to uphold the political impartiality of the Civil Service, and not to ask civil servants to act in any way which would conflict with the Civil Service Code; a duty to ensure that influence over appointments is not abused for partisan purposes; and a duty to observe the obligations of a good employer with regard to terms and conditions of those who serve them. Civil servants should not be asked to engage in activities likely to call in question their political impartiality, or to give rise to the criticism that people paid from public funds are being used for Party political purposes.[32]

5.38 It seems to the Committee to be self-evident that nothing is more calculated to destroy a civil servant's willingness to give impartial advice than the perception that giving unwelcome advice may prejudice his or her career. In saying this we do, of course, recognise that once the civil servant has properly carried out the duty of giving impartial advice (perhaps translating facts which make unwelcome reading to Ministers) the ultimate decision is for the Minister. The civil servant would be wholly wrong at this point to continue with a rearguard action or even more reprehensibly, to leak information and thereby corrode ministerial confidence.

5.39 Dr Cunningham gave us a robust refutation of the suggestion that the political neutrality of the Civil Service has been affected and Sir Richard Wilson assured us that no dilution of the principle of impartiality has taken place. We note too that the Civil Service Unions, in their evidence, did not sound any warning bells on this issue.[33]

5.40 Nevertheless we recollect the warning of Lord Armstrong of Ilminster that the public service ethos while surprisingly hardy, is not indestructible (paragraph 5.10). We also agree with the House of Lords Select Committee that maintaining the esteem in which the public service is held is a major safeguard against any erosion of the ethos. In our view, the danger is not so much one of politicising the Civil Service, as marginalising its professional advice by bringing in a very significant proportion of external advice. Our consideration of the role of special advisers in Chapter 6 is relevant here.

5.41 We therefore welcome the undertaking given in the *Modernising Government* White Paper that *''we will value public service, not denigrate it''*.[34] Nevertheless it is necessary to consider if any further safeguards are required.

A Civil Service Act

5.42 The main safeguard that our witnesses mentioned was the provision of a statutory framework for the Civil Service. The debate about this concept is as old as the Northcote-Trevelyan Report itself, which concluded by recommending that the proposed Civil Service Commission should be put on a statutory footing.[35]

5.43 It did not happen in 1855 – instead the power to establish the Civil Service Commission was created by the Prerogative powers through an Order in Council – and it has not happened since. The regulation of the Civil Service continues to be primarily by Orders in Council, supplemented by the Civil Service Code (1996), the Civil Service Management Code

[32] The Ministerial Code, Cabinet Office, July 1997, para 56.

[33] Day 4 (pm).

[34] *Modernising Government* White Paper, p 7.

[35] *Report on the Organisation of the Permanent Civil Service*, p 23.

(1997)[36] and parts of the Ministerial Code. One result is that formal changes to the Civil Service are not subject to Parliamentary debate and receive little, if any, public debate.

5.44 There now appears to be a political consensus that a Civil Service Act of some kind is desirable. The Treasury and Civil Service Select Committee in its 1994 Report recommended one. It was not convinced of the case for a wide-ranging Act but believed *''there would be considerable value in a much narrower Statute, principally designed to provide statutory backing for the new mechanisms for maintaining the essential values of the Civil Service.''* The passage of such an Act, they commented, *''would reflect the interest of Parliament, as the representative of the electorate, in the preservation of the values of the Civil Service.*[37]

5.45 The Labour Party made a commitment to passing a Civil Service Act before the general election of 1997. This was contained in the Report of the Joint Consultative Committee on Constitutional Reform. The Joint Committee was set up in October 1996 in conjunction with the Liberal Democrats and issued its short Report just before the 1997 election. It states:

> *Both parties agree that there should be a Civil Service Act to give legal force to the Code which should be tightened up to underline the political neutrality of the Civil Service. It should also be reviewed in relation to other published authorities to clarify lines of Civil Service and ministerial accountability and responsibility.*[38]

5.46 There was no mention of a Civil Service Act in the Labour Party Manifesto[39] but since the general election, the Government has confirmed in its *Response to the House of Lords Select Committee on Public Service* in July 1998 that it planned to make statutory provision for the Code, when a suitable legislative opportunity arose.[40]

5.47 There is no reference to an Act in the *Modernising Government* White Paper but Dr Cunningham assured us that an Act was still the policy of the Government. When asked whether the Government was contemplating a Civil Service Act that would contain a schedule backing up the Civil Service Code and giving it statutory force, he replied:

> *That is right. That is a commitment, although I must say that so far no legislative time has been provided for it . . . What we would envisage in taking that forward is that . . . we try to build a consensus across the parties for it . . . so that whatever legislation was necessary could be introduced on a non-controversial basis . . . That is very much in our mind, but I cannot promise that it will be in the next legislative programme.*[41]

5.48 As the Civil Service Unions remarked, the Government's line on finding parliamentary time is *''a bit like 'next year in Jerusalem' ''*. They themselves envisage a *''fairly minimal Act''* but went on:

> *Giving the Code a statutory force is important in reinforcing the notion that the Civil Service is not just the property of the government at the time but is owned more generally by Parliament. It is an institution that is part of the British Constitution and it is*

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[36] Civil Service Management Code, Cabinet Office, 1997.

[37] Treasury and Civil Service Committee, *Report on the Role of the Civil Service*, HC 27–1 (1993–94), Recommendation 14 and para 116.

[38] The Labour Party, Report of the Joint Consultative Committee on Constitutional Reform (1997), para 84.

[39] The Labour Party, *New Labour, Because Britain Deserves Better* (1997).

[40] *The Government's Response to the Report from the House of Lords Select Committee on the Public Service*, Cm 4000, July 1998.

[41] Day 2 (pm).

important that it is treated in a way that develops broadly as much as possible by consensus.[42]

5.49 Old as the debate is, we consider that it has acquired fresh importance because of the radical reform of the Civil Service that this Government is pursuing. On any view, the Civil Service should be seen as not solely the property of the Government of the day but as a national asset. Other countries with systems similar to ours – for example Canada, Ireland, Australia and New Zealand – have legislated to put their public service structures and values on a statutory footing. As one academic analyst has pointed out: *''Almost all democracies have legislation of some sort or another, taking the view that as one of the great institutions of state, the Civil Service needs to be insulated against the vagaries and caprice of party faction, fad or prejudice.''*[43]

5.50 We do not comment here at length about the issues of scope and structure of an Act as we did not hear sufficient evidence to form a view. Such evidence as we heard was chiefly concerned with enshrining the Civil Service Code in statute and the need to ensure that the legislative structure should be flexible so that the Government could respond sufficiently quickly to changing circumstances. However, we are aware of academic analyses that suggest a far wider scope for a Civil Service Act. One suggestion is that such legislation should set out *''the duties and obligations of the Civil Service to Ministers, Parliament and the public''* and should also be used to clarify aspects of ministerial responsibility.[44] We ourselves make recommendations in Chapter 6 for some provisions concerning special advisers to be included in a Civil Service Act.

5.51 We accept that considerable consultation will have to be undertaken before the scope of an Act can be determined. What does concern us is that this programme of work has no proper timetable for implementation. We have already noted that the commitment to an Act does not form part of the *Modernising Government* White Paper and is not therefore to be found in the Action Plan nor Sir Richard Wilson's Report to the Prime Minister of December 1999. We regret that there appears to be no separate programme of work in progress on considering the scope of an Act or building the all-party consensus of which Dr Cunningham spoke.

5.52 There may be good reasons why work on an Act should take second place to the work currently in progress on the *Modernising Government* White Paper. If, for example, the values currently enshrined in the Civil Service Code are to be expanded to encompass the new ones under discussion, it may be sensible to hold back in the immediate future. However, in the modern Civil Service environment where government commitments, quite properly, are subject to a timetable, we find it disappointing that no target date has been given so far for putting the Code on a statutory footing.

5.53 Changes to the Civil Service's core values, its structure and its obligations should all be openly debated. We note that Sir Richard Wilson has called for a wide debate, including with Parliament, on the modernisation measures. We support this wholeheartedly but feel that this does not fully equate to the rigours of a Parliamentary debate on draft legislation. Nor does it provide the ongoing protection against subsequent change that Sir Michael Bett and

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[42] Day 4 (pm).

[43] N D Lewis, ''A Civil Service Act for the United Kingdom'', *Public Law* (Autumn 1998), pp 463–88.

[44] Ibid.

Professor Hennessy were advocating. We therefore recommend that the Government should treat the work required to honour its commitment to a Civil Service Act as a matter of urgency.

R17. A timetable for the implementation of the Government's commitment to a Civil Service Act should be produced as soon as possible. In particular a target date should be set for the process of consultation on the scope of such an Act.

SPECIAL ADVISERS

Background

6.1 Special advisers have been described by one commentator as *''no ordinary civil servants''.*[1] Technically, they are temporary civil servants, subject to the Civil Service Code. Yet there are key differences between special advisers and other officials. Unlike career civil servants, for whom impartiality and objectivity are key requirements, special advisers are usually politically partial and appointed without open competition to act as the party political 'voice' within a department. Their tenure lasts only as long as that of the appointing Minister or Government, giving them significantly less security than career officials.

6.2 The Ministerial Code sets out the role of special advisers in the following terms:

> *The employment of Special Advisers on the one hand adds a political dimension to the advice available to Ministers, and on the other provides Ministers with the direct advice of distinguished 'experts' in their professional field, while reinforcing the political impartiality of the permanent Civil Service by distinguishing the source of political advice and support.*[2]

6.3 Some special advisers are appointed for their technical expertise rather than their party political awareness: two current examples are members of the Council of Economic Advisers and the UK Anti-Drugs Co-ordinator. A number of special advisers are employed in briefing the media and in related tasks, while others are mainly engaged in advising ministers on policy matters.

6.4 Despite their (often) political nature, special advisers are paid from public funds. This apparent contradiction is explained in the Model Contract for special advisers published in May 1997:

> *they are employed to serve the objectives of the Government and the Department in which they work. It is this which justifies their being paid from public funds and being able to use public resources. The same principle also explains why their participation in party politics is carefully limited.*[3]

6.5 Special advisers or their equivalent are a long-established phenomenon in British public life, dating back at least to the temporary ministerial advisers appointed by Lloyd George when Prime Minister.[4] In 1968 the Fulton Report on the Civil Service noted the fact that Ministers had in recent years brought into government:

> *professional experts and advisers of their own . . . We welcome this practice as a means of bringing new men and ideas into the service of the State . . . We consider however that this practice should be put on to a regular and clearly understood basis.*[5]

6.6 It was Mr Harold Wilson who as Prime Minister in the 1970s moved to put the practice on such a basis. He laid down many of the parameters of today's system, authorising the appointment of 30 'political advisers' in 15 departments, including Number 10, in March

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[1] Mary Ann Sieghart: ''Lay off it girls: stick to real issues'', *The Times*, 11 November 1999.

[2] Ministerial Code (July 1997) para 48.

[3] Model Contract for Special Advisers (1997), Schedule 1 (Part 1).

[4] Peter Hennessy, *Whitehall* (London: Secker and Warburg, 1989), p 66.

[5] *The Civil Service,* Cmnd 3638 (1968) vol 1, p 45.

1974. In a 1975 speech to the Heads of Commonwealth Governments, he said: *''the political adviser is an extra pair of hands, ears and eyes and a mind more politically committed and more politically aware than would be available to a Minister from the political neutrals in the established Civil Service''.*[6]

6.7 The number of special advisers did not vary much for about 20 years. At the beginning of 1997, there were 38 in Government. However, the number in December 1999 stood at 74. Taking the position at Number 10 alone, the respective increase has been from eight special advisers to 25 (including one unpaid special adviser).[7]

6.8 The paybill for special advisers has accordingly risen in the last four years, as illustrated below:

Year	Paybill
1996–1997	£1.8 million
1997–1998	£2.6 million
1998–1999	£3.5 million
1999–2000	£3.9 million (estimate)[8]

The Framework for the Activities of Special Advisers.

6.9 There are four kinds of document that set the framework within which special advisers operate:

- The Ministerial Code
- Orders in Council
- The Model Contract for Special Advisers
- The Civil Service Code

6.10 The present general arrangements for appointing special advisers are set out in the Ministerial Code. Having outlined the thinking behind the appointment of special advisers (see paragraph 6.2 above) the code continues:

> *Cabinet Ministers may each appoint up to two Special Advisers ('political' or 'expert'). All appointments require the prior written approval of the Prime Minister, and no commitments to make such appointments should be entered into in the absence of such approval. All such appointments should be made, and all Special Advisers should operate, in accordance with the terms and conditions of the Model Contract promulgated by the Prime Minister on 19 May 1997.*

6.11 The number of special advisers varies from department to department. On one hand, there are some Cabinet Ministers with only one special adviser but, on the other hand, 25 special advisers have been appointed by the Prime Minister to Number 10. The precise application of the Code to the Prime Minister is not entirely apparent: as the Code is addressed by the Prime Minister to his ministerial colleagues, it is not clear whether it can be

[6] Harold Wilson, *The Governance of Britain* (London: Weidenfeld and Nicolson and Michael Joseph, 1976), p 203.
[7] Cabinet Office figures.
[8] Ibid.

used to regulate the number of special advisers appointed to his office. At a recent count five Cabinet Ministers employed more than two special advisers – the Deputy Prime Minister had four, including two who worked part-time; the Chancellor of the Exchequer had four including three members of the Council of Economic Advisers; the Secretary of State for Education and Employment employed four, including two who worked part-time; the Minister for the Cabinet Office had four including the UK Anti-Drugs Co-ordinator and his deputy; and the Secretary of State for Scotland had appointed three, including one who was unpaid and part-time.

6.12 Under an amended Order in Council,[9] executive powers over civil servants can be given to up to three special advisers, all at Number 10. (In practice this power has been conferred on only two individuals, Mr Alastair Campbell, the Chief Press Secretary, and Mr Jonathan Powell, the Chief of Staff.) We discuss this issue further in paragraphs 6.55–6.57.

6.13 A further amendment in 1999[10] allowed for up to 12 special advisers to be appointed by members of the Scottish Executive and up to four by a Welsh Assembly Secretary. Of these, nine have been appointed in Scotland and four in Wales.

6.14 The Model Contract was established in May 1997 as the basis for the employment of special advisers, superseding the previous system by which special advisers received only letters of appointment.

6.15 The Model Contract is a pro forma, setting out the terms of the contract which is drawn up between the adviser and the department (although it is the appointing Minister whose name is on the face of the contract). Two elements in the contract recognise the particular situation of special advisers: there is no requirement for them to be appointed on merit through competition; and their contracts terminate with the end of the Government or the departure of the appointing Minister. The contract also sets out the requirement for the special adviser to adhere to certain parts of the Civil Service Code.

6.16 Schedule 1(1) to the Model Contract (set out in Appendix VIII) indicates what a special adviser *''may or may not do''*. The Schedule says that *''Special Advisers are appointed to advise the Minister in the development of Government policy and its effective presentation''*. Apart from the three possible posts in Number 10 (see paragraph 6.12 above), special advisers are employed *''for the purpose only of providing advice to any Minister''*, and have no executive powers over civil servants – that is to say they do not have permanent civil servants working directly for them (apart from providing assistance through the Minister's office).

6.17 Schedule 1(1) also contains a list of duties. The list includes activity which brings the expertise of special advisers to bear on policy development as well as some background work to support the presentation of policy, including *''encouraging presentational activities by the Party which contribute to the Government's and Department's objectives''.*

6.18 In many departments where there are two special advisers, one adviser tends to concentrate on policy issues and the other on presentational issues. The role of the latter may include direct briefing of the media as well as advice to the Minister – although there is

[9] Civil Service (Amendment) Order in Council 1997.

[10] Civil Service (Amendment) Order in Council 1999.

no specific reference to direct media briefing in the Model Contract. In other departments special advisers have little contact with the media. In practice, the pro-forma Model Contract is tailored to individual special advisers, so individual contracts may contain variations. We examine the implications of this below (paragraph 6.60).

6.19 Special advisers must, according to section 14 of the Model Contract, adhere to the Civil Service Code (which is set out in Appendix VII), except for those aspects of it that relate to the impartiality and objectivity of the Civil Service, and a passage that relates to working with a future Administration and future Ministers. Therefore, although in the Civil Service Code it is stated that: *''the constitutional and practical role of the Civil Service is, with integrity, honesty, impartiality and objectivity, to assist the duly constituted Government of the United Kingdom, the Scottish Executive or the National Assembly for Wales''*, special advisers are not required to observe the requirements for impartiality and objectivity (though clearly there is no relaxation as regards the overriding obligation to act with honesty and integrity). Any disciplinary action under this Code would be a matter for the department, and would be the responsibility of the permanent head of the department.

The Committee's Remit with Regard to Special Advisers

6.20 We considered carefully the nature of this Committee's remit with regard to special advisers. Firstly, it is clear that advisers are civil servants, paid from the public purse, and as such the Seven Principles of Public Life, as set out by this Committee, apply to them.

6.21 We have examined the evidence in the context of two of the Principles: Objectivity and Accountability. We define the Objectivity principle in the following way: *''In carrying out public business . . . holders of public office should make choices on merit''*.[11] As we have set out above, however, special advisers are specifically exempt from the requirement to act with impartiality and objectivity, so that they may make choices based (if necessary) on political considerations.

6.22 We believe that special advisers have a valuable role to play, precisely because they are free to act and advise in a way that a politically impartial civil servant cannot. There is the argument, however, that if the numbers of this type of public servant, and their degree of influence, rise to a point where the influence of the 'objective' public servants is outweighed, the effectiveness of the principle of objectivity in public life is diminished. Our examination of this question is thus complementary to our examination in Chapter 5 of whether the role of a strong and impartial Civil Service is, or is perceived to be, in the process of being diminished.

6.23 The other Principle at issue is Accountability. We define this Principle in the following way: *''Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.''*[12] We consider below how the framework regulating special advisers could be improved to promote the accountability of individual special advisers.

6.24 But there is also the question of the Government's own accountability for the employment of special advisers. It has long been recognised that Parliament has a role in scrutinising the Executive's use of public money in funding the machinery of government. The

[11] See text reproduced at the beginning of this report.

[12] See text reproduced at the beginning of this report.

number of Ministers paid from the public purse is, for example, limited by Parliament through the Ministerial and other Salaries Act 1975.

6.25 Special advisers are directly appointed by Ministers and the principle of linking their numbers to those of Ministers was recognised by the Prime Minister when the 'two-per-Cabinet-Minister' formula was promulgated in the Ministerial Code in July 1997 (see para 6.10). The principle of a limit has been further recognised by the Order in Council stipulating the numbers that can be appointed by members of the Scottish Executive and or Assembly Secretaries in Wales (see paragraph 6.13). We consider below, in paragraphs 6.45–6.54, what are the implications of these precedents.

Evidence on Special Advisers

6.26 We now turn to the issues raised by the evidence we received. Almost all witnesses made clear their view that special advisers were valuable components of the machinery of Government. Mr Peter Riddell, Assistant Editor of *The Times*, told us that he was *''strongly in favour of political advisers, because I think that, properly deployed, they can bridge the gap, particularly with the current style of Government, between the civil servant and the Minister''*.[13]

6.27 The Association of First Division Civil Servants (FDA), which represents both special advisers and permanent civil servants, supported the system as being *''in general of benefit to the public service and public administration''*. The FDA said that special advisers *''performing their job effectively and reflecting the views of their Minister can assist greatly in the smooth working of a department in their liaison with civil servants''*.[14]

6.28 The Head of Profession of the Government Information and Communication Service (GICS), Mr Mike Granatt, set out the value of a good working relationship between special advisers and Civil Service press officers. He described special advisers as *''an essential part of the system''*, and continued *''I personally welcome a competent special adviser . . . It does actually take a considerable burden off the Head of Information in the sense that otherwise you are asked questions which you cannot answer''*.[15]

6.29 Several witnesses, however, sounded warning notes about the number or role of special advisers. Professor Anthony King said:

> *There are simply far more of them than before. Secondly, some of them have far more authority or wield far more authority than their predecessors . . . That being so it seems, to use a North American expression, that the neither hog, dog nor mutton status that they have historically enjoyed is no longer appropriate. Whether one is Sir Richard Wilson or a member of the Neill Committee, one needs to think a little bit about what the role of those people ought to be, constitutionally and governmentally; and also about the rules that ought to apply to them.*[16]

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[13] Day 1 (pm).
[14] Written evidence (17/17).
[15] Day 3 (pm).
[16] Day 1 (am).

6.30 Mr Riddell said:

> *I do not think we should get over-excited about the growth in advisers. We are nothing like the American standard. But I think there is a need for disclosure about their position, role, also the taking on of outside appointments.*[17]

6.31 Sir George Young Bt MP, Shadow Leader of the House of Commons, said: *''I think you do reach a point when the numbers of special advisers reach a level where you do begin to change the nature of the debate and the way a Civil Service department operates – if the special advisers became, as it were, the dominant influence on the Minister rather than the civil servants.''*[18]

6.32 Other concerns centred on whether the present framework of control, set out in paragraphs 6.9 to 6.19 above, was effective. Because of the dual nature of a special adviser as a personal, political appointee of a Minister but subject also to control by the Permanent Secretary through adherence to the Civil Service Code, the lines of accountability and ownership can appear less than clear. A representative from the FDA, for instance, said:

> *It might well be that . . .* [the Neill] *Committee, a very respected Committee, above the day-to-day political fray, might be able to reach a consensus about what is appropriate and how these issues are tackled. Because at the moment nobody else appears to have any sense of ownership of how the matters are dealt with. I know that Sir Richard Wilson clearly has some role but the decisions are by and large political ones.*[19]

6.33 Some commentators have discerned a new approach by the Government, suggesting that special advisers are being used to overcome what is claimed to be the drag in the system created by the Northcote-Trevelyan inheritance. These accounts have emphasised that special advisers were seen as playing a very influential role, because of Ministers' reliance upon them for ensuring the delivery of Manifesto promises and the effective communication of Government policy.

6.34 The link between an enhanced role for special advisers and the increase in their numbers appeared frequently in the evidence to us. It was suggested, for example, that the substantial increase in their numbers since May 1997, particularly at Number 10, amounts to a politicisation of the process of government and an undesirable reduction in the position of the impartial Civil Service. Professor Peter Hennessy of Queen Mary and Westfield College London said:

> *any signs of professional detachment on the part of career civil servants can all too easily be interpreted as 'not-one-of-usery' by the evangelists of the Blair project who, not surprisingly, fill the considerable number of special adviser posts in the various parts of the extended Number 10 . . . Two bodies, in particular, need to keep a watch on any potential Blairising of the top reaches of career Whitehall – the House of Commons Select Committee on Public Administration and the Committee on Standards in Public Life.*[20]

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[17] Day 1 (pm).

[18] Day 6 (am).

[19] Day 4 (pm).

[20] ''The British Civil Service: The condition of Mr Gladstone's Legacy as the Century Turns'', Founder's Day Address given at St Deiniol's Library, Hawarden Castle, 8 July 1999.

6.35 Lord Butler of Brockwell, former Cabinet Secretary, told us that there were sound reasons why Ministers appointed special advisers:

> *I took the view that it was not reasonable to ask people who had worked extremely closely with some advisers, on whom they relied to a considerable extent reasonably and rightly, to have that support completely removed from them when they came to office. I also comforted myself by the knowledge that in the end, the odds are stacked in favour of the Civil Service.*
>
> *There comes a time when a special adviser or special advisers want to move on while the Government are in office. By that time, the Minister knows the civil servants but does not know the replacement special adviser. In some senses, it is an initial problem of government. There is always likely to be more concern about it at the beginning of a government than subsequently. I do not feel that the proportion of special advisers presents any permanent threat to the political impartiality of the Civil Service.*[21]

6.36 His view was firmly endorsed by the present Cabinet Secretary, Sir Richard Wilson. When asked whether the increase in special advisers amounted to *''creeping politicisation''*, he said:

> *The number of advisers in the 1970s was roughly three dozen and is now roughly double that, around 72. It is certainly true that there are more political advisers in this Government than there were in the last Government. The biggest increase is in Number 10 where the Government made it clear before they came office that they would want to have a strong centre. The purpose of setting up the various policy units and the communications unit is to provide just that kind of strong centre.*
>
> *In departments there is an increase in the number, taking all departments together. Quite a lot of departments though have roughly the same or even in one or two cases fewer political advisers than they had. My short answer to your question on that is that I do not think the Senior Civil Service of 3,700 people is in danger of being swamped by 70 special advisers. That is not what is happening and I do not see it as creeping politicisation.*[22]

6.37 While it was suggested that we should concentrate on the role, rather than the numbers, of special advisers, the two are in our view inextricably linked. To argue about quantum alone is to miss the point about probity. The critical questions are: What is the role of the special adviser in any given instance? How influential with the Minister is the special adviser? Does he or she effectively control access to the Minister and act as the gate-keeper? Is the voice of the special adviser being given such prominence that the voice of the impartial civil servant is being lost? Sir George Young Bt MP drew the link between role and numbers in his evidence:

> *If you are a Minister having a meeting with, say, five civil servants and there is one special adviser there, the terms of trade are really between you and the civil servants and the special adviser sits in. The moment you start to create a sort of court around*

[21] Day 5 (am).
[22] Day 7 (am).

> *you and I think there are signs of that happening in the Treasury, then the terms of trade between the Minister and the civil servants begin to change . . .*[23]

6.38 Lord Butler made a similar point: *''What I would worry about is if special advisers took over the Private Office – in other words if they became the 'cabinet' and a curtain between the Minister and the Department. That would be bad for the running of the Department and for the Minister. I have always advised against that.''*[24]

6.39 We turn now to the suggestions that were made for more effective control of the way in which special advisers are appointed and managed.

Payment for Special Advisers out of Party Funds Alone

6.40 The most radical proposal for changing the position of special advisers was that of withdrawing public funding from at least some special advisers and requiring them to be paid from party funds. Mr Andrew Tyrie MP said *''advisers such as Alastair Campbell who are doing a large amount of explicitly party political work, should henceforth be paid from party funds''*.[25] Sir Bernard Ingham, who was Chief Press Secretary to Baroness Thatcher when she was Prime Minister, told us:

> *A number of special or political advisers, however they may be described, have been and are directly employed on political media management, whereas previously that job was performed by Parliamentary Private Secretaries . . . It is open to argument whether special or political advisers performing that role should be paid by the taxpayer.*[26]

6.41 There are a number of arguments **in favour of** paying special advisers exclusively out of party funds. Unlike other civil servants, special advisers are not appointed by any form of competition; it could be said to be inappropriate that they, as personal appointments by Ministers, should receive payment from the public purse (though it should also be emphasised that special advisers lack the security of tenure enjoyed by most civil servants). Payment out of party funds would clarify their role it might be said and bring them out of the 'grey area' that they allegedly occupy, as temporary civil servants providing advice on party political issues. They would be seen as being in the same category as other outside advisers to Ministers.

6.42 The major argument **against** such a change is the key role such advisers play in providing Ministers and departments with credible advice concerning the political impact of departmental policies, and in lending assistance in ensuring that policies are implemented. To be effective, such work requires access to the staff and facilities of a department, and should make a contribution to the achievement of departmental objectives. By bringing the special adviser into the department, some control is also exerted over their activities, by requiring their adherence to the Model Contract and parts of the Civil Service Code.

6.43 The second argument concerns 'Short money', which is the public finance provided for opposition parties to enable them to fulfil their Parliamentary duties more effectively. Were public sector status for these posts to be withdrawn, a party in Government might seek to

[23] Day 6 (am).
[24] Day 5 (am).
[25] Day 2 (pm).
[26] Day 4 (am).

have such work funded through what might be claimed to be the equivalent of 'Short money'. Sir George Young, in arguing against the ending of public funding, said:

> *the parties simply have not got the resources to pay for 76* [special advisers]*; certainly my party has not. So we would be back to where we started with the Neill Committee looking at Short money to assist them to pay for special advisers . . .*[27]

6.44 We agree with the arguments for retaining public funding. We believe that advice on the political implications of policy is a necessary and proper component of the service to Ministers and that it is therefore appropriate that special advisers should continue to be paid out of public funds.

Setting a Limit on Numbers

6.45 The general effect of the evidence we heard was not that the present number of special advisers was unacceptable but that there was no mechanism for debating or controlling any further increase. The FDA believed that it was a *''pretty reasonable''* convention for each Cabinet Minister to have two special advisers. Their representative continued *''Whether two is the right number or whether three is the right number – it is debatable. I think if you went for higher numbers that you would be into a 'cabinet' system which would be quite a different way of working which would need debate.''* It was thought that a consensus could be reached between the parties as to the overall numbers of political special advisers. Once a limit had been agreed, it was suggested that further posts should be filled by open competition. The FDA emphasised that they were not critical of the present number, or of individuals, but were interested in preserving the ethos of open competition: *''the point is to raise these things while it is still a small number rather than seeing a continued and unchecked growth . . . At what point do you say 30 is appropriate but not 70, or not a Prime Minister's office of 200 filled by special advisers?''*[28]

6.46 Lord Butler said that concerns about the influence of special advisers on the impartiality of the Civil Service were *''in some senses . . . an initial problem of government''*. We do not agree, as least as far as growth in numbers is concerned. The number of special advisers at Number 10 has continued to increase. Lord Butler was, however, referring to the over-reliance by Ministers on their advisers from Opposition days and we agree that the passage of time should help to establish greater trust between Ministers, special advisers and civil servants. Nevertheless, he did agree that there might indeed come a point where a ceiling on numbers was desirable. He did not feel that that stage had arrived but made an interesting observation on the mechanism that could be used if it did. In answer to the question whether a ceiling on numbers would be a desirable development, he said that it would:

> *if one is tending to excess . . . I do not think that we are tending towards excess at the moment. One of the merits of a Civil Service Act is that one could provide protection of that sort, or it could be done by agreement.*[29]

6.47 As noted in paragraphs 6.10–6.13, there are already controls on numbers, distributed across a range of documents from the Ministerial Code to various Orders in Council. A strict interpretation of these controls would suggest that they are not always observed: for

[27] Day 6 (am).
[28] Day 4 (pm).
[29] Day 5 (am).

example, the Ministerial Code limits each Cabinet Minister (without mentioning any exception) to two special advisers, yet the numbers in several departments exceed that figure, as is apparent from the statistics in paragraph 6.11. For many years, under Governments of both parties, the figure in the Prime Minister's Office has also exceeded two. Thus the Ministerial Code has its limitations as an instrument of control.

6.48 The arguments **against** controls on the overall numbers of special advisers include the following:

- Governments should be allowed the flexibility to appoint the number of special advisers they feel to be appropriate, especially as the task of government becomes more complex and demanding. Future needs and developments cannot be foreseen. This Government in particular has made no secret of its view that a stronger centre is necessary to co-ordinate the activities of all departments, and that outsiders should be brought in to fill some posts. In these rapidly changing circumstances, it might be difficult to see how any specific limit could be placed on the amount of personal and political advice available to Ministers.
- Any numerical restriction could have the effect of encouraging Ministers to dispense with good expert advice. In the reality of the political world, the setting of a quota is likely to encourage any Government to fill that quota largely with political advisers, thereby squeezing out those with a purely expert role.

6.49 The arguments **for** controls on numbers include the following:

- The Government has already set limits through the Ministerial Code and an Order in Council on the numbers of special advisers who can serve the Scottish and Welsh administrations (see paragraph 6.13 above). There are therefore precedents for imposing a ceiling. A precedent for parliamentary scrutiny in a closely related area is to be found in the Ministerial and other Salaries Act 1975, which imposes a limit on the number of Ministers whose salaries can be paid from the public purse.
- Concentration is important. The considerable increase in numbers, particularly at Number 10 where influential roles are played by special advisers (even those without executive powers), raises the question of whether their authority outweighs that of objective advisers.
- Any further growth in numbers would raise questions about a move towards the establishment of a 'cabinet' system within departments.

6.50 A ceiling on overall costs, rather than numbers, of special advisers has also been suggested. But it could lead to a tendency to regrade posts and pay more advisers less – which would not enhance control or quality. We are not attracted to this suggestion.

6.51 The Ministerial Code already sets a limit on the number of special advisers which is being exceeded in some cases. The Code is an important document in making clear to Ministers the rules by which they should work. Although it is not for this committee to say whether the present number of special advisers is correct, or should be higher or lower, we believe the Code should accurately state the present position. We recommend that it should be amended accordingly.

R18. The Ministerial Code should be amended to reflect the fact that in certain circumstances more than two special advisers per Cabinet Minister may be appointed. The Prime Minister may wish to set out in the Code the criteria which should be applied if the limit is to be exceeded.

6.52 We believe, however, that additional provisions are needed. We have already noted in paragraph 6.11 that there are uncertainties about the applicability of the Code to the Prime Minister's Office. More importantly, we believe that a degree of Parliamentary scrutiny should be brought into the process. As explained above, there is already the precedent set by the Ministerial and other Salaries Act 1975. Although the Scottish and Welsh limits have been set by Order in Council, this mechanism does not allow for Parliamentary debate.

6.53 We therefore believe that a limit on the numbers of special advisers should be included in the proposed Civil Service Act (see Chapter 5). Any future statutory limit would need to be in a sufficiently flexible form to allow the Government to seek a variation when necessary, subject to approval by affirmative resolution. We emphasise that we are not calling for any particular numerical limit, only that such a limit should be set, and that there should be a mechanism whereby Parliament's role in holding the Executive to account can be exercised.

6.54 Given that the enactment of Civil Service legislation will not come immediately, we suggest that interim arrangements should be made for Parliamentary debate.

R19. The proposed Civil Service Act should contain a provision limiting the total number of special advisers that can be appointed within Government. Any increase beyond that figure should be made subject to affirmative resolution of both Houses of Parliament.

R20. Pending the enactment of the Civil Service Act, the Government should put before both Houses of Parliament for debate a limit on the total number of special advisers that can be appointed within Government.

Numbers of Special Advisers with Executive Powers

6.55 Some witnesses saw potential difficulties in giving special advisers executive powers over civil servants. In general, however, it was felt that the current situation, where there are three possible posts with these powers in Number 10, was acceptable, although Mr David Davis MP, Chairman of the House of Commons Public Accounts Committee, believed that the power to give directions to career civil servants *''can exert significant influence over access to the Prime Minister . . . Control of access has led to scandals in other countries and the implications of that development need to be looked at carefully''*.[30]

6.56 Lord Butler explained that the change to the Order in Council which had enabled the three posts at Number 10 to be created was to some extent a technicality: *''The way in*

[30] Day 5 (am).

which the Order in Council had been drawn up in the 1980s made us doubtful whether a special adviser could do the things required of a Chief Press Secretary. We wanted to make clear that they were not debarred.''[31] Witnesses in general were opposed to an increase in the numbers of special advisers with executive powers. The Rt Hon Dr Jack Cunningham MP, then Minister for the Cabinet Office and Chancellor of the Duchy of Lancaster, for example, said *''I know of no proposal – none at all – that* [giving special advisers executive powers] *should become a common practice, nor do I think it would be a good idea to propose that it should be a common practice.''*[32] Sir Michael Bett, the First Civil Service Commissioner, said: *''If the number went beyond three, I would, of course, be concerned.''* Asked what would be the reason for his concern, he said *''A creeping change in the nature of the Civil Service in this country''*.[33]

6.57 Although we had no testimony to the effect that the exercise of executive powers by special advisers at Number 10 was causing problems at the moment (and evidence from the Head of the GICS that it was working well), we are concerned to ensure that any increase is considered by Parliament.

> ***R21. Any increase in the number of special advisers with executive powers should be subject to the same process of Parliamentary scrutiny as set out in recommendations R19 and R20 for the overall number of special advisers.***

The Regulatory Framework – A Need for Change

6.58 We now turn to a detailed consideration of the practicalities of the regulatory framework for the activities of special advisers. As noted in paragraph 6.9 above, the main elements of this framework are contained in the published Model Contract and application of certain aspects of the Civil Service Code. This arrangement was put in place by the Government after the May 1997 general election, and represented a useful advance on previous informal arrangements for the employment of special advisers. The question for the Committee is whether these moves towards greater clarity and wider availability of information have gone far enough.

6.59 One of the Committee's Principles of Public Life is particularly at issue in this case: that of Accountability. This principle would seem to require that there should be a document or documents against which the public, and those who are responsible for maintaining propriety, can measure conduct. MPs have their own code of conduct, as do Ministers and civil servants. These promote accountability by setting out clearly the standards expected of their public office-holders. We considered whether the framework for the activities of special advisers promotes accountability in the same way.

6.60 Although the Model Contract sets out the parameters for the role of special advisers, and Lord Butler told us that it was *''actually meant to provide a code''*, it does not meet in full the requirements for accountability. Special advisers are employed according to individual contracts which are personal to the advisers themselves; only on rare occasions are these

[31] Day 5 (am).
[32] Day 2 (pm).
[33] Day 4 (am).

documents made public. It is understood that there are variations from the Model Contract in the individual contracts of a number of special advisers, but there is no way of confirming whether these variations are minor or substantial. Thus there is no single public point of reference for anyone seeking to hold a special adviser to account.

6.61 In trying to set out (in Schedule 1 (1)) the detailed ways in which special advisers do their work, the Model Contract risks losing credibility. For instance, the list of tasks makes no reference to briefing of the media, which, for a number of special advisers, is an important part of their work. As Sir Richard Wilson told us, *''not just under this Government, but under previous governments in my experience, political advisers have spoken to and briefed the media''*. It could be argued that this omission from the list of possible special advisers' duties undermines the authority of the Model Contract, and that the position needs to be regularised to prevent any accusation that advisers are engaging in activities which go beyond their contracts.

6.62 As already noted in paragraph 6.19, special advisers are not required to observe the Civil Service Code in respect of the very important elements of impartiality and objectivity. The relevance of the code in this case must be diminished when such central principles are excluded from its application.

6.63 In addition, the usefulness of the present regulatory framework for special advisers is diminished by its complexity; a Model Contract which is a mix of broad principle and lists of specific tasks is supplemented by the application of parts of a code originally intended for career civil servants. On grounds of clarity, a case can be made for these two documents to be replaced by a single code, applicable to all special advisers and encapsulating the main principles of their employment. We discuss below the question whether such a code should be established.

Simplifying the System: A Separate Code for Special Advisers

6.64 Some of the arguments in favour of a special code were put by Professor Peter Hennessy, who advocated a short document that could be attached as a schedule to a Civil Service Act. He said:

> *the hosing-down mechanisms around the centre are all rather weak at the moment. That means there is an ever-greater role for Ministerial and Civil Service Codes, and, I would say, a special adviser code. They do not solve the problem but they make people think twice.*[34]

6.65 The FDA told us that they felt a separate code for special advisers would be helpful and more appropriate than trying to amend the Civil Service Code, while Professor Anthony King remarked that some special advisers:

> *are playing roles, especially at Number 10, that special advisers have not played in the past. That being so, it seems to me that it is time to create a new regime, to cover that special category of public servant. In my view, that new regime should cover not merely their pay and rations – their strictly contractual conditions of service – but also their conduct.*[35]

[34] Day 3 (am).

[35] Day 1 (am).

6.66 Sir George Young Bt MP supported the use of a separate code:

> *I do not think you can go on using the Civil Service Code to cover them. They are appointed in a different way, they do not go through the normal process, their appointment comes to an end in a totally different way from civil servants, and they are allowed to do things that civil servants are not allowed to do . . . I think it would be better to have a code for special advisers that recognised their different role within the Civil Service, which had some arrangements for enforcement.*[36]

6.67 On the other hand, Dr Jack Cunningham MP was unconvinced of the need for a separate code for special advisers. He judged: *''It is not clear to me why a separate code is necessary, given that their contracts are clear and their roles and responsibilities are clear.''*[37]

6.68 The arguments **in favour of retaining the present system** include the danger that a new code could create further bureaucracy. There are many codes which relate to the work of departments, and that burden should only be increased for the most convincing of reasons. The current documents also contain many of the main principles for the conduct of public servants: the Model Contract clearly states the important principle that special advisers are civil servants and are covered by all relevant sections of the Civil Service Code for any disciplinary action, and the Civil Service Code itself is a clear summary of what publicly-funded officials should do.

6.69 Arguments **in favour of a single consolidated code** include:

- The current group of special advisers is different in nature from previous ones. An unprecedented range of senior posts are currently held by special advisers; these include the Chief of Staff and Chief Press Secretary to the Prime Minister, as well as the Chief Economic Adviser to the Treasury. We have already noted the numbers employed by other Cabinet Ministers. It could be argued that the development of this strengthened group requires that they be covered by a special code which reflects their new roles and greater concentration in influential posts at the centre of government.
- The Ministerial Code states that one of the beneficial functions of special advisers is *''reinforcing the political impartiality of the permanent Civil Service by distinguishing the source of political advice and support''*. A special code for special advisers could strengthen that reinforcement by setting out the precise and appropriate rules.
- A new, specialised code would put special advisers in the same position as Ministers and civil servants with a clear, credible and explicit set of principles, drafted to guide them in their complex roles.
- Attempting to make the Model Contract act as a code as well as a detailed recital of special advisers' tasks means that it is not effective as either. It would be simpler to focus on the setting out of principles, leaving the listing of specific tasks to individual contracts.

[36] Day 6 (am).
[37] Day 2 (pm).

6.70 Having weighed these arguments, we conclude that the Model Contract and the Civil Service Code do not set out with sufficient clarity the specific obligations of special advisers. In the interests of accountability, there needs to be a single code that guides special advisers and sets out for their departments and the wider public the rules that they should observe. We believe that the code should emphasise general principles and replace both the Model Contract and the use of the Civil Service Code. Special advisers would then be given individual contracts that in each case stipulated that they should observe the special advisers' code.

6.71 We emphasise that the code should embody familiar principles for the proper conduct of civil servants, although adapted to the special situation of special advisers. It should be a consolidation of provisions found elsewhere, clearly setting out their application to the work of these advisers. We do not believe it is necessary to create a wide range of new obligations.

6.72 However, one specific omission needs to be corrected when the new code is drawn up. There is no reference, in either the Civil Service Code or the Model Contract, to any duty on special advisers to refrain from asking civil servants to act in ways which threaten the impartiality of those civil servants. Ministers are obliged to refrain from such action under paragraph 56 of the Ministerial Code (see paragraph 5.37 above): special advisers should be required to observe similar restraint.

6.73 In drawing up the new code, the Government should also ensure that attention is given to the need for greater clarity in the relationship between special advisers who brief the press and Civil Service information staff. Note should be taken of the Guidance on the Work of the Government Information Service, published in July 1997, which refers to the role of departmental heads of information and permanent secretaries or their equivalents in ensuring propriety in information work.[38]

6.74 We also believe that the new code should be given equivalent status to the Civil Service Code by being subject to debate in Parliament. In line with our recommendations in Chapter 5, the special advisers' code should be included in the Civil Service Act in a way that provides sufficient flexibility. Pending the passage of the Civil Service Act, to ensure early Parliamentary scrutiny, a draft of the proposed code should be tabled before both Houses of Parliament for debate.

R22. There should be a separate code of conduct for special advisers. The special advisers' code should:

(a) consolidate appropriate elements of the Civil Service Code, the Model Contract and paragraph 56 of the Ministerial Code, which sets out the duty to uphold the political impartiality of the Civil Service and other obligations;

(b) include a section on the direct media contacts of special advisers, making clear the nature of the role that they play in relation to the work of Civil Service information staff and in particular the role of the departmental head of information, as set out in the Guidance on the Work of the Government Information Service published in July 1997;

(c) be enforced by permanent heads of department.

[38] Issued by the Cabinet Office.

R23. The Government should include in the contracts of employment of all future special advisers a clause requiring the special adviser to abide by the terms of the special advisers' code, and the Model Contract and the Civil Service Code should not apply to them. The Government should also ensure that existing special advisers abide by the terms of the special advisers' code.

R24. The special advisers' code should be included in the proposed Civil Service Act.

R25. Pending the enactment of the Civil Service Act, a draft of the proposed Code should be tabled in both Houses of Parliament for debate.

LOBBYING AND ALL-PARTY GROUPS

Background

7.1 Our First Report dealt with two issues related to lobbying: first, the question of Parliamentary consultancies, and secondly, whether there should be formal statutory regulation of lobbyists. As to the first, a House of Commons Resolution of 6 November 1995 made clear that paid advocacy by MPs of *''any cause or matter on behalf of any outside body or individual''* was prohibited. The House also adopted the Committee's recommendation that agreements and remuneration regarding Parliamentary services should be disclosed.[1]

7.2 As to the regulation of lobbyists, this Committee rejected statutory registration of those who lobbied Parliament, on the ground that to do so *''would create the danger of giving the impression, which would no doubt be fostered by lobbyists themselves, that the only way to approach successfully Members or Ministers was by making use of a registered lobbyist. This would set up an undesirable hurdle, real or imagined, in the way of access.''*[2] The First Report encouraged lobbyists' organisations to develop self-regulation further. In this chapter, we examine whether there is any reason to alter our view.

Attitudes to Lobbying in the House of Commons

7.3 There is little doubt that the actions taken by the House of Commons in 1995 have dramatically changed the perception of lobbying among MPs. Our witnesses were overwhelmingly of the opinion that the regulation of MPs through the ban on paid advocacy and the new rules on registration of interests had changed the approach in Westminster for the better. The assessment of the former Parliamentary Commissioner for Standards, Sir Gordon Downey, was reassuring:

> *To the best of my knowledge the financial links with lobbyists have now been broken. Some non-financial links are proving embarrassing but at least the spectre of cash for influence through this route has fallen away.*[3]

7.4 Propriety is higher on the agenda in the House of Commons, and there is indeed evidence of a concern among MPs of being seen to be unduly influenced by lobbying, or to be seen to be lobbying themselves. Michael Watson MSP (Lord Watson of Invergowrie), with a unique perspective as peer, Member of the Scottish Parliament and both a former lobbyist and a former MP (1989–1997), told the Committee that, on returning to Westminster as a lobbyist after 1997:

> *often when I introduced myself, explained who I was and what I was doing, new Members of Parliament might quite literally take a step back. They were rather nervous about speaking to lobbyists because of a lot of the publicity that had been attracted in the period up to the 1997 general election with 'cash for questions' and so on . . .''*[4]

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[1] First Report, Recommendation 5.

[2] First Report, p 36, para 73.

[3] Appendix to the *Nineteenth Report of the House of Commons Select Committee on Standards and Privileges*, HC1147 (1997–98), p v.

[4] Day 4 (am).

7.5 Allegations have been made that organisations which once attempted to influence MPs through lobbyists are now using All-Party Parliamentary Groups instead. Sir Gordon Downey thought that there had been some infiltration of All-Party Groups by lobbyists. However, it was his view that the requirement for the involvement of lobbyists in All-Party Groups to be registered, following a Resolution of the House of Commons on 29 July 1998, had reduced the potential for abuse. These groups are discussed below, paragraphs 7.57–7.70.

Attitudes to Lobbying in Government

7.6 Issues relating to the lobbying of the Executive – Ministers and civil servants (including special advisers) – have been the subject of much public comment in recent years. In July 1998 the so-called 'lobbygate' affair raised doubts about the propriety of some Government relationships with lobbyists. A series of articles appeared in *The Observer* newspaper[5] in which allegations were made about the access to government circles enjoyed by those who had, before the 1997 election, advised members of the Shadow Cabinet, but who were now working for lobbying firms. Evidence from several cases was cited to show that these individuals were, or claimed to be, influential in government decision-making, and had passed on confidential information to their contacts. The passing-on of such material would have been in breach of the Civil Service Code.

7.7 Mr Greg Palast, who reported on these cases for *The Observer*, believes that business interests can still lobby Ministers, civil servants and special advisers to influence policy and secure deals without proper scrutiny. *''Privileged access is not a victimless crime,''* he told us, referring to one of the cases publicised during 'lobbygate':

> *When Government gives special access to business interests, the rest of the public is left outside the door: in this power industry story, I can list the advocates for poor people, such as Will Baker of the National Local Government Forum Against Poverty, who were turned down flat on requests for meetings on utility charges. They had no lobbyist, no cash, and as a result, no access.*[6]

7.8 In the autumn of 1999 there was much public interest in the relations between lobbyists and Ministers in the new Scottish Executive. There were allegations that lobbyists with strong connections to the Executive were claiming that they could influence ministerial diaries, and indeed ministerial decisions. The response of the Scottish Parliament to this affair (which became known in the media as the 'Scottish lobbygate') was to hold an inquiry largely in public with evidence taken on oath. We touch on the outcome of this inquiry below (see paragraph 7.39 below).

7.9 In the period since the First Report, self-regulation by groups which represent lobbyists (the Association of Professional Political Consultants (APPC), the Public Relations Consultants' Association (PRCA) and the Institute of Public Relations (IPR)) has grown, along with convergence between the approaches of these organisations to codes and registration. The Westminster 'lobbygate', which involved among others two APPC member firms, led to an inquiry and report by the APPC, and the suspension of both firms from membership of that body. The firms' internal arrangements were inspected by independent experts (a former Head of the Home Civil Service and a QC) and they have now been readmitted to

[5] 5 and 12 July 1998.

[6] Supplementary evidence (17/81).

membership. We received evidence from some lobbyists that self-regulation had worked to improve standards, but there was also a general, though not universal, tendency for them to favour compulsory registration and the imposition of a code of conduct.

Openness and Consultation

7.10 While the issues concerning the regulation of lobbyists are important, the underlying Principle of Openness, one of the seven set out by this Committee, is central. The democratic right to make representations to government – to have access to the policy-making process – is fundamental to the proper conduct of public life and the development of sound policy. The Committee is opposed to anything which fetters that right without the very strongest of reasons.

7.11 Lord Butler emphasised the importance of openness and accessibility:

> *Transparency is the solution. It would be a great shame and bad for government if Whitehall were cut off from contact with the outside world. One of the great advances over the past 30 years is that the relationship with business is very much better.*[7]

7.12 Professor Michael Rush, an expert in the Canadian system of lobbyist regulation, told us, in similar vein:

> *The registration of lobbyists should not be seen from a narrow perspective of responding to or preventing abuses, important as that is, but from the wider perspective of open government, providing information about who is involved in the consultative process on public policy.*[8]

7.13 Bearing in mind this principle of openness, we now turn to the question of whether it is appropriate to establish a system of formal, statutory regulation for lobbyists. As many of our witnesses told us, lobbying by means of the employment of specialist firms is only one method by which outside interests try to influence policy and decision-making. A narrow debate centred on a single type of activity – which accounts for a tiny proportion of all government contacts with the outside world – can be unhelpful and potentially misleading.

Statutory Regulation for Lobbyists

7.14 Mr Derek Draper, adviser to the Rt Hon Mr Peter Mandelson MP (currently Secretary of State for Northern Ireland) when Mr Mandelson was in Opposition, was a lobbyist prominent in media reports of the Westminster 'lobbygate'. He gave us evidence of continuing concern about the activities of lobbyists, and advocated statutory regulation, telling us *''all this requires lobbyists to be identified and registered and subject to clear rules.''*[9]

7.15 Professor Rush had no doubts that a formal scheme was practicable, and could make useful information available to the public, *''cheaply and effectively by electronic information gathering, storage and retrieval, providing easy access to all who wish it.''*[10]

7.16 The APPC, representing specialist firms in the field, argued that Parliament should play a role in regulation: it believes that those outside its membership who undertake lobbying –

[7] Day 5 (am).
[8] Day 1 (pm).
[9] Day 4 (pm).
[10] Day 1 (pm).

lobbyists who are not members, lawyers, management consultants and others – should no longer be able to lobby without specific controls.

7.17 The APPC proposes that Parliament should *''debate and vote upon a Resolution the wording of which would 'expect' that all those who hold themselves out as advising third parties for gain on dealings with Parliament should be regulated by a body approved by Parliament.''*[11] The bodies (which could include the APPC, the PRCA, the Law Society and the Institute of Chartered Accountants) would administer *''on Parliament's behalf''* a code of conduct laid down by the House and would be required to report annually to both Houses on compliance with the code. This proposal is, however, limited in scope, and would not apply to contacts between lobbyists and civil servants.

7.18 The IPR, which represents many of those who are 'in-house' lobbyists, working for companies and other bodies, also advocates formal regulation, either by Parliament itself or through a specially-established agency. It is, however, already strengthening its own self-regulation.

7.19 By contrast, the PRCA raised some doubts about a move to greater formality, saying that self-regulation had worked well.

7.20 Several of our witnesses thought formal regulation of lobbyists to be impractical and counter-productive. For instance, Professor Justin Greenwood, who has studied on a comparative basis the approach to lobbying of many other countries, warned the Committee against any form of regulation based on compulsory registration. He stressed the commercial benefits of this sort of control to firms with an established market position:

> *Those schemes which are based on a declaration of clients by lobby firms tend to benefit lobby firms seeking intelligence on their competitors at the public expense. While lobbyists are no doubt concerned to improve standards, they tend to seek regulation to enhance their own status by controlling access to the profession and by seeking recognition.*[12]

7.21 The result of this approach, Professor Greenwood believed, was a restriction on access by others. He told us:

> *any registration scheme runs a risk of creating a two-tier system, or the impression of one. This is a barrier to the democratic right of citizens to make their voice heard.*[13]

7.22 But the arguments against restrictions on access were put most strongly by the National Council for Voluntary Organisations. Charities, they told us, were already subject to strict regulation as to their access to the decision-making process:

> *Further regulation for charities could be a bar to the many thousands of voluntary organisations and groups which do not have sufficient resources and skills in lobbying from having sufficient access to the political process.*[14]

7.23 We also gathered evidence of the practical difficulty of operating compulsory regulation in a number of the countries which currently require, or have in the past required, formal

[11] Written evidence (17/26).
[12] Day 7 (pm).
[13] Day 7 (pm).
[14] Day 7 (am).

registration. There is a history, in the United States, Canada and Australia in particular, of amendments to regulatory schemes to fill a succession of loopholes. This may have an impact on the credibility of the system.

7.24 In Canada, for instance, there was a major review of the Lobbyists' Registration Act in 1993 and amending legislation (which increased the amount of information lobbyists were required to provide) was passed in 1995.[15] Another review is now under way, with a particular focus on the question of the requirement to register. Any in-house lobbyist is obliged to register if *''a significant amount of their time''* is devoted to lobbying Government. *''Significant''* is defined by the Canadian Lobbyists' Registration Branch as a proportion of 20 per cent. This has led to an apparent fall in the number of in-house lobbyists, because many employees felt able to claim that they spent less time than that on their lobbying activities, and therefore came off the register. But, as Professor Rush pointed out, the most important lobbying does not have to take a large proportion of a person's time: as he says, senior corporate executives are *''very unlikely to register, since very little of their time is actually spent lobbying. However, the lobbying they do engage in is often particularly important and influential.''* The outcome is that the guidance offered by the Branch is likely to be revised *''possibly by stipulating the cumulative amount of time spent by a range of employees engaged in lobbying.''*[16]

7.25 In the United States, the 1995 Lobbying Disclosure Act, a major piece of amending Federal legislation, also exempts from the requirement to register those who spend less that 20 per cent. of their time on lobbying.[17] This legislation became necessary partly because registration under the previous Act was so often avoided. One estimate suggested that only about 1 per cent. of expenditures on lobbying at the Federal level were being registered.[18] It is this sort of experience that can help to undermine the credibility of formal regulation.

7.26 Some of the arguments **in favour** of some form of compulsory regulation of lobbyists, covering relations with MPs, Ministers and civil servants are:

- The lobbying registration schemes currently in existence in the United States and Canada provide a great deal of information to the public about the contacts between governments and those trying to gain access to and influence with them. This makes it more difficult for unfair privileged access to be granted, and reduces the opportunity for secret deals between Government and outside interests.
- Compulsory regulation could force lobbyists who do not take part in voluntary schemes to comply with good practice. At present, it is not known how many people and organisations undertake lobbying; if they were required to register and adhere to a code, their activities would be opened to scrutiny, and they could be made to account for them.
- Formality could bring consistency in regulation, which might be preferable to the present wide range of voluntary registers and codes. It could be said to be unfair

[15] Lobbyists Registration Act (R.S.C. 1985, c.44 (4th Supp.) as amended by S.C. 1995, c.12). See Appendix V.

[16] Supplementary evidence (17/43) Corroboration of the importance of senior executives in lobbying is to be found in C P Harris, ''Lobbying and Public Affairs in the UK: The Relationship to Political Marketing'' (unpublished doctoral dissertation, Manchester Metropolitan University, 1999).

[17] Lobbying Disclosure Act of 1995 PL 104-65.

[18] Clive S Thomas, ''Interest Group Regulation in the United States: Rationale, Development and Consequences'', *Parliamentary Affairs,* Vol 51, No 4 (October 1998) p 509.

on lobbyists, and a distortion of the market for these services, that those who abide by the rules of their professional bodies are disadvantaged by the lack of controls on others who undertake the same sort of work.

7.27 Among the arguments **against** compulsory regulation by registration and a code of conduct are these:

- International experience (see paragraph 7.23 above) suggests that the credibility of compulsory regulation schemes is often diminished by amendments to the rules. An elaborate, frequently-changing system could produce unfairness, evasion and bureaucratic complexity. Perhaps partly as a result, such schemes have little impact on the general public – in many countries few people, apart from journalists and lobbyists themselves in search of market information, consult the registers.
- Defining lobbying, and distinguishing it from the simple provision of information, can be difficult. Regulations on lobbyists would have to be framed in such a way as to avoid the unnecessary recording of hundreds of harmless and informal conversations and contacts.
- Defining a 'lobbyist' would also be difficult, given the number of professions now engaged in such work: lawyers, accountants, management consultants and others are employed by companies, charities and other bodies, both 'in-house' and on a fee basis, to undertake lobbying work, or work that could be described as lobbying. There is also the danger, as noted in the First Report, that the creation of a category of 'registered' or 'licensed' lobbyists would give the impression that access to government could only be gained through the employment of that kind of company.
- The self-regulation schemes operated by lobbyists' organisations are already moving towards greater convergence. An important motivation behind this consolidation of standards may be considered to be the need to increase public confidence in their services, which is likely to be at least as effective as any imposed scheme of registration.

7.28 In the opinion of the Committee, the weight of evidence is against regulation by means of a compulsory register and code of conduct. Lobbyist regulation schemes can help make government more open and accountable, providing useful information about influences on decision-making. But we believe that the amount of information that could be made available through a register would not be proportionate to the extra burden on all concerned of establishing and administering the system. There is also still force in this Committee's original objection, that such a system could give the erroneous impression that only 'registered lobbyists' offer an effective and proper route to MPs and Ministers.

R26. There should be no statutory or compulsory system for the regulation of lobbyists. The current strengthening of self-regulation by lobbyists is to be welcomed.

Guidance for 'the Lobbied' in Government

7.29 We heard evidence that the strengthening of controls on, or stronger guidance for, those who are lobbied in government – Ministers and civil servants including special advisers – might be advantageous. According to some witnesses, it is not outsiders' attempts to influence government decision-making which should be the main focus of attention, but the behaviour of 'the lobbied'.

7.30 There has already been some attempt to define the relations between, on the one hand, Ministers and civil servants and, on the other, those who lobby government. In July 1998, in the immediate aftermath of the Westminster 'lobbygate' affair, the Cabinet Secretary, Sir Richard Wilson, issued Guidance for Civil Servants: Contacts with Lobbyists to all civil servants (including special advisers).

7.31 The Guidance makes clear that it is *''completely unacceptable''* that *''privileged access''* should be given, and advises civil servants, when judging whether a meeting with a lobbyist is proper, to *''err on the side of caution.''*

7.32 The Ministerial Code is silent on the specific issue of contacts with lobbyists, but the Government has made clear in Parliamentary Answers that it expects Ministers to abide by the principles of the Cabinet Secretary's guidance to civil servants, as well as the general principles of the Ministerial Code on conflicts of interest.[19] Some of the evidence we received suggested that more might be needed to ensure propriety in such contacts. We now turn to examine this evidence and evaluate some proposed schemes which might provide such assurance.

Strengthening the Guidance

7.33 A number of specific proposals for stronger guidance for the lobbied in the executive were put to us. Professor Rush told us that in Canada pressure was growing for Ministers and civil servants to keep a record of such contacts, in addition to the existing close regulation of the lobbyists.

7.34 Two levels of strengthened guidance have been suggested:

- one would simply require those who are lobbied to record their contacts with outside bodies and individuals;
- the other would require, in addition, that information about such contacts should be available for public inspection under certain circumstances.

A Requirement to Record

7.35 The Cabinet Secretary's guidance on lobbying already advises officials who are dubious about the propriety of a contact with a lobbyist: *''Do consider putting a brief note on the file recording that you have addressed the issue of propriety and setting out your reasons for believing that your actions comply with the Civil Service Code, if you decide to go ahead.''*

7.36 In the same vein, Lord Butler put forward a scheme for a record of contacts, which could be consulted if necessary:

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[19] Written Answer, *Hansard* (HC) 4 March 1999, col 895.

My solution is that special advisers and civil servants should be required to keep a record of their contact with lobbyists that can be inspected if necessary. By that, I do not mean that every time one meets a lobbyist, one should have to publish the fact. That would inhibit it too much. But if there are suspicions and anything goes wrong, there should be some record that is capable of inspection, to reassure people.[20]

7.37 Such a scheme might help to increase public confidence that contacts are proper, but it would need to be implemented with some care. First, any scheme should avoid concentrating exclusively on one type of contact. It would be inconsistent to require the keeping of a record of Ministers' and civil servants' contacts with specialist commercial lobbyists, without obliging them to do the same for their dealings with other outside interests – directors and managers of companies, lawyers, management consultants and other advisers, as well as senior representatives of non-profit organisations. As we noted above (paragraph 7.24), Ministers' discussions with outsiders directly involved in executive roles are often much more significant than meetings with lobbyists, whether the lobbyist is employed directly or paid on a fee basis. In the rest of this chapter, our observations are therefore relevant to contacts with all types of external interest, and not just specialist lobbyists.

7.38 The question arises whether it would be desirable to require Ministers and civil servants to maintain a record of this sort of contact. There are arguments **against** a requirement to record, such as the danger that it would run into the same sort of difficulties as a system of lobbyist regulation. These problems might include hard decisions about the setting of a *de minimis* level of contact justifying exemption from the requirement to record. Among the 'grey areas' might be:

- brief contacts at receptions or similar social gatherings;
- telephone calls which begin as requests for information, but progress to direct or indirect lobbying;
- the receipt of faxes and e-mails containing information to support a particular argument advanced by the sender.

7.39 The principal argument **in favour** of the keeping of a record is that it is simply sound administrative practice to keep a note of discussions with outside bodies and individuals. Current Government good practice in recording such contacts, as part of the effective consultation of the public on major policy issues, is described below (paragraph 7.52). We do not think that compliance with a new requirement to the record would be burdensome for departments, and we believe that it would encourage high and uniform standards. A large proportion of the media reporting of the Scottish 'lobbygate' and a section of the Scottish Parliament's Standards Committee report on the issue were concerned with uncertainty about the contents of a Minister's constituency diary and the possibility that a lobbyist had undue influence over the Minister's engagements. The report concluded that there had been no such influence, but the case demonstrates the potential for strong public interest in the existence of contacts and the need for a clear record of meetings.[21]

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[20] Day 5 (am).

[21] Standards Committee of the Scottish Parliament: *First Report 1999: Report of an Inquiry into matters brought to the attention of the Committee by* The Observer *newspaper*. SP Paper 27 Session 1 (1999).

7.40 The Committee recognises that a complete record of contacts would be very difficult to produce. We appreciate that many ministerial contacts with external interests are informal, and take place in the context of Ministers' constituency work, or at receptions and other social events. Similar considerations apply to civil servants' contacts with a wide range of external interests. It would not be practicable or proportionate to require the recording of each and every external contact.

7.41 We believe, however, that awareness of the importance of propriety in external contacts should be improved, and that arrangements for the recording of external contacts should be strengthened by some modest practical measures. These concern, first, ministerial office diaries, which contain the details of meetings with external contacts. We believe that the Ministerial Code should oblige Ministers to retain them for later inspection if necessary. Secondly, as noted in paragraph 7.39 above, it is already good administrative practice among civil servants to make a record of discussions with outside interests. Under the current Guidance on lobbying, officials are asked to *'consider'* whether to put a note on file if there is doubt about the propriety of a contact with a lobbyist. We believe that civil servants including special advisers should in future be **required** to keep a record of the basic facts about every contact with external interests for each occasion on which those interests are attempting to influence policy and decisions. These would be proportionate measures, based on existing practice, aimed at ensuring better awareness of the need for propriety.

R27. For Ministers, the basic facts about official meetings with external interests (which should include the date and time, the people involved and the general subject under discussion) should be recorded in their office diaries, which should be retained. The Ministerial Code should be supplemented accordingly.

R28. For civil servants including special advisers, the current guidance on lobbying should be strengthened, to ensure that a record is kept of the basic facts (which should include the date and time, the people involved and the general subject under discussion) of any contact with external interests in which those interests attempt to influence policy and decisions.

7.42 The suggested wording of the requirement to record for officials differs from that suggested for Ministers because a high proportion of officials' contacts with external interests, especially at junior level, are merely concerned with the provision of information by the official. The requirement to record should only apply to contacts which involve an actual attempt to influence policy and decisions.

Public Access to Records

7.43 We considered whether the public should have access to records of contacts. Several witnesses were in favour of such access. Lord Melchett, for instance, described the principles of openness by which Greenpeace worked:

Greenpeace starts from a basic position that all external meetings or other communication we have should, if possible, be on the record (both in respect of the fact that the meeting has taken place and in respect of what is said by all those at it).[22]

7.44 Mr Greg Palast told us that there was a need to control the lobbied:

The first lesson to learn from 'Lobbygate': It is not the lobbyists who are dangerous, it is the lobbied – the government officials (and this includes Special Advisers, Ministers, regulators and agency functionaries) who give out the inside information, who arrange to seek out the secret meetings, who cut the hidden deals.

7.45 Mr Palast suggested that the legislation that applies in the United States could be a model. He said:

The public has the right to the names, purposes and key points discussed as well as copies of papers swapped in such gatherings. This rule now governs in the US under Freedom of Information and other laws. Yes, in practice the rules are bent, broken and abused – but it beats the heck out of no rule at all as in the UK.[23]

7.46 The United States Lobbying Disclosure Act 1995 states in its preamble that *''responsible representative Government requires public awareness of the efforts of paid lobbyists to influence the public decision making process in both the legislative and executive branches of the Federal Government.''*

7.47 To implement that principle, the Lobbying Disclosure Act requires the recording in a public register of all *''lobbying contacts''* – defined as *''any oral or written communication (including an electronic communication) to a covered executive branch official or a covered legislative branch official''* with regard to *''the formulation, modification, or adoption''* of a wide range of Federal policies and decisions. Previous legislation on lobbying only covered members of the Congress, not members of the Executive – making the 1995 Act a major extension of the scope of legislation on openness.

7.48 In the United Kingdom as in the United States, the question whether such records should be open to public inspection is a freedom of information issue. That debate is very much a matter of current political concern, following the Government's introduction of a Freedom of Information Bill.

7.49 Under clause 33(l) of the Freedom of Information Bill now before Parliament, information held by a Government department is *''exempt information''* if it *''relates to the formulation or development of Government policy''*. Most records of contacts with lobbyists are likely to fall into this category. A department would not be obliged to disclose exempt information on request, though it would have a discretion to do so under clause 13.

7.50 A draft version of the Bill published for consultation was considered and reported on by the House of Commons Select Committee on Public Administration[24] and by an *ad hoc* Select Committee of the House of Lords.[25] The House of Lords Select Committee was prepared to accept the exemption on policy, but the Committee on Public Administration

[22] Day 1 (am).

[23] Supplementary evidence.

[24] HC Paper 570 (1998–99), Vol I, pp liii–lv, paras 83–89.

[25] HL Paper 97 (1998–99), pp 16–17, paras 34 and 35.

took a more critical view and thought the exemption was too wide. We trust that in the debate on the relevant parts of the Bill the principle of openness will be adequately reflected.

Good Practice in Consulting the Public

7.51 As part of its aim of modernising and improving access to information, the Government has indicated that it attaches great importance in the policy-making process to effective consultation with interested groups, the private and voluntary sectors and the general public. We see this as a standards issue, because without the consultation of a wide cross-section of the public the openness and accountability of Government can be impaired. Any dangers posed by privileged access are magnified if the public have little or no chance to make their views known on policy proposals.

7.52 A government document outlining best practice on written consultations – last updated in August 1998 – is produced by the Cabinet Office. Among other things, it advises: *''The results of all consultation exercises should be carefully analysed''*. It suggests that, where circumstances permit, at the end of consultation processes departments should produce and make available a summary of views, unless they are confidential. Where respondents ask why their views have been rejected, the document suggests that a full explanation should be given.[26]

7.53 None the less, some of our witnesses felt that change was overdue. Professor Rush said:

> *There is still a great deal of secrecy in British government. We do not know who gets consulted over legislation. That information is not regularly published . . . it would not be a bad thing if governments at a certain stage of the consultative process said who had been consulted and who had made representations to them . . .*[27]

7.54 The quality of Government practice on consultation – and therefore the extent of access to the policy-making process – varies widely. There are some very good examples of consultation – for example, the comprehensive document setting out responses to consultation on the Department of Trade and Industry's policy on utility regulators.[28] Other examples could, however, be cited of White Papers which contain a minimal amount of information about the prior consultation process.[29]

7.55 There are signs of possible progress towards a more consistent standard of consultation. A Working Group on Government Relations, containing representatives of many voluntary groups, set up in 1999 a sub-group on consultation, with observers from a number of government departments. This group, part of work related to the compact signed in 1998 on relations between government and the voluntary sector, has produced a draft code of practice on the consultation of that sector.[30]

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[26] ''How to conduct written consultation exercises – an introduction for central government'' (Cabinet Office, 1998).

[27] Day 1 (pm).

[28] *A Fair Deal for Consumers: Modernising the Framework for Utility Regulation. The Response to Consultation* (Department of Trade and Industry, 1998).

[29] The White Paper on public health, *Saving Lives: Our Healthier Nation*, Cm 4386 (July 1999), notes (p 10) that there were over 5,500 replies to the Green Paper on the subject published in 1998. However, the White Paper contains no list of the individuals or organisations who responded and little analysis of the content of the responses.

[30] *Compact Code of Practice on Consultation: Consultation Document*, Working Group on Government Relations, National Council for Voluntary Organisations (1999).

7.56 But the Government needs to maintain a high quality of consultation with all groups and individuals. The openness and effectiveness achieved by some departments in consulting the public should become the norm for consultation right across Government. There is a need for reassurance that privileged access is not being granted during the development of policy. One solution could be to require greater consistency and transparency in the recording of all contributions from the outside world. The promulgation of stronger rules on consultation, requiring compliance with the principles of the document on written consultation for central government (paragraph 7.52), would be more effective than maintaining the current position where they are simply recommended as best practice. It is clear from the evidence presented above (in paragraph 7.54) that the current guidelines do not consistently produce the right approach across Government.

R29. The Cabinet Office should issue guidance on consultation, which would have as its objective a uniformly high and transparent standard of consultation on policy issues and decisions. This might be in the form of a Consultation Code, which would seek to ensure that departments meet the principles set out in the current Cabinet Office document on Best Practice in Written Consultation.

All-Party Groups

7.57 Outside interests may gain access to parts of the process of policy-making by a number of other means. We heard some evidence, for instance, about the activities of All-Party Parliamentary Groups, which are composed of backbench members of the House of Commons, or of both Houses of Parliament. According to a recent count there are 221 All-Party Parliamentary Groups, membership of which is restricted to MPs only (or to MPs and Peers only), and 39 Associate Parliamentary Groups (which also allow membership to 'strangers').[31] They cover a very wide range of topics, including many social, economic and international issues, as well as the affairs of a number of individual countries.

7.58 A number of measures to increase the transparency of the operation of these groups have been put in place over the last 20 years, including the drawing up of an Approved List of groups as a result of a Resolution of the House of Commons in October 1984 and the establishment of a register of the names of their officers and any financial or other benefits, in kind and in cash, received from outside sources.

7.59 Some of these groups receive support from outside organisations. This can be in the form of a direct financial subvention, as in the case of the Parliamentary Food and Health Forum, which receives funding from pharmaceutical and retail companies, or the All-Party Parliamentary Group for Social Science and Policy, which receives £10,000 per annum as a grant from the Economic and Social Research Council, to fund an administrator and expenses for meetings.[32]

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[31] ''Approved All-Party Parliamentary and Associate Parliamentary Groups in the House of Commons: Subject Groups'' and ''Approved All-Party Parliamentary and Associate Parliamentary Groups in the House of Commons: Country Groups,'' Public Information Office, House of Commons (July 1999).

[32] Register of All-Party and Parliamentary Groups, House of Commons (May 1999).

7.60 More common is indirect support in the form of administrative and secretarial assistance. There are examples of an agency or association which represents a group interest providing the secretariat or administrative support for an All-Party Group. Thus there is a network of support provided directly by organisations with a vested interest in the subjects. There are also a small number of arrangements whereby Parliamentary groups are staffed by a lobbyist or public relations consultant, apparently funded by a commercial or other supporter.

7.61 The Committee believes that it is important to keep a sense of proportion in debating the issues that are raised by All-Party Groups. Much of the evidence we received suggested that these groups played a useful role in providing information to members, while other witnesses believed that they were unaccountable agents of influence for outside interests, or that their activities were unfocused and wasteful of time and money.

7.62 We noted Lord Melchett's view: *''it does not seem to me that All-Party Groups have a huge amount of influence.''* Yet the benefits of these groups were evident to several of our witnesses. Mr Barry Sheerman MP, for instance, Secretary of the Parliamentary Sustainable Waste Group, was an enthusiastic advocate:

> *Partly as a reaction to the confrontational atmosphere of the House, parliamentarians have often sought alternative channels through which Members could meet to pursue matters of mutual interest on an all-party basis and in a rather less partisan atmosphere.*[33]

7.63 Asked for his views of the involvement of lobbyists in such groups, Mr Sheerman was clear:

> *My view is that in a sense a well-organised parliamentary group is a good defence against the lobbyist The strength of a Parliamentary group is that you invite into the House of Commons all sorts of people who could not afford a lobbyist and would not want to – the small and medium enterprises of this country. You give them access and that in a sense balances the big people that can afford a lobbyist.*[34]

7.64 However, another witness, a backbencher with long experience of these groups, Mr Peter Temple-Morris MP, expressed concern at the ability of lobbyists to drive the thinking of All-Party Groups. He advocated an end to staffing for groups' secretariats from lobbying organisations.[35]

7.65 Ms Elizabeth Filkin, Parliamentary Commissioner for Standards, also felt that the area of outside staffing needed to be kept under review:

> *Many lobbyists who are engaged and promoting an interest are paid by outside organisations and are active in all-party groups. The Register of All-Party Groups only requires that such paid employment is openly recorded for* [Parliamentary] *pass holding staff of the Group. It is likely that such disclosure reduces the risk of abuse but it cannot be assumed to do so.*[36]

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[33] Day 6 (pm).
[34] Day 6 (pm).
[35] Day 6 (pm).
[36] Written evidence (17/68).

7.66 Mr Roger King, of the Society of Motor Manufacturers and Traders, which gives assistance to the All-Party Motor Group, was very conscious of the accusations of over-enthusiastic lobbying that have been levelled in the past against the industrial sponsors of these groups. He believed that the cross-party nature of the group helps to control such dangers:

> *There have been cases in the past where we might have been guilty of a little bit of excessive enthusiasm, but I go back several years now, before the present government where it could have been said that the industry was trying to put across a point of view. We were told by the then Chairman and officers that we should not do that – ease off a little. There are checks and balances there which we work together. Because it is an all-party group, the various political parties are watching each other.*[37]

7.67 The APPC raised a related issue – the suggestion that the groups are less than entirely open about their memberships:

> *There is very little awareness of which organisations provide the secretariat for all-party groups. Although there is a register, its existence is not well-publicised*
>
> *Where interested parties (not necessarily lobbying companies) provide the secretariat for all-party groups, there have been allegations that other organisations have been denied access to lists of members and to the opportunity to put their case.*[38]

7.68 If attempts were made to deny access to information such as membership lists of these groups on commercial grounds, we would deprecate them. However, we received no clear evidence that such attempts were being made, and must leave it to the groups themselves, and the authorities of both Houses, to ensure that free association and free debate are not hampered.

7.69 We do not believe that there is any major cause for concern over standards in the operation of All-Party Groups. They appear in many cases to work effectively and to the benefit of MPs and Peers. Where there are difficulties, we are confident that the Standards and Privileges Committee in the House of Commons will monitor and undertake any improvements that they may judge to be necessary.

7.70 We do not see any need for new structures for funding or organisation, or for any new regulations. However, there is a need for effective public access to information about the groups, their funding and membership. We recommend that the register should be placed on the internet.

R30. The Register of All-Party Parliamentary and Associate Parliamentary Groups should be placed on the internet. The question of the ease of public access to information about All-Party Groups should be kept under review by both Houses.

[37] Day 6 (pm).

[38] Supplementary evidence (17/26).

SPONSORSHIP OF GOVERNMENT ACTIVITIES

Background

8.1 Sponsorship of government activities by private companies and other organisations covers a very wide range. It is provided in two main ways – either through direct cash payments or by means of 'in-kind' assistance such as government departments having the use of companies' facilities or products.

8.2 One example of cash sponsorship is the private sector funding given to the Foreign and Commonwealth Office (FCO) towards the cost of a brochure outlining the consular services available to British passport holders. 'In-kind' sponsorship can include assistance such as the provision of space for government exhibitions in shops and banks.

8.3 British companies spent an estimated £640 million on all types of sponsorship in 1998, with the largest proportion – £353 million – going on sponsorship of sports events.[1] It is likely that only a small part of the £640 million went towards the funding of government activities and publications, although no overall figure is available. This chapter describes some of the main features of that type of sponsorship, and assesses whether it is jeopardising standards in public life.

8.4 One of the difficulties in discussing sponsorship is that it comes in diverse forms. The International Chamber of Commerce has produced this working definition, which captures some of the main features:

> *Sponsorship: Any communication by which a sponsor contractually provides financing or other support in order to establish a positive association between the sponsor's image, identity, brands, products or services and a sponsored event, activity, organisation or individual.*[2]

8.5 Sponsorship, in the private or public sector, can benefit the commercial sponsor in a wide variety of ways. The FCO has produced guidelines on sponsorship which list a number of these benefits, including a number which are especially relevant to the activities of government departments:

- *to influence opinion formers;*
- *to raise or enhance the company's image and awareness;*
- *to generate PR opportunities and media coverage;*
- *to gain name exposure through branding and signage opportunities;*
- *to achieve credibility;*
- *to be associated with a project that has long-term opportunities and involvement.*

8.6 We considered whether the creation of a *''positive association''* with government departments poses a potential threat to standards in public life. The Association of First Division Civil Servants (FDA), which represents administrators in the public service, clearly feels that it does. The FDA sees a strong parallel between sponsorship and the funding of political parties:

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[1] The figures have been calculated by Ipsos–RSL Ltd.

[2] Quoted in FCO Sponsorship Guidelines (1999).

> *The FDA believes that the sponsorship of Government activities by companies or individuals should not take place. The Neill Committee has been examining separately the funding of political parties. It is hard to see that the sponsorship of Government activities is anything other than an attempt by such companies or individuals to influence the behaviour of a political party, in this case the one in Government, by another route.*[3]

Issues for the Committee

8.7 The Committee believes that several of its Principles of Public Life are relevant to sponsorship of government activity, particularly the Principles of Integrity, Accountability and Openness.

8.8 For example, sponsorship might pose a threat to the integrity of the government, in the sense that it might place Ministers or civil servants under a *''financial or other obligation to outside individuals or organisations that might seek to influence them in the performance of their official duties''*, as the sub-text of the principle puts it.[4] There is also the issue of whether sponsorship transactions are accountable ones. In a complex market, it is important to ensure that Ministers and officials account properly for their actions. Below we discuss whether sponsors should be required to disclose the details of their sponsorship of government activities and events – in the interests of openness.

8.9 There is one other important theme which runs through this report, and which is highly relevant to our discussion of sponsorship – the issue of **privileged access**. Sponsorship should not give sponsors any opportunity of privileged access to the decision-making machinery of government, to Ministers and civil servants, in a way which gives them advantages, and disadvantages others. This will be the focus of much of this chapter.

Sponsorship of Government Activities – the Current Situation

8.10 Sponsorship from the private sector now regularly forms part of the funding of government activities, and several witnesses explained how such support could help the Government achieve its objectives. Baroness Symons, the former Parliamentary Under-Secretary of State, FCO, described to us private sector support both 'in-kind' (the use of cars) and in cash in relation to the staging of international conferences in London which were organised by her department:

> *There is also a wider benefit, which could be said to be to UK plc. The companies concerned are able to engage in an exercise which does bring them more into the market place; it raises their profile, it helps with the success of British companies and, of course, that means greater prosperity and more jobs for people in this country.*[5]

8.11 Many departments have welcomed sponsorship from large retail and other companies, who have associated themselves with government campaigns and helped in the promotion of government messages. For example, the Government's Scottish road safety campaign 'Foolsspeed', launched in November 1998 and aimed at reducing excessive speed, has been supported by a variety of large retail companies. A total of £325,000 'in-kind' support has been provided by the private sector, including the free display of Foolsspeed slogans on

[3] Written evidence (17/17).

[4] See text reproduced at the beginning of this report.

[5] Day 4 (am).

company vehicles, the allocation of space in stores for exhibits and the provision of fast internet links from company websites to the campaign website. In other cases, several chains of supermarkets have provided shelf space at no charge for popular versions of government White Papers. In this way, private sector facilities and marketing media are used to drive home messages that the Government wishes to communicate, potentially increasing the effectiveness of public information campaigns.

8.12 Baroness Symons made clear that the saving of public expenditure on highly expensive events like international conferences was also of benefit to Government. Approximately £270,000 was for instance provided by private sector sponsors to support the cost of the 1998 European Council in Cardiff, whose overall cost was in the region of £6.5 million.[6]

8.13 The Government has recognised that sponsorship of the kind described above must be used with care. The Cabinet Office has produced brief guidelines for all departments.

8.14 Among the main features of the current Cabinet Office guidelines are:

- an emphasis on the saving of public expenditure as a central objective in seeking sponsorship;
- no access to be offered to Ministers or officials, beyond what is specified in direct relation to the specific event. There should be no suggestion of any obligation beyond the event itself, whether related to the award of contracts or any other government decision;
- sponsorship to be sought in an even-handed manner; there should be no grounds for complaint about firms being deprived of an opportunity to sponsor an event;
- the benefits of sponsorship for the sponsor and other details of the agreement to be set out in written form.

8.15 The FCO guidelines (see paragraph 8.5 above) incorporate the Cabinet Office guidance but add more practical detail, notably on the handling of sponsorship by British diplomats abroad.

Evidence Concerning Sponsorship

8.16 Our witnesses expressed strongly differing views on the propriety of sponsorship. Lord Norton, who first drew the issue to our attention, criticised sponsorship as part of a wider trend:

> *The trend towards sponsorship is part of the current fad for the commercialisation of Government, where the boundaries between commercial interests and good governance are being blurred. The consequence is potentially to damage the existing good name of UK public life.*[7]

8.17 He felt that sponsorship could never be controlled properly, and that only the public purse should be used to fund public events:

> *It is difficult to see how sponsorship can ever be adequately regulated. Certainly in the absence of greater transparency and accountability, there are good grounds for*

[6] Written Answer, *Hansard* (HL) 3 September 1998, col 45.

[7] Day 4 (am).

supposing that the practice be outlawed. The Government should go back to the principle of paying for their essential goods and service in the normal manner.[8]

8.18 The FDA believed that the motives of sponsors should be carefully scrutinised, with a particular emphasis on the possible purchase of influence:

Companies do not offer such sponsorship from altruism. Either the objective is to advertise the company or product, in which case, perfectly legitimate avenues exist, to gain a competitive advantage over a period of time, or because it believes that such sponsorship will win it favour within the decision-making process of Government. It is a potentially corrupt practice which if unchecked could do considerable damage to public administration in the UK.[9]

8.19 The FDA expressed particular misgivings over companies' claims that the nature and amount of sponsorship should be protected by commercial confidentiality, stating that: *''at the very least all such sponsorship should be a matter for public record. If the Government and individual companies have nothing to hide, then why hide it?''*

8.20 The Rt Hon Tony Benn MP felt that sponsorship fell *''far short of corruption but there is a little bit of mutual back-scratching.''* He believed that a major point of principle was in jeopardy: *''I cannot believe a great nation cannot afford its own public services.''*[10]

8.21 Baroness Symons, however, saw sponsorship of government exhibitions, such as those that demonstrate the qualities of British technology, as real opportunities to reach new markets. She explained the broader thinking behind these arrangements:

The Government is committed to increasing the efficiency of the public sector, both through the more effective management and delivery of public services and the fuller utilisation of public assets. The Government's policy is that departments and their agencies should enhance the utilisation and value of their assets, whether physical or non-physical. Sponsorship is an opportunity for departments to use their non-tangible assets to do more for the same budget whilst at the same time offering significant opportunities to the private sector to market their corporate image and their products, thereby increasing the potential for the UK in terms of sales and jobs.[11]

Tighter Controls on Sponsorship

8.22 We considered whether it is desirable to impose restrictions on sponsorship of government activities by the private sector. Some of our witnesses argued for a complete ban, on the grounds that the dignity of government activities is always diminished if it appears that a department has had to seek a subvention to fund them. Outside Government, the accusation that dignity is jeopardised by sponsorship is a matter for debate, notably over the sponsorship of major sporting events such as the FA Cup. Even more strongly in the case of government activity, the criticism might be made that private sponsors are in some sense 'buying' the activity and any associated influence with Government, and thereby creating undue obligations.

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[8] Ibid.

[9] Written evidence (17/17).

[10] Day 2 (am).

[11] Day 4 (am).

8.23 We are not convinced that sponsorship should be banned. Many of the government public information campaigns that are sponsored by the private sector are of great importance in saving lives in the home or on the roads, or increasing awareness of highly significant issues such as the environment. The use, for example, of retail facilities in such campaigns is an effective way of getting these messages across and communicating with people who might not otherwise be reached. It would be draconian to prohibit the use of such techniques in appropriate cases. Similarly, partnerships with private sector sponsors can be valuable means of promoting British industry abroad, and providing a high quality of presentation which can help sustain, rather than diminish, the dignity of, for instance, an international conference.

8.24 However, there are a number of reasons to be cautious, and here we return to some of the principles discussed in paragraphs 8.7 to 8.9 above. Baroness Symons recognised that, along with the benefits, there might conceivably be risks to the integrity of government in sponsorship, given the danger of privileged access being allowed. She said that Ministers had:

> *to be very careful not to . . . allow government decision-making to become contaminated or to allow the event in any way to be dictated by the companies who are undertaking the sponsorship.*[12]

8.25 Baroness Symons felt that the FCO guidelines were *''sufficiently robust''* to avoid infringing integrity. We agree that, although there are potential risks in sponsorship of government activities, they can be managed, given effective guidelines effectively enforced. We discuss the means by which they can be drawn up and enforced below, in paragraphs 8.27–8.33.

8.26 One other issue emerged during our deliberations – the question whether there should be any difference in principle between the controls applied to cash sponsorship and the controls that might relate to assistance that is provided 'in-kind'. We see no reason on grounds of propriety to distinguish between these two types of assistance, because the potential for impropriety is the same whatever the mechanism used. It is, however, significantly more difficult to assess the value of 'in-kind' sponsorship than the value of a cash payment. This issue will be considered in paragraph 8.36 below.

R31. There should be no ban on sponsorship of government activities, subject to the implementation of recommendations R32, R33, R34, R35 and R36.

8.27 If sponsorship is to continue, and to be conducted with propriety, there is a strong argument for an agreed set of principles to be applied consistently across government. But civil servants also require practical help in dealing with the complexities of sponsorship in individual departments, which have different needs and constraints, as we have noted with regard to the FCO.

8.28 To ensure that the ethical standards for sponsorship are widely known, they should continue to be communicated centrally by the Cabinet Office. We recommend that the

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Cabinet Office should issue a set of principles, based partly on the current guidelines but updated to reflect recent experience and the recommendations in this chapter. These should be incorporated in more detailed practical guidance, to be produced by each department which wishes to seek sponsorship. Because, at least theoretically, sponsorship could be provided by voluntary bodies as well as the private sector, the guidelines should also make reference to voluntary sector sponsors. In our view the FCO guidelines provide a good model.

R32. The Cabinet Office should produce a set of principles (based on the current Cabinet Office guidelines but reflecting recommendations R33, R34, R35 and R36) to be followed by all departments that wish to attract private or voluntary sector sponsorship. Each of these departments should incorporate these principles in a more detailed practical document, appropriate to its own requirements.

Issues to be Considered by Departments

8.29 We believe that departments should examine certain questions very carefully when contemplating sponsorship. We are not satisfied, for instance, that departments currently ask themselves in a systematic way whether or not an offer of sponsorship will further government objectives. The existing guidelines are not always well known, and they fail to insist on a rigorous evaluation of the arguments for and against sponsorship in a particular case. There are potential risks in sponsorship (for example, of association with a company whose activities may be seen as inappropriate for a particular campaign). Ideally, departments should be able to assess potential benefits and set these against the potential disbenefits before committing themselves to a search for sponsors.

8.30 We therefore believe that the Cabinet Office sponsorship principles should require departments to consider all these issues thoroughly. A simple checklist could be used to ensure that departments weigh the arguments for and against. If departments cannot assure themselves that the potential benefits to the work of the department will outweigh the costs and potential disbenefits, they should not proceed with the search for sponsorship.

8.31 The key to this is that departments should be rigorous in selecting events and activities for possible sponsorship, and should if necessary exclude some activities from sponsorship altogether. Departments should also be vigilant in applying their rules on types of company that might be held to be inappropriate as potential sponsors, in particular where there might be accusations of conflict of interest.

R33. The Cabinet Office sponsorship principles should include a requirement that departments must satisfy themselves, before they begin to seek sponsorship, that any sponsorship is likely to produce significant net benefit for the department, at no detriment to the public interest. Departments should in particular examine rigorously whether: (a) particular activities should be excluded from sponsorship, and (b) particular types of company could be held to be unsuitable for consideration as sponsors on the grounds of potential conflicts of interest or inappropriate association.

8.32 There should also be a network of officials with expertise in dealing with sponsorship, to ensure that consistent standards are maintained across government. Many individuals have acquired a good knowledge of the issues and constraints, but there is no evidence that information is shared or principles discussed in a systematic way.

8.33 The FCO has recently appointed a sponsorship adviser to *''provide a focus for sponsorship activity within the FCO and to provide hands-on advice to project managers''.* This is a useful initiative, which should help to produce a consistent approach across that department. We believe that this should be reproduced in other departments which are seeking sponsorship, to provide a point of contact for officials and a source of advice on propriety issues (as well as on the details of sponsorships already arranged or in prospect). These sponsorship advisers should also encourage a cross-government approach to sponsorship which maintains high standards of propriety. The adviser would in many cases be nominated by the departmental head of information, who already has responsibility for advising on propriety in these and related areas under central government guidance (see paragraph 6.73 above). The identification of such an official would also help to strengthen accountability by encouraging departments to think clearly about the reasons for or against sponsorship, and about the location of responsibility for making decisions on sponsorship.

R34. Each department which seeks sponsorship should identify an official, who would be responsible for ensuring that the relevant guidance on sponsorship is known and observed throughout that department. The official should liaise with other such officials across government departments to ensure high standards of propriety in relations with sponsors.

Openness in Sponsorship

8.34 Several witnesses advocated greater openness about the details of sponsorship. Sir Richard Wilson, the Cabinet Secretary, saw transparency in this area as an important protection, and made clear that the onus of proof should be on those sponsors and those departments that wished to keep the details confidential:

> *My own view is that one should lean towards openness. I think it is a good idea that one of the great protections in this area is transparency. If you have secrets it conveys a sense that you are doing something which you do not want other people to know about. If people feel that what they do is going to be in the open, then that actually is a good discipline on them . . . There may be cases where for a good reason commercial confidentiality applies. So be it, but the department must be prepared to defend it and give a good account of itself.*[13]

8.35 Baroness Symons spoke out strongly in favour of openness in this area, while pointing to some of the difficulties that could be caused to companies:

> *I believe that openness is the best policy. I heard your previous witness say that if you have nothing to hide, you ought to able to say so. That is something with which most of us feel very comfortable . . . my own view is that we should be as forthright as possible in getting companies to be open. There are issues of public confidence about this, but I*

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recognise at the moment that it would be enormously difficult to force companies into that position. I hope that bit by bit, they will be persuaded with sticks and carrots that that is the right thing to do.[14]

8.36 Mr Richard Down, of the sponsorship consultants Integrated Communication Projects Ltd, set out the issues raised for companies by proposals for disclosure. He saw little difficulty in releasing information about cash sums paid *''because that is a matter of fact''*. However, describing in-kind sponsorship could be difficult, he believed. He told us that companies: *''probably would not want to give away the cost* [to the company] *because in some cases that would provide information to their competitors.''*[15]

8.37 Arguments **against** requiring disclosure of the nature and amount of sponsorship include the danger that it would deprive government of some potentially generous sponsors. It is also difficult to assess the value of sponsorship – should it be recorded as the amount saved by the sponsored department, or the amount spent by the sponsor?

8.38 Arguments in **favour** of such a requirement are based on the need for openness. Disclosure of sponsorship amounts would help to make clear where influence was being sought and reassure the public that privileged access was not being granted.

8.39 There are also parallels between the sponsorship of government activities and the sponsorship of political parties. In our Fifth Report, we recommended that donations to political parties of £5,000 or more should be disclosed.[16] The Government has accepted this recommendation, making clear that the definition of 'donation' should include sponsorship, both in cash and 'in-kind'. Although it could be argued that sponsorship of government activity is not precisely comparable to direct assistance to a political party, the danger of real or perceived 'buying' of political influence is common to both. Openness in both situations helps to allay anxiety and increase confidence in the probity of the transactions.

8.40 It might be the case that a sponsor demands commercial confidentiality because of the large sums involved. That would in itself be a good reason for the public to know; such sums are more likely than more modest ones to influence the formulation of policy.

8.41 The Committee accordingly believes that there should be disclosure in departmental annual reports of sponsorship of government activities by the private sector. The information should also be available to the public on request. We also recommend that sponsorship of a value below £5,000 should only be recorded as 'less than £5,000'.

8.42 Guidance on the recording of 'in-kind' sponsorship will also be required. Clause 47(e) of the draft Political Parties, Elections and Referendums Bill could form the basis for such guidance. The sub-clause is one of a series of definitions of what might constitute a 'donation' to a registered party. Included is: *''the provision otherwise than on commercial terms of any property, service or facilities for the use or benefit of the party (including the services of any person).''*[17]

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[14] Day 7 (am).

[15] Day 4 (am).

[16] Committee on Standards in Public Life, *The Funding of Political Parties in the United Kingdom,* Cm 4057 (1998), Recommendation 1.

[17] *The Funding of Political Parties in the United Kingdom: The Government's proposals for legislation in response to the Fifth Report of the Committee on Standards in Public Life,* Cm 4413 (July 1999), Annex 2, p 24.

8.43 We believe that the sum to be disclosed should be the value **to the Government** of such 'in-kind' sponsorship. This should help to avoid the criticism that commercial confidentiality could be infringed by disclosure.

R35. There should be disclosure in departmental annual reports, and to the public on request, of the details, including the value received, of sponsorship of government activities by the private and voluntary sectors. For sponsorship valued at less than £5,000, the individual amounts need not be disclosed.

R36. In recording the value of sponsorship, the figure to be recorded should be the value of the sponsorship to the government department. Guidance on the correct way to record 'in-kind' sponsorship in such disclosures should be appended to the principles set out by the Cabinet Office.

PUBLIC APPOINTMENTS AND PROPORTIONALITY

Scope of Our Present Enquiry

9.1 Although our terms of reference cover all categories of Non-Departmental Public Bodies (NDPBs) (that is, executive bodies, advisory bodies and tribunals), our First Report enquiry focused on executive NDPBs and National Health Service (NHS) bodies (principally health authorities and trusts) only. We made recommendations which fell into two categories: those dealing with the appointments system and those concerned with issues of propriety. Our principal recommendation was that a new independent Commissioner for Public Appointments should be appointed.[1] The first Public Appointments Commissioner was Sir Leonard Peach, who was appointed in December 1995. He was succeeded by Dame Rennie Fritchie on 1 March 1999. We have no doubt that the creation of that office has been fully justified. We are impressed by the thoroughness with which Sir Leonard and now Dame Rennie have discharged their duties, and the observations which we make in the course of this chapter demonstrate that many of the issues which are a cause of concern to us are now in the process of being addressed by Dame Rennie.

Proportionality

9.2 In November 1997, we published a review of the implementation of the First Report recommendations on public appointments (and those contained in the Committee's Second Report on Local Public Spending Bodies). We concluded that *''considerable and welcome progress had been made''* and that our recommendations had largely been acted upon.[2] For this reason, subject to one exception, we decided not to reconsider those recommendations in our present enquiry. The exception is the issue of 'proportionality' in the public appointments process.

9.3 We use the term 'proportionality' in this context to describe the principle that the length and complexity of an appointment procedure should be commensurate to the nature and responsibilities of the post being filled. In guidance issued by the Commissioner for Public Appointments on appointments to public bodies (published in July 1998), the principle of 'proportionality' is stated to be one of the Commissioner's Seven Principles.[3]

Advisory NDPBs

9.4 In June 1998, the Government announced that our recommendations in relation to executive NDPBs should, where practicable, be extended to advisory NDPBs.[4] None the less, initially, we decided not to include advisory NDPBs within the scope of our present enquiry. During the course of taking oral evidence, however, it became clear to us that we should not confine ourselves to executive NDPBs. The overlap of issues relating to the appointments systems governing executive and advisory bodies is such that we think it is difficult to consider the two types of NDPB in isolation.

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[1] First Report, Recommendation 38.
[2] Fourth Report, p 2, para 7.
[3] *The Commissioner for Public Appointments' Guidance on Appointments to Public Bodies* (July 1998), p 12.
[4] This announcement was made in a document entitled *Opening the Doors*.

NHS Bodies

9.5 Many of the recommendations contained in our First Report cover executive NDPBs and NHS bodies jointly. In the course of our present enquiry, the evidence we received suggested that there are issues which we should address which specifically relate to NHS appointments. For this reason, we have, to some extent, treated NHS bodies separately from executive (and advisory) NDPBs.

Principles of selection

9.6 In our First Report we endorsed the twin objectives of selection on merit and a balanced representation on public bodies. The debate on reconciling these objectives continues. We are aware that this debate is a complex and sensitive one. The issue was often raised during the course of our enquiry and whilst we have not considered it exhaustively, we believe that we should take this opportunity to comment on relevant evidence that we have received.

Evidence Gathering

9.7 In addition to receiving oral evidence and written submissions (in response to the Issues and Questions paper) on issues relating to proportionality in the public appointment system, we undertook a survey of a selected number of executive NDPBs and of NHS bodies within the London and North West regions. We also surveyed main government departments about their public appointments systems.

9.8 Questionnaires were sent to 115 high-spending executive NDPBs (that is, those executive NDPBs which, according to the publication *Public Bodies 1998*, spent in excess of £10 million in the year 1997–98) and to all NHS bodies in the two selected NHS regions. Questionnaires were also sent to Establishment Officers in main government departments and to the Commissioner for Public Appointments. Examples of the questionnaires are set out in Appendix IX. We received 80 responses from executive NDPBs and 62 responses from NHS bodies. Respondents are listed in Appendix X. We are grateful to those organisations and departments which responded to our questionnaire. The answers we received provided us with valuable insights.

Substantive issues

9.9 We now turn to the substantive issues about the public appointments system which were raised during the course of our enquiry. We shall deal with them under three headings: A. proportionality, B. issues relating specifically to NHS bodies, and C. principles of selection.

A. Proportionality

The First Report

9.10 The recommendations in the First Report sought to ensure greater fairness and greater openness in the public appointments system. It was agreed, however, that this should not be achieved at the expense of excluding flexibility from the system. The Committee acknowledged that *''a process which may be right and cost-effective for a*

full-time, highly paid post responsible for significant public spending is unlikely to be necessary for a part-time, one day a month, unpaid appointment to an advisory committee.''[5] The Committee proposed that a test of proportionality should be included in the public appointments system, albeit one that was *''tightly drawn''*.

The Fourth Report

9.11 It was clear from the responses which the Committee received in the course of the Fourth Report review that the changes to the public appointments procedures brought about by the First Report had, in the main, been welcomed by executive NDPBs and NHS bodies and had increased public confidence in the appointments system. As regards the principle of proportionality, however, in our Fourth Report, the Committee said:

> *In public appointments, the principle of 'proportionality' . . . has not properly been taken into account. Practical implementation of the procedures has become too cumbersome, a point recognised by the Commissioner for Public Appointments. While we can say that the public service has responded positively, and in some cases enthusiastically, to our recommendations, there is still much work to be done.*[6]

9.12 The Committee also made the following observation:

> *O2. It is essential that departments and executive NDPBs should apply the principle of proportionality to the appointments procedure. Any advice and guidance the Commissioner for Public Appointments can give in this respect would be most welcome. It is, nevertheless, important that correct procedures are adhered to and that appointments are made on merit. Proportionality should not be an excuse for sloppy procedures.*

Government's response to the Fourth Report

9.13 In its response to the Fourth Report, the Government said in relation to the second observation (O2):

> *Proportionality is one of the seven principles on which all appointments must be based . . . It is expected that the Commissioner's revised guidance will include strengthened and expanded advice on proportionality which stresses the importance for departments to consider whether the proposed approach is proportionate to the status and responsibility of the post concerned.*[7]

Response of the Commissioner for Public Appointments

9.14 In July 1998, the Commissioner for Public Appointments published revised guidance to departments which covered, amongst other things, the issue of proportionality. In the revised guidance, the Commissioner states (paragraph 2.29):

> *It is essential that at the beginning of all appointment processes departments should consider whether the proposed approach is proportionate to the status and responsibilities of the post concerned.*

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[5] First Report, p 80, para 71.
[6] Fourth Report, p 3, para 10.
[7] *Fourth Report of the Committee on Standards in Public Life: Government Action Plan*, Cabinet Office (OPS), May 1998.

9.15 A number of factors which should influence the selection approach are set out by the Commissioner. These include:

- the size of the body's budget and expenditure;
- the status and responsibility associated with the post;
- whether the body is a high profile body;
- the level of remuneration (if any);
- the availability of sufficient suitable candidates from appropriate sources;
- special circumstances pertinent to the appointment.

The tier system and advisory NDPBs

9.16 With effect from October 1998, the Government extended the remit of the Commissioner for Public Appointments to cover appointments to nationalised industries, public corporations, the utility regulators and advisory NDPBs. The Commissioner (then Sir Leonard Peach) recognised that it would be inappropriate to apply the appointments procedures in full to most of the advisory bodies whose members are, by and large, part-time and unpaid, and he agreed to less onerous procedures for most advisory NDPBs.

9.17 Under the reduced scheme, advisory NDPB posts have to be allocated to one of three tiers:

- Tier 3 comprises posts in receipt of £3,001 a year or more;
- Tier 2 comprises posts in receipt of up to £3,000 a year; and
- Tier 1 comprises unpaid posts

9.18 Posts allocated to Tier 3 have to be filled using the full procedure applicable to executive NDPBs. Tier 2 and 1 posts (which cover most appointments to advisory NDPBs)[8] are subject to modified procedures.

Complaints raised in evidence in relation to proportionality

9.19 The complaints raised in evidence about proportionality – or its absence – from the public appointments system, fall, broadly, into the following categories:

- that the full executive NDPB appointments procedure is being applied to all appointments to NDPBs (executive and advisory) without discrimination;
- that an appointments system based on open competition is inappropriate to highly specialist advisory bodies.

9.20 Professor Anthony King, a former member of this Committee, expressed concern that the First Report recommendations had been taken too far. Professor King was a member of the Committee at the time the First Report was written, and, as a result, his comments about the intention behind the First Report are particularly important to us. He said in evidence:

[8] *The Commissioner for Public Appointments' Guidance on Appointments to Public Bodies* (July 1998), p 38, para 4.13.

> *The intention . . . was to focus primarily on executive quangos that spent large amounts of money and/or had a great deal of power. The recommendations were never intended to apply either to executive bodies that do not answer that description or, in particular, to advisory bodies.*[9]

9.21 He suggested an explanation for the spread of 'Nolan procedures' to those bodies for which they were not intended:

> *My guess is that Ministers and civil servants have been so anxious to protect themselves against any possible accusation of unfairness or impropriety that they have, in effect, taken the easy way out and applied the rules in every possible circumstance.*[10]

9.22 Professor King argued that a number of adverse consequences flow from this development: a disproportionate amount of time and effort is used to fill posts; appointments are subject to delay; highly suitable candidates are deterred from participating. Expanding on the last point, Professor King explained that the issue related to a sense of duty that arose when an individual is invited to fill a post rather than expected to apply and compete for a post:

> *the best people in any given field are often very busy people – precisely because they are the best people. They are not actively seeking additional work and commitments; they are probably trying to shun them. If a Minister or senior official comes along and actually invites such a person to sit on an advisory committee or some similar body, the person in question may think it is his or her duty to serve and may agree to do so; but that same person would never dream of applying for the appointment.*[11]

9.23 Mr Peter Riddell, Assistant Editor of *The Times*, told us that he agreed with Professor King's concerns and shared the same view as to why they had arisen:

> *I think that the Civil Service in a classic fashion is applying it so rigorously that it significantly reduces the efficiency of the process, because of the length of time* [taken to make] *appointments.*[12]

9.24 In a recent report,[13] the House of Commons Select Committee on Culture, Media and Sport commented that the most common complaint about the Department of Culture, Media and Sport (DCMS) appointment system was not the fairness of the system but the time taken. We received, through our survey, evidence from a number of executive NDPBs which are sponsored by DCMS. Whilst delay is clearly an issue, several of them were critical of the absence of proportionality. For example, the response of the Imperial War Museum (IWM) stated:

> *We believe that the DCMS is over-cautious in its approach to proportionality.*[14]

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[9] Day 1 (am).
[10] Day 1 (am).
[11] Day 1 (am).
[12] Day 1 (pm).
[13] *Sixth Report of the Committee on Culture, Media and Sport*, HC 506 (1998–99), published on 22 July 1999.
[14] Written evidence (18/20).

The IWM suggested, amongst other things, that the 'job application' element of the procedure should be abolished because board members were *''volunteers, unpaid, and not executive employees, of the Museum''*.

A representative of the Tate Gallery expressed a similar view:

> *I am afraid I must say that I do believe that our sponsoring department is over-cautious in its approach to proportionality in relation to appointments to the Tate. We fully support the Commissioners' aspirations to broaden representation on public bodies such as the Tate and to have fair, open and supportable public appointments process. However, all of the Tate Gallery's trustees are unpaid non-executive trustees who often give a great deal of their time to the gallery with no financial recompense.*[15]

The Natural History Museum told us that its experience *''strongly suggests that the public appointments procedure can be disproportionate''* and the National Gallery said:

> *We believe that the procedures for appointments to unremunerated, part-time, non-executive Boards of trustees are still taking too long.*[16]

9.25 Sir Leonard Peach, the former Commissioner for Public Appointments, told us what he thought should be done in response to the complaint about the absence of proportionality in the public appointments system. He suggested that the new scheme governing advisory NDPBs should be allowed to settle down, with a view to seeing if smaller executive NDPBs could be combined with larger advisory NDPBs to form a class of NDPBs with its own rules on proportionality.

9.26 The creation of the tier system with respect to advisory NDPBs represents a positive development in thinking about reconciling pragmatism with principle in the public appointments system. Given, however, the weight of evidence – albeit much of it anecdotal – testifying to the indiscriminate application of the Nolan principles in relation to public appointments, we would not have felt it right to leave matters as they are without assurance that the complaints we have identified were receiving more active consideration.

9.27 We were therefore pleased to receive such assurance from Dame Rennie Fritchie, the present Commissioner on Public Appointments. In her evidence to us, she addressed both the general issue of the absence of proportionality in public appointments and the more specific issue of appointments to highly specialist advisory committees. She made the following two commitments:

- *Towards the end of* [1999]*, when the tier system for ANDPBs has been in place for over 12 months, I intend to review its operation and consider whether it would be appropriate to introduce a similar system for the other categories.*
- *I have also begun to examine the possibility of introducing a special category for 'expert' posts. By that I mean posts that require such a rare combination of skills and experience that it is impractical to try to fill them by using the prescribed procedures.*[17]

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[15] Written evidence (18/66).
[16] Written evidence (18/64).
[17] Day 7 (am).

9.28 On the practical point of the onerousness of completing an application form, Dame Rennie said that she was taking steps to encourage departments to require less time-consuming forms to be completed by applicants. We received evidence from our survey of executive NDPBs that the requirement to fill in an application form was thought to deter potential candidates. We have also been shown some examples of application forms and, given their length and complexity, we fully endorse Dame Rennie's efforts.

9.29 We are under no illusion that the tasks with which the Commissioner has charged herself are simple. For example, we anticipate that there will be differences of opinion about which sorts of posts should fall within the category of special 'expert' posts. The Rt Hon Chris Smith MP, Secretary of State for the DCMS, gave an example of the uncertainty of the boundary. He first set out the obvious case:

> *Let me give you one example of a clear case: the Advisory Committee on Historic Wrecks is an expert committee . . . there is a very limited pool of people that one would wish to draw from. It is purely an advisory body and clearly should not be subject to the same kind of procedures as when we come to recommend for appointment governors of the BBC.*[18]

He then suggested a less clear example:

> *Recently the Science Museum told us that they had three vacancies . . . There we were certainly looking for experts, but we also were looking for people who could contribute generally to the running of the Board of the Museum. That falls into a slightly different category from the pure expert.*[19]

9.30 Dame Rennie made a similar distinction when she compared *''very rarefied and specialist''* posts like some of the scientific posts for the Ministry of Agriculture, Fisheries and Food or the Ministry of Defence, with posts which require, say, financial expertise where the numbers of suitable candidates would be far greater.

9.31 We were impressed by Dame Rennie's commitment to addressing the proportionality issue, both generally and with particular reference to 'expert' posts. We believe that it would be premature to offer any recommendations in advance of Dame Rennie's reviews. We therefore confine ourselves to making the following observations.

O1. We welcome the announcement of the Commissioner for Public Appointments, Dame Rennie Fritchie, that she intends undertaking a review of the operation of the tier system and look forward to the report of her findings and conclusions.

O2. We also welcome the Commissioner's indication that she is to consider whether it would be appropriate to introduce a special category of appointments, designated 'expert' posts, to which different appointment rules should apply.

[18] Day 7 (pm).
[19] Day 7 (pm).

B. NHS Bodies

9.32 We now turn to the specific issues relating to the NHS. The first concerns the problem of delay.

Delay

9.33 It was a Manifesto commitment of the present Government that it would make NHS bodies more representative of the communities they served. Following the general election in May 1997, the former Secretary of State for Health, the Rt Hon Frank Dobson MP,[20] implemented this commitment by changing the criteria of appointments to NHS bodies. It was suggested to us that it was for this reason that the appointments procedures in the NHS have been subject to serious delays, especially in the last two years.

9.34 Bearing in mind our general concern about proportionality, we were interested to note that both the results of our survey and the evidence we received about the NHS appointments process at our public hearings suggested to us that one of the principal complaints about NHS appointments is not delay caused by an absence of proportionality but the delay itself.[21] Indeed, many of those who offered their views about the NHS appointments procedure were generally supportive of its breadth and openness. For example, a representative of one NHS trust said that there was *''no evidence of 'over caution' by the Department of Health''* as regards the principle of proportionality but *''the long delay between application and appointment means that some useful people are lost to the NHS because they find other activities to pursue''*. A representative of another NHS trust wrote:

> *I do not necessarily believe that the Department of Health is over-cautious in its approach to proportionality in the public appointments process. I think that a major problem exists with the selection process resulting in delays in new appointments and reappointments.*

9.35 Representatives of the NHS Confederation similarly complained about the delay in the appointments process. Mr Dobson MP, however, was not prepared to accept the word 'delay' in reference to appointments in the past two years (preferring to use the expression *''elapse of time''*) but assured us that this year (1999) *''every health authority appointment due in April was made on time''*.

Reappointments

9.36 In his foreword to the *Fourth Report of the Commissioner for Public Appointments*, Sir Leonard commented:

> *The Department of Health again ran into problems in completing its appointment cycle on time and a number of chairmen and members found themselves uncertain of their position in relation to reappointment or cessation of office. This is not a new problem and I had hoped that the experience of last year which led to a number of changes would have produced a solution to a situation which occurs time and time again . . .*[22]

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[20] On 11 October 1999, the Rt Hon Alan Milburn MP replaced Mr Dobson as Secretary of State for Health.

[21] Therefore echoing the comment of the Committee on Culture, Media and Sport about the DCMS appointments system (see para 9.24 above).

[22] *Fourth Report of the Commissioner for Public Appointments* (1998–99), p 5.

9.37 In evidence, Sir Leonard said that he attributed the delays in reappointments to the fact that the Secretary of State for Health had changed the criteria for appointments to NHS bodies. Dame Rennie explained why reappointments were a particular source of concern in the NHS:

> *The main complaints about the reappointments process seem to circle around the NHS, although there are others. The NHS has a system that is different from all other departments. For a first reappointment, so long as someone has been assessed as performing their role well, there is no need to go out to compare them against external candidates. However, the NHS recently decided to go out at that first stage in any case, and that has caused an enormous amount of work. I recognise the reason for it is that the criteria have changed and I am sure that the Secretary of State wants to make sure that the people who are there are fit for the new purpose. However, that has made a big difference.*[23]

9.38 From the evidence we have received, it seems clear to us that not only has this change in procedure for reappointments caused *''an enormous amount of work''*, as Dame Rennie suggests, but also significant distress for the candidates who apply to be reappointed. We set out some of the evidence in paragraphs 9.41 to 9.44 below.

9.39 We can understand why the (then) Secretary of State adopted the new approach to reappointments during a period in which a transition is being made from one set of selection criteria to another. We anticipate, however, that such a procedure on first reappointment (for those who have been assessed as performing satisfactorily) will become unnecessary as the new criteria fully permeate the system. We would urge the Secretary of State for Health to review the reappointments system as a matter of priority. We have received evidence, through our survey of NHS bodies, that it is a particular cause of concern. For example, the chairman of one hospital trust said that reappointments were *''particularly badly handled''*, and:

> *Whether they have done an excellent, mediocre or poor job, the process is the same and they have to enter a competitive process for reappointment. This inevitably leads to a period of uncertainty for the individuals and organisations concerned.*

9.40 We believe that it is particularly important that lessons should be learned from this recent experience in relation to reappointments in the event that this – or any future – Government should consider introducing another change in the criteria for appointment to NHS bodies.

Discourtesy and distress

9.41 In his written submission, Lord Nolan, the former Chairman of this Committee, expressed his concern about what he perceived to be *''insensitivity, ingratitude, even discourtesy towards precious volunteers''*. We touched on this issue with specific reference to delays in the appointments system in our Fourth Report. We commented:

> *Departments and executive bodies should plan their appointment procedures well in advance so that extended vacancies are avoided and candidates do not become*

[23] Day 2 (am).

> *frustrated or demotivated by being kept waiting for news. It should be, after all, a common courtesy of good government.*[24]

9.42 During our current review, we received evidence which indicated a particular concern about the implicit discourtesy shown to those seeking NHS appointments and reappointments – born, principally, of the fact that that candidates are not kept informed of the progress of their application and, in reappointment cases, are not given timely notification of whether they have been successful in retaining their posts. Andrew Foster of the NHS Confederation said:

> *Within the normal timetable, if I am putting forward a recommendation in May or June for a vacancy that will occur in November, as a matter of good practice, I will inform everybody whose name has gone forward. Neither I nor they can successfully find out what is going to happen next or when it is going to happen. This is simply poor practice, when the delay only extends to, say, the month up to the date of re-appointment. When it goes beyond the date of reappointment, I think it becomes a very severe discourtesy that someone knows their name has been put forward, a decision has not been made and there is no way of finding out when that decision will be made.*[25]

9.43 The chairman of one hospital trust told us that although there was no evidence that delays in appointments deterred potential candidates, *''it certainly causes distress to those reapplying''*. Another said:

> *I am aware of several people who have been left waiting months to hear if they have been reappointed or not. They may not be reappointed, are not told why and are often unceremoniously dropped, sometimes after years of valuable service. This is demotivating for their colleagues, who may decide not to put themselves through the process.*

9.44 Evidence was received from another health authority that the treatment of candidates fell *''well short of what the Fourth Report described as a 'common courtesy of good government'''* and that there was *''much work still to be done in this area''*.

9.45 The impression we have gathered about the operation of the NHS reappointments procedure in particular is a cause of considerable disquiet to us. We therefore make the following recommendation.

[24] Fourth Report, p 3, para 10.
[25] Day 1 (am).

R37. The Secretary of State for Health should review the procedure governing reappointments to NHS bodies with a view:

(a) to re-introducing a system under which those seeking reappointment for the first time, who have been assessed as performing satisfactorily in their posts, can be reappointed without being compared to an external candidate;

(b) to ensuring that those seeking reappointment are kept fully informed about the progress of the reappointment process at all stages; and

(c) to ensuring that the reappointment process is undertaken at the appropriate stage and a decision on reappointment is made reasonably in advance (say, two months) of the end of the post-holder's term of office.

Workload

9.46 It was put to us by representatives of the NHS Confederation that one issue which could well adversely affect recruitment to NHS bodies was a misrepresentation of the workload of board members. The present guidance indicates that the members should be available on three days a month to discharge board functions: in fact, we were told, many members work at least six days a month. Sir Alan Langlands, Chief Executive of the NHS Executive, agreed that the underestimate of the workload was causing a problem. He said that the matter would be considered carefully when the autumn (1999) advertisement for board members was drawn up. We welcome the commitment of the Chief Executive of the NHS Executive to revising the advertisement for NHS board members so as to describe more accurately the workload of NHS board members.

The register

9.47 Because of the volume of appointments to NHS bodies, the appointments procedure has been designed with cost-effectiveness in mind. Individuals apply in response to a national round of advertising or are nominated by Members of Parliament (MPs) or chief executives of local councils, and those who are successful at interview are put on a regional register. Candidates' names remain on the register for up to two years. As a vacancy arises, the Regional Chairman will consider candidates on the register and the skills and appraisal report of any incumbent wishing to be reappointed. Up to three names will then be passed to the Minister for selection of the successful candidates. Sometimes, before the names are sent to the Minister, the chairman of a local health authority or trust might be given the opportunity to meet two or three shortlisted candidates.

9.48 Sir Alan Langlands said of this system:

> *The generic advertisement and regional registers are themselves a demonstration of proportionality. I believe that taking proportionality further to avoid or reduce advertising would prevent us from meeting the Secretary of State's objective of ensuring that NHS boards are representative of the communities they serve.*[26]

[26] Day 3 (am).

9.49 Mr Andrew Foster of the NHS Confederation was critical of the register:

> *when you invite people to enter into the register in the first place, they are not applying for a specific vacancy, they do not know when the vacancy may occur and I have certainly heard it said: ''what is the point of me applying for something that may never even happen?''*[27]

9.50 We agree that it would be a misuse of the principle of proportionality to reduce advertising for candidates for NHS boards, whether at national or regional level. By the very nature of the boards and their functions, it is important that the net should be thrown as widely as possible. Our concern is about the use of a central register. We believe that there is a risk that applicants and potential applicants will be demoralised and deterred by the register system because of (a) the length of time they may have to wait before being given an opportunity to serve on a board, (b) the risk that they might never be appointed at all despite having gone through the process of getting on the register, (c) the fact that they cannot apply for a particular vacancy in a particular geographical area, and (d) the fact that they cannot apply for a particular vacancy in a particular skills area. We are also very concerned that under the present NHS appointments system, it is sometimes the case that a local chairman might not be given an opportunity to meet the group of shortlisted candidates from which a new member of his or her board is to be selected. It is inconceivable that this could happen to a chairman of a board in the private sector.

9.51 We recognise that the register system has been conceived, of necessity, with cost in mind. Bearing in mind the disadvantages of the system that we have detected, we believe that the Secretary of State should consider, in the light of the findings of the Public Appointments Commissioner's proposed scrutiny (see paragraph 9.57 below), whether a less centralised system might be devised which would permit appointments being made in respect of particular vacancies and enable local chairmen to have a more prominent role. Any change must, of course, be subject to the need to maintain standards of performance and delivery across the NHS system.

> ***R38. The Secretary of State for Health should reconsider, with the advice of the Public Appointments Commissioner and following the Commissioner's scrutiny of the NHS appointments system (see O3 below), the appointments procedure in relation to NHS trusts and authorities with a view to setting up, if practicable, a less centralised appointments system than the present register system, subject to the need to maintain standards of performance and delivery across the NHS system.***

Political activity and political nominations

9.52 Professor Anthony King, in evidence to us, expressed concern about the membership of NHS bodies. He said:

> *In connection with executive bodies, I only know what I read in the newspapers. It is said crudely, the Tories packed NHS trusts in particular with their people, the present*

[27] Day 1 (am).

> *Secretary of State* [Mr Dobson] *is now packing them with his people. How far this is true, I do not know. . . . If – I emphasise 'if' – the present Government have chosen to replace one system of partisan-oriented appointments with another, I would think that unfortunate.*[28]

9.53 One of the principal concerns addressed in our First Report was whether public appointments were being unduly influenced by party political considerations. We made the following recommendation:

> *Candidates for appointment should be required to declare any significant political activity (including office-holding, public speaking and candidature for election) which they have undertaken in the last five years.*[29]

9.54 We took the view that the collection of this information would enable the Commissioner for Public Appointments to monitor the success rates of candidates of different political persuasions and *''if the results of this monitoring were then to be published it could act as a discipline against abuse as well as helping to restore public confidence in the system''.*[30] In our Fourth Report, we expressed some concern about indications that changes in the appointments system had *''introduced an apparently political flavour to the appointment system''* and we suggested that the Public Appointments Commissioner revisit the definition of declarable 'political activity'. This was done and, in October 1998, a new definition applied.

9.55 In his Fourth Report (1998–99), Sir Leonard Peach commented about politically active appointees in the NHS. He said:

> *The number of politically active appointees within the NHS remains higher than in any of the other groups . . . This is of course due to Ministers actively seeking greater local representation, with the result that the number of local councillors being appointed has more than doubled from 129 in January 1998 to 278 in March 1999, with Labour councillors representing 80 per cent of the March figure.*[31]

He raised the following concern:

> *that the emphasis on representation may lead to the bodies in question losing the wider management and professional skills and competencies which those holding office need to fulfil the responsibilities that they are required to discharge.*[32]

9.56 On a related issue, we heard evidence about the role of MPs and local councillors in the NHS appointments process. Mr Dobson explained that MPs and local authorities, as elected representatives of people in a locality, were invited to submit names for consideration but said that *''candidates from whatever source are treated identically''*. Whilst the NHS Confederation did not quarrel with this arrangement in principle, they expressed concern about the fact that the candidates nominated in this way tended to bypass the local level interview stage.

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[28] Day 1 (am).
[29] First Report, Recommendation 43.
[30] First Report, p 80, para 67.
[31] *Fourth Report of the Commissioner for Public Appointments* (1998–99), p 4.
[32] Ibid.

9.57 During the course of giving evidence, the present Commissioner, Dame Rennie Fritchie, made clear her awareness of issues relating to political activity and appointments within the NHS and to political nominations. She made the following announcement:

> *I have decided to set up a scrutiny group to look into the appointments process in the NHS. I recognise that concerns might be based on perception rather than reality, but I wish to establish the facts. . . . The group's objectives will be to take account of recent annual audits in the NHS and to examine the processes used during the current and preceding year to see whether there were any areas of weakness and, if so, make recommendations for the future. The scrutiny will cover all aspects of the appointments system and will pay particular attention to the attraction and selection of politically active and politically nominated candidates.*[33]

O3. We support the announcement of the Commissioner for Public Appointments that she intends undertaking a scrutiny of the appointment procedure used for NHS appointments and look forward to the report of her findings.

C. Principles of Selection

9.58 We have already noted (in paragraph 9.33 above) that the (then) Secretary of State for Health, Mr Dobson MP, changed the criteria for appointments to NHS bodies with the objective of making NHS boards more representative of the communities they serve. Factors now taken into account in determining the composition of NHS boards include the following:

- geographical involvement of individuals;
- gender balance;
- representation of ethnic minority groups;
- representation of the disabled community.

9.59 Mr Dobson stressed his belief that the principle of appointment on merit and an objective of widening access to appointments were not contradictory. Representatives of the NHS Federation were of the same view: *''There are enough people of all backgrounds interested in applying for these very valuable jobs to ensure quality.''*

9.60 In our First Report, the Committee recommended that public appointments should be governed by *''the overriding principle of appointment on merit''*,[34] but that *''selection on merit should take account of the need to appoint boards which include a balance of skills and backgrounds''*.[35] In its response to the First Report,[36] the Government of the day welcomed these recommendations. Whilst supporting the need for a balance of skills and background on the boards of public bodies, the Government highlighted the fact that *''the nature of the skills and backgrounds required of individual members, and hence the overall balance, is clearly likely to vary from board to board''*.

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[33] Day 7 (am).
[34] First Report, Recommendation 34.
[35] First Report, Recommendation 35.
[36] Cm 2931 (July 1995).

9.61 In February 1998, the House of Commons Select Committee on Public Administration published a report on the public appointments system.[37] The Committee considered this Committee's recommendations on the need for boards to contain a balance of skills and backgrounds. Taking into account the evidence of Sir Leonard Peach, the (then) Commissioner for Public Appointments, who was concerned about imbalances of gender, of ethnic composition and of age on boards, the Select Committee came to the view that it was not clear whether *''this aspect of the [public appointments] process . . . was one to which sufficient attention has been given''*.[38] The Select Committee warned against government departments defining 'merit' in a way which reflected *''hidden prejudices''*, and recommended that the Commissioner should *''aim to assist departments in ensuring that quango boards reflect more effectively a balance of varied backgrounds''*.[39]

9.62 In June 1998, the Cabinet Office published a report in which the Government made the following statements:

> *I. The Government is committed, in principle, to the equal representation of women and men in public appointments, and a pro-rata representation of members of ethnic minority groups.*
>
> *II. The Government is committed to appointment on merit, using fair selection procedures, which recognise non-traditional career patterns as suitable qualifications for appointments.*[40]

9.63 In her evidence to this Committee, Dame Rennie Fritchie, the Public Appointments Commissioner, described how she was going to take the debate further:

> *What I am doing . . . is setting up a group, which will . . . include two Permanent Secretaries. I am asking departments to give me practical examples of where the tensions between merit and balanced boards have come into play . . .*[41]

9.64 We remain of the view, expressed in our First Report, that *''all public appointments should be governed by the overriding principle of appointment on merit''*.[42] We also support the view that boards should, if appropriate, have a balance of skills and backgrounds. We think it likely that attempting to reconcile these views will reveal tensions between them. For example, members of NHS bodies are required to have specific skills in matters such as accounting, law, project management and information technology. They must be able to chair complaints committees and appeal hearings. Merit in these areas must be sustained whilst attempts are made to achieve a balance in gender, social and ethnic composition – and, we suggest, user groups such as the elderly.

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[37] HC 327 (1997–98).
[38] HC 327, para 33.
[39] Ibid.
[40] The report is entitled *Quangos: Opening up Public Appointments*.
[41] Day 7 (am).
[42] First Report, Recommendation 34.

O4. We welcome the work of the Commissioner for Public Appointments on developing measures to improve the balance of representation on the boards of public bodies and look forward to the report of her conclusions. As part of the objectives of her work, we invite her to consider:

- *how to improve the range of candidates from which public appointees are drawn, and*
- *how the concept of 'merit' can be reconciled with the need for a balanced and appropriately qualified representation.*

TASK FORCES

10.1 One example of an issue that has emerged as an area of concern since our First Report is that of task forces. Professor Hennessy drew the Committee's attention to it in his oral evidence:

> *A year ago, Sir Leonard Peach and I were in Northern Ireland . . . I asked Sir Leonard how many task forces there were and he thought there were 73 at the latest count – but four of them had transmogrified into quangos, by his definition. I was amazed that there were so many.*
>
> *It is another mushrooming area of patronage that is directly related to the new Government and which is beyond the scope of Nolan 1, and it is important that you look at it. It is in many ways a surrogate for old royal commissions or departmental committees of inquiry and is beyond the remit of Nolanry, if I may call it that – and it is very worrying.*[1]

10.2 The 'remit of Nolanry' is a reference to the system for ensuring that public appointments are made on merit which was recommended by our First Report. Recognising the complexity of the range of bodies affected, the Committee limited the scope of the First Report to appointments to executive Non-Departmental Bodies (NDPBs) and NHS bodies. In the Second and Fourth Reports, the Committee looked at appointments to local public spending bodies.[2]

10.3 In June 1998 the Government announced that the system for appointments recommended by the Committee in relation to executive NDPBs should be extended, where practicable, to advisory NDPBs.[3] Many advisory NDBPs (ourselves included) do not disburse public monies but offer advice on a specific area of policy. Although they are not responsible for public spending, it was recognised as important – to negate charges of ministerial patronage – that advisory NDPB members should be openly and fairly appointed.

10.4 This development still left a great many departmental working groups outside the scope of the Nolan rules. The existence of such groups – travelling under a variety of labels such as reviews, task forces, expert committees and working groups – is not a new phenomenon. They have long been a recognised way of bringing external advice to bear on specific policy issues. However, their existence has been seen as temporary: once the issue in question had been addressed, they were disbanded. It was this temporary status that justified their exclusion from the Nolan rules.

10.5 Since the election of the Labour Government in May 1997, there has been a dramatic increase in the number of such policy review groups. The figures below are derived from a series of Written Answers in the House of Lords:

- In February 1998, there were 113 review groups and 37 task forces.[4]

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[1] Day 3 (am).

[2] Committee on Standards in Public Life, *Local Public Spending Bodies*, Cm 3270 (1996), referred to hereafter as the Second Report, and *Review of Standards of Conduct in Executive NDPBs, NHS Trusts and Local Public Spending Bodies* (London: Stationery Office, 1997), referred to hereafter as the Fourth Report.

[3] *The Commissioner for Public Appointments' Guidance on Appointments to Public Bodies* (July 1998), p 12.

[4] Written Answer, *Hansard* (HL) 26 February 1998, col 113.

- Between February and July 1998, 69 review groups and 18 task forces had reported, but 48 additional reviews and seven additional task forces had been announced (making net totals of 92 review groups and 26 task forces).[5]
- In April 1999, a list of 148 review groups and task forces was given with no distinction made between task forces and review groups.[6]
- In November 1999, a list of 44 task forces established since May 1997 was given, showing that 11 had been wound up. Of the 33 still in being, several appear to be over two years old.[7]

10.6 As this list suggests, much of the debate so far has centred around numbers. Numbers are, however, meaningless if there is no agreement as to what is being defined. The word 'task force' has become the buzzword. Yet in the absence of any definition, it is possible for the *Daily Mail* in August 1999[8] to quote a figure for task forces of 110, but for Sir Richard Wilson, in his evidence to us in July 1999, to say that there were 'around 30'.[9] The 1999 academic analysis published in November 1999 and entitled *Ruling by Task Force* suggested that there were 295.[10] Such wide statistical differences demonstrate the absence of any common starting point. One person's 'task force' is clearly another person's 'review'.

The Issues

10.7 It seems to us important to concentrate on the issues raised by such groups, not solely their numbers. In our view, the debate about their existence mirrors the concerns that were aired at the time of the Committee's First Report about the unregulated growth of 'quangos', the secret nature of the appointment process and their unaccountability.

10.8 It is understandable that a new Government with a firm commitment to carrying out its manifesto should wish to review many issues. It is also for the Government to decide upon what sources of advice it wishes to draw and to decide how to *''promote a dialogue between 'social' partners from industry, academia and lobby groups''*.[11]

10.9 It is as well, however, to be aware of the concerns to which this policy can give rise. The creation of a dialogue with privately selected groups can raise suspicions that this dialogue is deliberately excluding other partners in the process of government. The proximity of business interests to the governmental process also raises suspicions of a kind that we have addressed in the chapter on Sponsorship (Chapter 8). Perceptions are very important in this area. As with other areas of concern, the best safeguards against such suspicions are openness and accountability.

10.10 The focus of our First Report was on how appointments should be made to public bodies in a way that guarantees they were made on merit and not because of political patronage. The question of which public bodies should be covered by this rule was taken up

[5] Written Answer *Hansard* (HL) 31 July 1998, cols 232–247.

[6] Written Answer *Hansard* (HL) 22 April 1999, col 174.

[7] Written Answer *Hansard* (HL) 11 November 1999, cols 242–248.

[8] *Daily Mail*, 19 August 1999.

[9] Day 7 (am).

[10] Tony Barker, Iain Byrne and Anjuli Veal, in association with the Democratic Audit, *Ruling by Task Force: Politico's Guide to Labour's New Elite*, Politico, November 1999.

[11] *The Economist*, 14 August 1999.

by the House of Commons Select Committee on Public Administration in their report on Public Appointments of February 1998. They stated:

> *We note that the extension to the Commissioner's remit will not cover the many groups which have been established since the election in order to advise on policy in particular areas . . . Most of these bodies appear to have functions very similar to those of most advisory NDPBs; and the only difference appears to be that some of them involve departmental officials as participants, rather than as secretaries. Departments seem to be free to select members of such bodies as they wish, despite the fact that they may have considerable influence and prestige. We believe that this is an anomalous and unacceptable situation. There should clearly be rules and guidance for these appointments as well. We recommend that the Government bring all advisory bodies, groups, and task forces within the remit of the Commissioner.*[12]

10.11 The Government's Response was published in May 1998 and was as follows:

> *The Government is currently consulting on proposals to bring all Ministerial appointments to advisory NDPBs within the Commissioner's remit. This would include appointments to those 'task forces' classified as advisory NDPBs. The Government does not, however, propose extending the Commissioner's remit to cover appointments to other types of advisory bodies. Such bodies generally fall into two main categories: time-limited bodies such as the majority of task forces, set up at short notice to report quickly on matters of particular concern, where it would be disproportionate to apply the Commissioner's Guidance to what are effectively short-term, 'one-off' appointments; and departmental working groups composed mainly of career civil servants, who are themselves recruited by fair and open competition under the rules established by the Civil Service Commissioners.*[13]

10.12 The then Commissioner for Public Appointments, Sir Leonard Peach, quite properly commented that it was for the Government to respond to the Select Committee's recommendation.[14] However, when he gave evidence to the same Select Committee in October 1998, he reverted to the question of exempt bodies being 'time-limited'. He said:

> *I have become concerned that they are not time-limited. My view is that they should be appointed for a particular period if they are to be designated as a Task Force. I have no specific view on the time period, except to say that once it gets over two years, it is very much in the 'quango' area. One may say that it is legitimate to appoint a Task Force for one to two years but after that it must either be disbanded or regularised.*[15]

10.13 The Parliamentary Answer of 11 November 1999 on Task Forces demonstrates that the options of disbandment or regularisation are already exercised. Of the 44 bodies listed, 11 are shown as having been wound up. It is also mentioned that those reclassified as NDPBs are not listed in the Answer as information on them is published in the annual *Public Bodies* publication.[16] In his evidence, Sir Leonard Peach said he thought *''about six task forces''* had been converted and commented:

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[12] *First Report of the Select Committee on Public Administration,* HC 327 (1997–98).

[13] *Government Response to the First Report from the Select Committee on Public Administration* (1997–98).

[14] *Third Report of the Select Committee on Public Administration* HC 723 (1997–98), Appendix 2, para 7.

[15] *Sixth Report of the Select Committee on Public Administration,* HC 209–1 (1998–99), vol 1, col 18.

[16] Written Answer, *Hansard* (HL), 11 November 1999, cols 242–248.

One legitimises the process. One takes the experience, recognising that people have given a great deal of time and put a lot of work into the task force and one then changes the body over a period of time or exposes it to competition. I see nothing wrong with that process.[17]

Our Findings

10.14 In seeking a way forward on this issue, we believe that the first requirement must be an agreed definition of what constitutes a task force. This clearly cannot be based on the wording of a group's title, as the application of the title 'task force' has been quite random. We are aware of the difficulty of finding a way through the maze of such groups which may range from Royal Commissions to internal working parties.

10.15 We have therefore concentrated on identifying the key characteristics that define a task force. Significant and plural outside membership must be one characteristic. We also agree with Sir Leonard Peach that another key characteristic should be the limited time frame as this is the stated justification for exempting them from the Nolan rules. In our view, his suggestion of two years as the relevant lifespan is correct. Anything beyond this point loses the justification that it would be disproportionate to apply those rules for a short-term and urgent exercise.

R39. An agreed definition of a task force should be established by the Cabinet Office, key elements of which should be that such a body has significant and plural outside membership and operates within a time frame of not more than two years.

10.16 Having established an agreed definition, it will then be necessary to conduct a thorough review of the present position. This requires a centrally organised exercise as individual departments and agencies will have to be contacted and asked for details. It would seem appropriate for the Cabinet Office to take on this role. If it appears from the review that some task forces have been in existence for longer than two years (and the Parliamentary Answer of November 1999 suggests that some have), a decision should be taken, in conjunction with the commissioning department, as to whether each task force should be disbanded or reclassified as an advisory NDPB.

R40. Using the agreed definition, a review should be conducted by the Cabinet Office to establish the number of task forces in existence and their current status and longevity.

R41. If it emerges that some task forces have been in existence for longer than two years, a decision should be made by the Cabinet Office, in conjunction with the commissioning department, as to whether the task force should be disbanded or reclassified as an advisory NDPB.

[17] *Sixth Report of the Select Committee on Public Administration* (1998–99), vol 1, col 18.

10.17 We are aware that achieving an accurate 'map' of task forces is not the end of the story. Such an exercise does not in itself guarantee openness and accountability, though it should place the concerns about the appointment process on a better foundation. There are other issues such as the openness of their terms of reference, their methods of working and the form of their conclusions. As a standing committee, we are able to review our earlier work and it is likely that this will be an 'emerging issue' to which we shall wish to return.

BUSINESS APPOINTMENTS

11.1 The business appointments system – governing the movement of certain public office-holders into jobs outside Government – was raised in the First Report in connection with three groups of office-holders: civil servants, special advisers and Ministers. Although business appointment rules for civil servants have been in place since before the Second World War, it was not until recently, as a result of recommendations contained in our First Report, that the business appointments system was extended to include former Ministers[1] and special advisers.[2]

11.2 In our Issues and Questions paper, we said that we had no reason to believe that the business appointments system was not functioning satisfactorily. We thought it important, however, to take steps to confirm (or challenge) that perception. We therefore heard evidence from the Chairman of the Advisory Committee on Business Appointments, the Rt Hon the Lord Mayhew of Twysden QC, the Vice-chairman, Sir John Blelloch KCB, and the former Chairman, the Rt Hon the Lord Carlisle of Bucklow QC DL. We also canvassed the views, by way of a questionnaire, of a number of former Ministers who had sought advice from the Advisory Committee, and a small number of former Ministers gave oral evidence as well. Little of the evidence we received countered our original belief. As a result, we shall not formally recommend any changes to the system.

11.3 The system appears to be working well at present, but changes, for example, in the Civil Service (see paragraphs 11.13–11.15 below) may, in turn, necessitate changes in the business appointments system. We are confident that the Advisory Committee will remain vigilant to the need for the system to evolve in the context of developments within the Civil Service and elsewhere.

Civil Servants

11.4 Leaving aside special advisers (who are civil servants but who are considered separately in paragraphs 11.16–11.20 below), the Committee made three recommendations in the First Report in relation to the business appointment rules for civil servants:

- that the operation, observance and objectives of the rules should be reviewed;[3]
- that the Advisory Committee on Business Appointments should, when an appointment has been taken up, give the reasons for its decision in that particular case;[4] and
- that the Advisory Committee should be able to advise an applicant, whether a civil servant or a former Minister, that it feels that the application is not appropriate, and to make public that advice if it is not taken.[5]

[1] First Report, Recommendation 15.
[2] First Report, Recommendation 31.
[3] First Report, Recommendation 30.
[4] First Report, Recommendation 29.
[5] First Report, Recommendation 17.

Review of the rules

11.5 When the then Government accepted the recommendation that the *''operation, observance and objectives''* of the Civil Service business appointment system be reviewed, an inter-departmental review was already under way. The scope of that review was therefore extended to cover the Committee's recommendation.

11.6 The inter-departmental review concluded that *''the rules provided an important expression of the core Civil Service values of integrity, impartiality and objectivity, and were helpful in establishing business and public confidence in the regulatory, procurement and other functions of Government departments, and that therefore the objectives should remain the same''*.[6] Revised rules, flowing from the findings of the review, came into effect on 1 April 1996. (The rules were also changed to give effect to our recommendation that special advisers should no longer be exempted from the business appointment rules.)

Publication of reasons

11.7 In its response to the First Report,[7] the Government of the day said that it proposed, after consultation with the Advisory Committee and others, to bring forward amendments to the business appointment rules, providing for reasons underlying the advice of the Advisory Committee to be made public.

11.8 This recommendation has not been fully implemented. The revised rules do not explicitly make provision for the publication of reasons in respect of all cases dealt with by the Advisory Committee. Instead, they envisage that the principal responsibility for any announcement should fall on the employing organisation or the applicant. The Advisory Committee, however, reserves the right to publish the terms of a particular decision and is required to publish a consolidated record of all appointments in its annual report. The Advisory Committee will give reasons where appropriate. In the Advisory Committee's Second Report (1998–99), for example, the Committee explained its judgement on the appointment of Sir Charles Masefield who, having served for a period in the Ministry of Defence, sought to return to the defence industry.

11.9 In our First Report, we said:

> *We agree that there is no reason based on public confidence why speculative applications made by civil servants should be made public. We do not, however, accept that the disclosure of decisions in individual cases is wrong in principle once the appointment has been taken up. The system is designed to maintain public confidence in the conduct of individual public servants. It is contradictory to keep details secret and to expect the public to take on trust the application of the rules.*[8]

11.10 We believe that the procedures adopted by the Advisory Committee in regard to the publication of the Committee's recommendations are sensible and practical. We welcome the Committee's willingness to give reasons for its recommendations when appropriate but note that this is not specified in the text of the rules. We suggest that when the rules are next reviewed they should be amended so as to clarify that the Advisory Committee will disclose the reasons for the Committee's recommendation in a particular case, on request.

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[6] *The Advisory Committee on Business Appointments First Report* (1996–98), p 12, para 3.
[7] *The Government's Response to the First Report from the Committee on Standards in Public Life*, Cm 2931, p 13.
[8] First Report, p 63, para 66.

Inappropriate applications

11.11 Our recommendation that the Advisory Committee should be able to advise that an appointment is unsuitable and for that advice to be published if not accepted has been implemented. The Advisory Committee, under the revised rules, may, if an appointment were believed to be unsuitable, recommend that the appointment should be subject to the maximum waiting period of two years with the additional advice that it is the belief of the Committee that the appointment is unsuitable. It is stated in the rules that that advice is available for publication.

11.12 We welcome the implementation of this recommendation. We note with interest that, to date, no civil servant (or former Minister) has been advised that his or her appointment is inappropriate.

Short-term contracts and the business appointment rules

11.13 In its White Paper entitled *Modernising Government* (March 1999),[9] the Government proposes a number of steps to develop the Civil Service for the twenty-first century. These include the following:

> *We will bring more people into the civil service from outside . . . We will make greater use of short-term contracts.*[10]

11.14 In its Second Report (1998-99), the Advisory Committee acknowledged the challenge which this commitment may set for the business appointment rules:

> *The question may . . . arise in the future as to how far it is reasonable to continue to apply, to people who are engaged as civil servants for a relatively short length of time (and who are therefore obliged to continue their career elsewhere when their contract has expired), waiting periods or other conditions which are comparable to those for permanent staff.*[11]

11.15 We understand that the Advisory Committee has, so far, been able to deal with all applications from those on short-term contracts satisfactorily. We share the Advisory Committee's view that this may be a problem in the future but think it would be premature for us at this stage to consider changes to the rules.

Special Advisers[12]

11.16 In our First Report we recommended that special advisers should be subject to the business appointment rules applicable to civil servants. This recommendation was accepted by the then Government and special advisers who have taken up post after 1 April 1996 are subject to the business appointments rules in the same way as permanent civil servants of equivalent standing. The present Government has also required that the business appointment rules should be applied to unpaid, as well as paid, advisers.

11.17 The principal difference in the procedure applied to special advisers compared with that applied to permanent civil servants is that, whereas for all but the most senior grades,

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[9] See Chapter 5 for further details about the White Paper.
[10] *Modernising Government* White Paper, Cm 4310 (March 1999), p 61.
[11] *The Advisory Committee on Business Appointments Second Report* (1998–99), para 19, p 9.
[12] See Chapter 6 for discussion about special advisers generally.

decisions on business appointments for former permanent civil servants rest with the Minister responsible for the department, decisions made at departmental level in respect of special advisers are the responsibility of the permanent head of the department. The reason for this difference is that it is felt that either the Minister would be too close to the special adviser (since he or she will have been a personal appointee of the Minister) or conversely (if there has been a change in Government) the Minister may have no knowledge of a special adviser's access to, for example, sensitive information.

11.18 Like the system for permanent civil servants, there is no automatic requirement for special advisers to make a formal application under the business appointment rules (for approval before taking up new employment) unless he or she is above a specified level (broadly equivalent to former Grade 3 or above). Those civil servants (including special advisers) below the specified level are only required to seek permission if one of the following circumstances applies:

- they have had any official dealings with their prospective employer during the last two years of Crown employment;
- they have had official dealings of a continued or repeated nature with their prospective employer at any time during the period of Crown employment;
- they have had access to commercially sensitive information of competitors of their prospective employer in the course of their official duties;
- their official duties during the last two years of Crown employment have involved advice or decisions benefiting their prospective employer, for which the offer of employment could be interpreted as reward, or have involved developing policy, knowledge of which might be of benefit to the prospective employer;
- they are to be employed on a consultancy basis (either for a firm of consultants or as an independent or self-employed consultant) and they have had any dealings of a commercial nature with outside bodies or organisations in their last two years of Crown employment.

11.19 We were assured by the Secretary to the Advisory Committee that the business appointments system in relation to special advisers had worked satisfactorily. When asked whether he had experienced any problems with special advisers going to other jobs, he said:

> *No, we have not as yet. A number of special advisers have left since the last election. Several of them raised issues on the Business Appointment Rules and were considered as business appointment cases. In four out of five cases there was no problem at all. The department, in fact, handled it because it was at a more junior level and did not come to the committee. The department saw no difficulty and the person was able to take up the job unconditionally. One case was referred to the* [Cabinet] *Office and a waiting period of three months was recommended.*[13]

11.20 Special advisers are civil servants and it is appropriate that, with some adjustments, the Civil Service business appointment rules should apply to special advisers. The nature of the relationship between special advisers and their appointing Ministers and their high public

[13] Day 4 (am).

profile have led some to argue that additional safeguards are needed in order to maintain public confidence in the business appointments system as applied to special advisers. We are not persuaded of the necessity. No examples have been drawn to our attention which suggest that the rules, at present, are working other than satisfactorily.

Ministers

11.21 An issue addressed by our First Report was the weakening of public trust in Ministers caused by the apparent ease with which Ministers could obtain employment with commercial firms with which they had had connections while in office. We said:

> *The Civil Service system is tried and tested; our view is that it appears to be accepted by civil servants and it provides a strong reassurance to the public. Public concern now demands a similar reassurance in the case of Ministers.*[14]

11.22 Our recommendation that a business appointments system, akin to that governing civil servants, should apply to former Ministers was accepted, and guidelines on the acceptance of appointments outside Government by former Ministers of the Crown came into effect on 15 November 1995. The Government agreed with us that the system should operate on an advisory basis, and that it should be administered by the existing Advisory Committee on Business Appointments.

11.23 The Government based the new system on the Civil Service business appointments system, save that in the case of Ministers the Advisory Committee offers advice which is tendered directly to the former Minister concerned.[15] In parallel with the system for civil servants, former Ministers are invited to seek the advice of the Advisory Committee on any appointment they wish to take up in the two years following their departure from office.

11.24 We noted in the First Report that permanent secretary grades in the Civil Service are normally required to undergo an automatic three-month waiting period before taking up outside employment. We recommended that this rule should be reflected in the guidance to former Cabinet Ministers (but not to other Ministers or Whips), and similarly the rule that the maximum waiting period advisable by the Advisory Committee should be set at two years from the date of leaving office.[16] The current guidelines assume a minimum three-month waiting period but state that:

> *The Advisory Committee may waive this automatic waiting period if, for example, the former Minister is returning to a family business or to the practice of a profession (eg farming, medicine or teaching) where the appointment is not connected with his or her Ministerial knowledge, and no considerations of improper advantage could apply.*[17]

11.25 We also recommended that former Ministers should have a right of appeal to the Prime Minister of the day.[18] We consider this recommendation, which has not been implemented, in more detail in paragraphs 11.30 to 11.32 below.

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[14] First Report, p 53, para 29.
[15] Whereas for civil servants, the advice is offered to the Prime Minister or other Ministers.
[16] First Report, Recommendation 16.
[17] *Guidelines on the Acceptance of Appointments or Employment Outside Government by Former Ministers of the Crown* (19 November 1998), para 8.
[18] First Report, Recommendation 18.

11.26 As with civil servants (see paragraphs 11.7 to 11.10 above), we said in our First Report that *''as soon as a former Minister has taken up a job which the advisory committee has scrutinised, the committee should make public the advice it had given and its reasons''*.[19] We note that the present guidelines governing business appointments and former Ministers state that once a former Minister has taken up a post, the Committee's advice *''will be available for publication''* and that all such appointments are listed in the Committee's Annual Report. Again, we suggest that when the guidelines are next reviewed they should be amended so as to clarify that the Advisory Committee will disclose the reasons for the Committee's advice in a particular case, on request.

Revised guidelines

11.27 In its First Report (1996-98), the Advisory Committee suggested that there had been some misunderstandings about the operation of the new system: for example, some former Ministers failed to realise that the guidelines still applied to them even though they had ceased to be Members of Parliament (MPs); some who remained MPs sought the advice of the Parliamentary Commissioner for Standards and did not appreciate the need to consult the Advisory Committee as well; and some had thought that they need not consult the Advisory Committee because the appointment being taken up had no connection with their former ministerial duties. There was also some uncertainty about what forms of employment were covered by the term 'appointment'. The Advisory Committee was not unduly perturbed by these misunderstandings, regarding them as *''the type of teething problem to be expected with the introduction of a new system''*.

11.28 In November 1998, revised guidelines were published which clarified the existing guidelines by defining the meaning of 'appointment' in general terms so as to include *''all forms of employment including the practice of a profession, apart from unremunerated appointments in non-commercial organisations or appointments in the gift of the Government''*.

Views of former Ministers

11.29 In response to our survey of former Ministers (see paragraph 11.2 above), we received overwhelming evidence that their applications for advice had been dealt with efficiently and gave no reason for complaint. None the less, a small number of issues emerged both from responses to the questionnaire and in oral evidence. These were:

- that the distinction made in the guidelines between Cabinet and other Ministers and, in particular, the fact that the automatic three-month waiting period applied to Cabinet Ministers only, was wrong;
- that the length of the period (namely, two years) after leaving office during which former Ministers are expected to seek the advice of the Advisory Committee was too long;
- that the maximum length of the waiting period (namely, two years) which may be advised by the Advisory Committee was too long;
- that there should be an appeals mechanism.

[19] First Report, p 56, para 38.

11.30 The last of these issues relates directly to a recommendation contained in the First Report. We recommended that former Ministers, having received the advice of the Advisory Committee, should have the right of appeal to the Prime Minister of the day, who would be able to reduce any waiting period or relax any conditions if the appeal were well founded.[20] This recommendation has not been implemented.

11.31 A number of those former Ministers who responded to our questionnaire supported an appeal mechanism; others, however, were against. The Advisory Committee argued against a formal appeal mechanism, involving another body or individual, on the ground that it is *''both unnecessary and impractical''*. In a written submission, the Advisory Committee said:

> *If the Advisory Committee is minded to advise a waiting period . . . or that the former Minister should stand aside from certain activities of the employer for a period, they will offer the former Minister the opportunity to meet and discuss the appointment before confirming the advice. As the system is advisory in nature, it would be open to a former Minister to disregard the Committee's advice if he or she disagreed with it, though we are not aware of anyone who has done this.*[21]

11.32 Although we think it unlikely that a former Minister would wish to suffer the consequences of being seen to disregard the advice of the Advisory Committee, we are persuaded that the purely advisory nature of the Committee renders an appeal mechanism inappropriate. We also acknowledge the more practical argument that, given the independence of the Advisory Committee, it would not be appropriate for appeals to be heard by the Prime Minister of the day (as we recommended in our First Report) and we have difficulty in identifying an alternative tribunal.

11.33 In regard to the other complaints raised, whilst we appreciate their force, we are not persuaded that the system – which we believe to be generally working well – should be changed.

Conclusion

11.34 At the time of our First Report, Lord Carlisle was the Chairman of the Advisory Committee. When he gave evidence to us in 1995, he was asked about whether there should be a business appointments system in respect of former Ministers. He expressed some reservations. In giving evidence in the present review, Lord Carlisle (who ceased being Chairman in January 1999) said that he had changed his view. In referring to the recommendation of the Committee to extend the business appointments system to former Ministers, he said:

> *On reflection, I am sure they were right to make the decision they did and, I think, it has been successful in that over the change of government, where it had applications from 60-odd previous Ministers, it has had the twin advantage of giving confidence to the public in the jobs they were taking up and also giving assurance to the Ministers as a defence to any unfair criticism of them.*[22]

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[20] First Report, Recommendation 18.
[21] Written evidence (17/42).
[22] Day 7 (pm).

11.35 We remain of the view that the extension of the business appointment system to former Ministers is right in principle and we conclude that, although some of the particular features of the ministerial business appointments system have provoked complaints from some former Ministers, the system appears to have worked well. This view was confirmed in the Advisory Committee's First Report (1996–98) – although the Advisory Committee (rightly) acknowledged the importance of remaining *''alert to any possible need for future refinement of the Guidelines''*.[23] In its Second Report (1998–99), the Advisory Committee has suggested that, given that the two-year period during which former Ministers in the last Administration should consult the Committee expired on 1 May 1999, it would be in a position to review the system over its full two-year course in its next report. We look forward to hearing the outcome of that review.

[23] *The Advisory Committee on Business Appointments First Report* (1996–98), p 10.

RECOMMENDATIONS OF THE FIRST REPORT

Members of Parliament

1. Members of Parliament should remain free to have paid employment unrelated to their role as MPs.

2. The House of Commons should restate the 1947 resolution which places an absolute bar on Members entering into contracts or agreements which in any way restrict their freedom to act and speak as they wish, or which require them to act in Parliament as representatives of outside bodies.

3. The House should prohibit Members from entering into any agreements in connection with their role as Parliamentarians to undertake services for or on behalf of organisations which provide paid Parliamentary services to multiple clients or from maintaining any direct or active connections with firms, or parts of larger firms, which provide such Parliamentary services.

4. The House should set in hand without delay a broader consideration of the merits of Parliamentary consultancies generally, taking account of the financial and political funding implications of change.

5. The House should:

- require agreements and remuneration relating to Parliamentary services to be disclosed;
- expand the guidance on avoiding conflicts of interest;
- introduce a new Code of Conduct for Members;
- appoint a Parliamentary Commissioner for Standards;
- establish a new procedure for investigating and adjudicating on complaints in this area about Members.

6. On disclosure of interests we recommend:

- the Register should continue broadly in its present form, and should be published annually. However, the detailed entry requirements should be improved to give a clearer description of the nature and scope of the interests declared;
- updating of the Register should be immediate. The current updated version should be made more widely available electronically;
- from the beginning of the 1995-96 session (expected in November) Members should be required to deposit in full with the Register any contracts relating to the provision of services in their capacity as Members, and such contracts should be available for public inspection;
- from the same time, Members should be required to declare in the Register their annual remuneration, or estimated annual remuneration, in respect of such agreements. It would be acceptable if this were done in bands: for example, under £1,000; £1,000-5,000; £5,000-10,000; then in £5,000 bands. An estimate of the monetary value of benefits in kind, including support services, should also be made;
- Members should be reminded more frequently of their obligations to Register and disclose interests, and that Registration does not remove the need for declaration and better guidance should be given, especially on first arrival in the House.

7. Members should be advised in their own interests that all employment agreements which do not have to be deposited should contain terms, or be supported by an exchange of letters, which make it clear that no activities relating to Parliament are involved.

8. The rules and guidance on avoiding conflict of interest should be expanded to cover the whole range of business pertaining to Parliament, and particular attention should be paid to Standing Committees.

9. The House should draw up a Code of Conduct setting out the broad principles which should guide the conduct of Members; this should be restated in every new Parliament.

10. The Government should now take steps to clarify the law relating to the bribery of or the receipt of a bribe by a Member of Parliament.

11. On procedure we recommend:

- the House should appoint a person of independent standing, who should have a degree of tenure and not be a career member of the House of Commons staff, as Parliamentary Commissioner for Standards;
- the Commissioner should have the same ability to make findings and conclusions public as is enjoyed by the Comptroller and Auditor General and the Parliamentary Commissioner for Administration;

- the Commissioner should have independent discretion to decide whether or not a complaint merits investigation or to initiate an investigation;
- the Commissioner should be able to send for persons, papers and records, and will therefore need to be supported by the authority of a Select Committee with the necessary powers;
- we consider that a sub-committee of the Committee of Privileges, consisting of up to seven very senior Members, would be the best body to take forward individual cases recommended by the Commissioner for further consideration; we recommend that such a sub-committee should be established;
- in view of the fact that there would be a *prima facie* case to investigate, we recommend that hearings of the proposed sub-committee should normally be in public. We also recommend that the sub-committee should be able to call on the assistance of specialist advisers and that a Member who so wishes should be able to be accompanied by advisers before the sub-committee;
- the sub-committee should be given discretion to enable an adviser to act as the Member's representative at hearings;
- as the sub-committee would report to the full Privileges Committee this would have the practical effect of giving the Member a right of appeal to that Committee. Only the most serious cases should need to be considered by the whole House.

The Executive: Ministers and Civil Servants

12. The first paragraph of Questions of Procedure for Ministers (QPM) should be amended to say: "It will be for individual Ministers to judge how best to act in order to uphold the highest standards. It will be for the Prime Minister to determine whether or not they have done so in any particular circumstance."

13. The Prime Minister should put in hand the production of a document drawing out from QPM the ethical principles and rules which it contains to form a free-standing code of conduct or a separate section within a new QPM. If QPM is to remain the home for this guidance, we recommend that it is retitled 'Conduct and Procedure for Ministers' to reflect its scope.

14. Careful consideration should be given to ensuring that the most appropriate means is used for the investigation of cases of alleged impropriety affecting Ministers. Other than in exceptional circumstances, the general rule that advice from civil servants to Ministers should not be made public should apply in these cases.

15. A system similar to the civil service business appointment rules should apply to Ministers. The system should operate on an advisory basis, and it should be administered by the existing Advisory Committee on Business Appointments.

16. In parallel with the civil service arrangements for permanent secretaries, an automatic waiting period of three months should apply to former Cabinet Ministers, but not to other Ministers or Whips. In cases where a further waiting period is recommended, the maximum waiting period should be set at two years from the date of leaving office.

17. The advisory committee should be able to advise an applicant, whether a civil servant or a former Minister, that they feel that the application is not appropriate, and to make public that advice if it is not taken.

18. Former Ministers, having received the advice of the advisory committee, should have the right of appeal to the Prime Minister of the day, who would be able to reduce any waiting period or relax any conditions if the appeal were well founded.

19. The system should be as open as possible, while protecting the personal privacy of Ministers.

20. The Government should monitor the workload of the advisory committee under the new arrangements and put in place contingency arrangements for its staffing to be augmented to deal with the aftermath of any change of administration.

21. Departments, as well as maintaining records of gifts, should maintain records of hospitality accepted by Ministers in their official capacity and should make these records available if asked to do so.

22. The new performance pay arrangements for the senior civil service should be structured so as not to undermine political impartiality.

23. The draft civil service code should be revised to cover circumstances in which a civil servant, while not personally involved, is aware of wrongdoing or maladministration taking place.

24. The operation of the appeals system under the Code should be disseminated as openly as possible, and the Commissioners should report all successful appeals to Parliament.

25. Departments and agencies should nominate one or more officials entrusted with the duty of investigating staff concerns raised confidentially.

26. The new civil service code should be introduced with immediate effect, without waiting for legislation.

27. The Cabinet Office should continue to survey and disseminate best practice on maintaining standards of conduct to ensure that basic principles of conduct are being properly observed.

28. There should be regular surveys in departments and agencies of the knowledge and understanding staff have of ethical standards which apply to them; where such surveys indicate problem areas, guidance should be reinforced and disseminated appropriately, particularly by way of additional training.

29. The Advisory Committee on Business Appointments should, when an appointment has been taken up, give the reasons for its decision in that particular case.

30. The operation, observance and objectives of the civil service business appointment rules should be reviewed.

31. Special advisers should be subject to the business appointment rules.

32. A central or local record of invitations and offers of hospitality accepted should be kept in all departments and agencies. There should be clear rules specifying the circumstances in which staff should seek management advice about the advisability of accepting invitations and offers of hospitality.

Quangos (Executive Non-Departmental Public Bodies and National Health Service Bodies)

Appointments

33. The ultimate responsibility for appointments should remain with Ministers.

34. All public appointments should be governed by the overriding principle of appointment on merit.

35. Selection on merit should take account of the need to appoint boards which include a balance of skills and backgrounds. The basis on which members are appointed and how they are expected to fulfil their role should be explicit. The range of skills and background which are sought should be clearly specified.

36. All appointments to executive NDPBs or NHS bodies should be made after advice from a panel or committee which includes an independent element.

37. Each panel or committee should have at least one independent member and independent members should normally account for at least a third of membership.

38. A new independent Commissioner for Public Appointments should be appointed, who may be one of the Civil Service Commissioners.

39. The Public Appointments Commissioner should monitor, regulate and approve departmental appointments procedures.

40. The Public Appointments Commissioner should publish an annual report on the operation of the public appointments system.

41. The Public Appointments Unit should be taken out of the Cabinet Office and placed under the control of the Public Appointments Commissioner.

42. All Secretaries of State should report annually on the public appointments made by their departments.

43. Candidates for appointment should be required to declare any significant political activity (including office-holding, public speaking and candidature for election) which they have undertaken in the last five years.

44. The Public Appointments Commissioner should draw up a code of practice for public appointments procedures. Reasons for departures from the code on grounds of "proportionality" should be documented and capable of review.

Propriety

45. A review should be undertaken by the Government with a view to producing a more consistent legal framework governing propriety and accountability in public bodies, including executive NDPBs, NHS bodies and local government. This should involve all relevant departments and be co-ordinated by the Cabinet Office and the Treasury.

46. The adoption of a code of conduct for board members should be made mandatory for each executive NDPB and NHS body.

47. It should be mandatory for the board of each executive NDPB and NHS body to adopt a code of conduct for their staff.

48. Board members and staff of all Executive NDPBs and NHS bodies should be required on appointment to undertake to uphold and abide by the relevant code, and compliance should be a condition of appointment.

49. Sponsor departments should develop clear disciplinary procedures for board members of executive NDPBs and NHS bodies with appropriate penalties for failing to observe codes of conduct.

50. The role of NDPB and NHS accounting officers should be redefined to emphasise their formal responsibility for all aspects of propriety.

51. The Audit Commission should be authorised to publish public interest reports on NHS bodies at its own discretion.

52. The Treasury should review the arrangements for external audit of public bodies, with a view to applying the best practices to all.

53. Each executive NDPB and NHS body that has not already done so should nominate an official or Board Member entrusted with the duty of investigating staff concerns about propriety raised confidentially. Staff should be able to make complaints without going through the normal management structure, and should be guaranteed anonymity. If they remain unsatisfied, staff should also have a clear route for raising concerns about issues of propriety with the sponsor department.

54. Executive NDPBs, supported by their sponsor departments, should:

- develop their own codes of openness, building on the government code and developing good practice on the lines recommended in this report;
- ensure that the public are aware of the provisions of their codes;

sponsor departments should:

- encourage executive bodies to follow best practice and improve consistency between similar bodies by working to bring the standards of all up to those of the best;

the Cabinet Office should:

- produce and periodically update guidance on good practice for openness in executive NDPBs and NHS bodies.

55. New board members should on appointment make a commitment to undertake induction training which should include awareness of public sector values, and standards of probity and accountability.

Appendix II

LIST OF WITNESSES WHO GAVE ORAL EVIDENCE

The Advisory Committee on Business Appointments: The Rt Hon Lord Mayhew of Twysden QC, Chairman, The Rt Hon Lord Carlisle of Bucklow QC DL, former Chairman, and Sir John Blelloch, Deputy Chairman (Day 7, am)

Association of First Division Civil Servants: Sue Jarvis, President, and Jonathan Baume, General Secretary, (Day 4, pm)

Association of Professional Political Consultants: Michael Burrell, Chairman (Day 7, am)

The Rt Hon Margaret Beckett MP, President of the Council and Leader of the House of Commons (Day 5, am)

The Rt Hon Tony Benn MP, former Cabinet Minister, member of Privileges Select Committee 1984-1997 (Day 2, am)

Sir Michael Bett CBE, First Civil Service Commissioner, and Jim Barron, Office of the Civil Service Commissioner (Day 4, am)

Lord Butler of Brockwell GCB CVO, former Cabinet Secretary and Head of the Home Civil Service (Day 5, am)

The Rt Hon Kenneth Clarke MP, former Cabinet Minister (Day 2, pm)

Council of Civil Service Unions: Charles Cochrane, Secretary (Day 4, pm)

The Rt Hon Dr Jack Cunningham MP, Minister for Cabinet Office and Chancellor of the Duchy of Lancaster (Day 2, pm)

Quentin Davies MP, former member of the Select Committees on Standards and Privileges and the Treasury and Civil Service (Day 6, pm)

The Rt Hon David Davis MP, Chairman, Committee on Public Accounts, and Sir John Bourn, Comptroller and Auditor General (Day 5, am)

The Rt Hon Frank Dobson MP, Secretary of State for Health (Day 2, am)

Richard Down, Chief Executive, ICP Ltd, and Stephen Townley, expert on sponsorship law (Day 4, am)

Sir Gordon Downey, former Parliamentary Commissioner for Standards (Day 7, am)

Derek Draper, former adviser to Peter Mandelson MP when in Opposition (Day 4, pm)

Elizabeth Filkin, Parliamentary Commissioner for Standards (Day 6, am)

Andrew Foster, Policy Director for HR Issues, NHS Confederation, and Trust Chairman, Wigan and Leigh NHS Trust, and Selwyn Ward, Non Executive Director, Bromley Health Authority (Day 1, am)

Dame Rennie Fritchie, Commissioner for Public Appointments (Day 7, am)

Mike Granatt, Head of Profession, Government Information and Communication Service (Day 3, pm)

Professor Justin Greenwood, School of Public Administration and Law, The Robert Gordon University, Aberdeen (Day 7, pm)

The Rt Hon John Gummer MP, former Cabinet Minister (Day 2, am)

The Rt Hon Sir Archibald Hamilton MP, Chairman of the 1922 Committee and former Member of the House of Commons Select Committee on Standards in Public Life (Day 1, am)

Neil Hamilton, former Member of Parliament for Tatton (Day 3, am)

Professor Peter Hennessy, Professor of Contemporary History, Queen Mary and Westfield College, University of London (Day 3, am)

Sir Bernard Ingham, former Press Secretary to Prime Minister Margaret Thatcher (Day 4, am)

The Institute of Public Relations: Colin Farrington, Director-General (Day 7, am)

Professor Anthony King, Professor of Government, University of Essex (Day 1, am)

Roger King, Director of Public Affairs, and Chris O'Keefe, Government Affairs Manager, Society of Motor Manufacturers and Traders (Day 6, pm)

Sir Alan Langlands, Chief Executive, and Dr Roger Moore, Head of Appointments Branch, NHS Executive (Day 3, am)

Lord Melchett, Executive Director, Greenpeace UK (Day 1, am)

National Council for Voluntary Organisations: Lady Tumim OBE, Chairman, Stuart Etherington, Chief Executive, and Adam Gaines, Director of Public Affairs (Day 7, am)

The Rt Hon Lord Newton of Braintree OBE, former Leader of the House of Commons and former Chairman of the Select Committee on Standards and Privileges (Day 5, am)

Lord Norton (Day 4, am)

Sir Leonard Peach, former Commissioner for Public Appointments (Day 2, am)

Police Federation of England and Wales: Ian Westwood, Vice-Chairman, and Jeff Moseley, General Secretary (Day 7, am)

Peter Preston, former Editor-in-Chief, and David Hencke, Westminster Correspondent, *The Guardian* (Day 6, pm)

Public and Commercial Services Union: John Sheldon, Joint General Secretary (Day 4, pm)

Public Relations Consultants Association: Simon Nayyar, Chairman of the Public Affairs Committee (Day 7, am)

Peter Riddell, Assistant Editor, *The Times* (Day 1, pm)

Professor Michael Rush, Professor of Politics, University of Exeter (Day 1, pm)

Barry Sheerman MP, Secretary, Sustainable Waste All-Party Subject Group (Day 6, pm)

The Rt Hon Robert Sheldon MP, Chairman, Select Committee on Standards and Privileges (Day 6, am)

The Rt Hon Chris Smith MP, Secretary of State, and Robin Young, Permanent Secretary, Department for Culture, Media and Sport (Day 7, am)

Clive Soley MP, Chairman, Parliamentary Labour Party (Day 1, am)

Corinne Souza, Author of *So You Want to be a Lobbyist?* (Day 2, pm)

The Rt Hon Jack Straw MP, Secretary of State for the Home Office, Steven Bramley, Legal Advisers' Branch, and Brian Kinney, Sentencing and Offences Unit (Day 5, pm)

Baroness Symons of Vernham Dean, Parliamentary Under-Secretary of State, Foreign and Commonwealth Office (Day 4, am)

Peter Temple-Morris MP, Chair, Spain All-Party Country Group (Day 6, pm)

Paul Tyler CBE MP, Liberal Democrat Chief Whip and Shadow Leader of the House, and the Rt Hon Alan Beith MP, Deputy Leader, Liberal Democrats and Chairman of Parliamentary Liberal Democrat Party (Day 5, pm)

Andrew Tyrie MP, Conservative MP for Chichester (Day 2, pm)

David Varney, Chief Executive, and Ian Priestner, Head of Public Policy and Relations, BG plc (Day 6, am)

Lord Waldegrave, former Cabinet Minister (Day 2, am)

Michael Watson MSP, former Member of Parliament, 1989-1997, and former Director, PS Communication Consultants (Day 4, am)

Sir Richard Wilson, Cabinet Secretary and Head of the Home Civil Service (Day 7, am)

The Rt Hon Sir George Young Bt MP, Shadow Leader of the House of Commons (Day 6, am).

THE IMPLICATIONS OF THE HUMAN RIGHTS ACT 1998 FOR PARLIAMENTARY DISCIPLINARY PROCEDURES

1. Article 6 of the European Convention for the protection of Human Rights and Fundamental Freedoms (the Convention) provides as follows:

> *1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgement shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.*
>
> *2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.*
>
> *3. Everyone charged with a criminal offence has the following minimum rights:*
>
> *(a) to be informed promptly, in a language which he understands and in detail, of the nature and the cause of the accusation against him;*
>
> *(b) to have adequate time and facilities for the preparation of his defence;*
>
> *(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;*
>
> *(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;*
>
> *(e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.*

2. Article 6 sets the minimum acceptable standards of fairness for any tribunal determining criminal charges against an individual. It has been noted in Chapter 3 of this report that (a) there is a technical issue whether a charge of serious misconduct against an MP would constitute a criminal charge for the purposes of the Convention, and that (b) section 6 of the Human Rights Act 1998 expressly excludes either House of Parliament or any person exercising functions in connection with proceedings in Parliament from the duty not to act in a way which is incompatible with a Convention right. Nevertheless, the case of *Demicoli* v *Malta* has demonstrated that punishment by Parliament of contempts against it may be subject to review by the Courts ((1992) 14 EHRR 47 and Vol 2 (Evidence) page 109) and the Nicholls Committee rightly proceeded on the basis that the minimum standards of fairness set out in Article 6 should apply to a charge of serious misconduct against an MP.

3. Each of the minimum requirements of fairness identified in the Nicholls Report[1] is based on a right recognised by Article 6 of the Convention:

- **A prompt and clear statement of the precise allegations against the member**

Article 6(3)(a) sets out the right of an accused to such a statement. The purpose is to give the accused the information which he needs to prepare his defence: *Bricmont* v *Belgium* (1986) 48 DT 106.

- **Adequate opportunity to take legal advice and have legal assistance throughout**

Article 6(3)(b) sets out the accused's right to adequate time and facilities for the preparation of his defence. This includes the right to take legal advice: *Campbell and Fell* v *United Kingdom* (1984) Series A, No. 80. More fundamentally, in *Golder* v *United Kingdom* (1975) Series A, No. 18 the European Court of Human Rights held that the right of access to legal advice was part of the right of effective access to a court or tribunal which is implicit in Article 6(1).

- **The opportunity to be heard in person**

Article 6(3)(c) sets out the accused's right to defend himself in person.

- **The opportunity to call relevant witnesses at the appropriate time**

Article 6(3)(d) sets out the accused's right to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him.

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[1] *Report of the Joint Committee on Parliamentary Privilege* (under the chairmanship of the Rt Hon the Lord Nicholls of Birkenhead), HL Paper 43-I and HC 214-I (1998–99). See para 281.

- **The opportunity to examine other witnesses**

Article 6(3)(d) also sets out the accused's right to examine or have examined witnesses against him.

- **The opportunity to attend meetings at which evidence is given, and to receive transcripts of evidence**

In *Edbatani* v *Sweden* (1988) Series A, No. 134, paragraph 25, the European Court of Human Rights held that *"it flows from the notion of a fair trial that a person charged with a criminal offence should as a general principle, be entitled to be present at the trial hearing"*. The right to be present at the hearing is implicit in the accused's right to participate effectively in the conduct of his case: *Stanford* v *United Kingdom* (1994) Series A, No. 282-A, paragraph 26.

Article 6 does not give the accused an express right to receive transcripts of evidence. There are, however, a number of grounds on which, depending upon the circumstances of the case, fairness may require that an accused should have access to transcripts, especially if they are made available to the prosecuting authority or the tribunal. First, access to transcripts might constitute facilities to which an accused is entitled pursuant to Article 6(3)(b). Secondly, the European Court of Human Rights has held (for example, in *Neumeister* v *Austria* (1968) Series A, No 8 paragraph 22) that the right to a fair hearing in Article 6(1) requires an 'equality of arms' between the accused and the prosecuting authority.

DISCIPLINARY PROCEDURES OF VARIOUS PROFESSIONAL BODIES

INITIAL ACTION	FIRST INSTANCE HEARING	APPEAL PROCEDURE
A. UNITED KINGDOM CENTRAL COUNCIL FOR NURSING, MIDWIFERY AND HEALTH VISITING		
A complaint is made to the United Kingdom Central Council (for Nursing, Midwifery and Health Visiting) (UKCC). After considering the circumstances surrounding the allegation and taking statements from witnesses, the information is forwarded to a **Preliminary Proceedings Committee** (PPC).	The PPC (comprising UKCC Council members) operates as a screening process. It considers, in private, the available evidence and can: (a) close the case, (b) issue a formal caution, (c) refer the case to a Panel of Screeners (if it involves an allegation of unfitness to practice), or (d) refer the case to a full public hearing before the UKCC's **Professional Conduct Committee** (PCC). The PCC is a body consisting of five members, four of whom are Council members, one drawn either from a consumer panel or from a practitioner panel. It is assisted by a Legal Assessor. The defendant is often represented. The PCC operates to the criminal standard of proof. Evidence is taken on oath and witnesses can be subpoenaed. Court-like procedures are used. If the facts of a charge are proven and it is held that they amount to serious misconduct, the PCC can: (a) issue a caution, (b) remove the practitioner from the register indefinitely or for a specified period, (c) exceptionally, postpone judgement to enable the defendant to provide further information, or (d) refer the case to the UKCC's Health Committee (if evidence emerges of the ill-health of the defendant).	A member who is removed or suspended from the register has a statutory right of appeal to the High Court. Notice of appeal has to be lodged within 3 months of notice of the decision of the PCC. A member who has been cautioned may challenge the PCC's decision to issue a caution by way of judicial review.

INITIAL ACTION	FIRST INSTANCE HEARING	APPEAL PROCEDURE
B. GENERAL DENTAL COUNCIL		
The President of the General Dental Council acts as Preliminary Screener and considers whether a conviction or complaint may suggest evidence of serious professional misconduct. If there is a case to answer, the matter is referred to the **Preliminary Proceedings Committee**. The defendant is invited to make a written response to the complaint. The Preliminary Proceedings Committee considers the evidence and if the evidence supports an allegation of serious professional misconduct, the matter is referred to the **Professional Conduct Committee**.	The Professional Conduct Committee (a body comprising the President and 10 other members of the Council) meets in public and is assisted by a Legal Assessor. The defendant is usually legally represented. Evidence is taken on oath and witnesses can be subpoenaed. Court-like procedures are used and the criminal standard of proof is operated. In cases where a dentist has already been convicted in a criminal court or is found guilty of serious professional misconduct, the Committee can: (a) conclude the case with an admonition, (b) postpone judgement, (c) suspend registration or (d) erase the dentist's name from the Register.	In cases where the Professional Conduct Committee has directed either suspension or erasure of registration, the defendant may (within 28 days) lodge an appeal with the **Judicial Committee of the Privy Council**.
C. ROYAL INSTITUTE OF BRITISH ARCHITECTS		
A complaint is made to the Secretary of the **Disciplinary Committee** (a body consisting of 13 members). After making any necessary enquiries, the Secretary submits the complaint to an **Assessment Panel** (a body of five to seven members of the Disciplinary Committee nominated by the Chairman of the Disciplinary Committee) for investigation. The Assessment Panel has power to formulate such charges as it thinks fit for determination by a **Hearings Panel**.	The **Hearings Panel** (a body of five to seven members of the Disciplinary Committee nominated by the Chairman of the Disciplinary Committee) hears and determines charges formulated by the Assessment Panel. The defendant member has a right of hearing either in person or by counsel, solicitor or a friend, to call witnesses, and to examine and cross-examine witnesses. The Hearings Panel may be assisted by a Legal Assessor who is required to advise the panel of any irregularity in proceedings and to advise on questions of law or the admission of evidence. The Hearings Panel has power to find the defendant guilty or not guilty or, at any stage, to find no case to answer. If the panel makes a finding of guilt, it can (a) reprimand, (b) suspend or (c) expel the defendant member. A notice of such a decision will be published in the Institute's journal.	A member suspended or expelled by a Hearings Panel may appeal to the **Appeals Committee** (a body constituted for each appeal, comprising a Chairman and two other members appointed by the Chairman from a panel of five to seven senior members of the Council) within 14 days of the decision. The grounds of appeal have to be confined to the severity of the decision of the Hearings Panel only. The Appeals Committee reports to the Council with a recommendation that the decision of the Hearings Panel be upheld, or rescinded, varied or annulled. If the Appeals Committee finds relevant new evidence, it is referred back to the Hearings Panel which reports to the Council through the Chairman of the Disciplinary Committee.

INITIAL ACTION	FIRST INSTANCE HEARING	APPEAL PROCEDURE
D. GENERAL MEDICAL COUNCIL		
The GMC acts in cases where either a doctor is convicted of a criminal offence or is alleged to have done something which amounts to 'serious professional misconduct'. Following an initial screen the matter is initially considered by the **Preliminary Proceedings Committee** (a body consisting of seven members of the GMC, elected annually) which sits in private and makes a determination (as to whether a case should be referred on) on the basis of written evidence and submissions (only). The Preliminary Proceedings Committee may ask the GMC's solicitor to make further enquiries to establish the facts of a case. The committee can: (a) refer a case to the **Professional Conduct Committee (PCC)** for enquiry; (b) send the doctor a warning letter; or (c) take no further action. If a reference is made, the committee may make an order for the interim suspension of the doctor's registration or for interim conditional registration.	In cases involving a conviction, the **Professional Conduct Committee** is bound to accept the conviction as conclusive evidence that the doctor was guilty of the offence of which he or she was convicted. In cases involving an allegation of serious misconduct, unless admitted by the doctor, the allegation has to be strictly proved, using court-like procedures. The Committee sits in public. The PCC can: (a) reprimand the doctor; (b) impose conditions limiting the circumstances in which he or she can practise; (c) suspend the doctor; or (d) erase ('strike off') the doctor from the medical register.	Where the Professional Conduct Committee has directed that the doctor's name be erased from the Register or suspension of registration or the imposition of conditions on registration, the doctor can (within 28 days) give notice of appeal to the **Judicial Committee of the Privy Council**. In case of suspension or erasure, the PCC may make an order for 'immediate' suspension, which has effect pending the determination of the appeal by the Privy Council.
E. THE ROYAL INSTITUTION OF CHARTERED SURVEYORS		
After receiving a complaint, the Chief Executive, if satisfied that there is a *prima facie* case, will refer the complaint either to (a) a **Professional Conduct Panel** (a body drawn from a group of 'appointed persons' appointed by the General Council and of high standing) or (b) a **Disciplinary Board** (a body drawn from 'the Permanent List' of high standing individuals appointed by the President). The choice of forum will depend on the Institution's view of the seriousness of the case; but the defendant member has the right to choose a reference to the Disciplinary Board.	(a) A **Professional Conduct Panel** has the power to reject a complaint or, if the complaint is upheld, reprimand or severely reprimand the defendant member or require the member to give undertakings. Whether the defendant member is permitted to call witnesses at the hearing (which is in private) is at the discretion of the chairman of the panel. The case is usually determined on the balance of probabilities.	(a) There is no appeal from the decision of the **Professional Conduct Panel**.
	(b) A **Disciplinary Board**, in addition to the penalties available to the Professional Conduct Panel, can fine, suspend or expel a member. The defendant member has the right to call witnesses at the hearing (which is in private) and the Board is assisted by a legally qualified assessor. The case is usually determined on the balance of probabilities.	(b) A member is entitled to appeal to an **Appeal Board** (a body drawn from 'the Permanent List' of high standing individuals appointed by the President) against both the finding and the penalty imposed by the **Disciplinary Board** (by notice within 21 days). The case is usually determined on the balance of probabilities, with the assistance of a legally qualified assessor, and the hearing is in private. The member has a right to call witnesses. The Appeal Board will not usually proceed by way of re-hearing.

INITIAL ACTION	FIRST INSTANCE HEARING	APPEAL PROCEDURE
F. THE INSTITUTE OF CHARTERED ACCOUNTANTS		
After a complaint has been received by the Secretary, the Secretary may attempt to resolve it by conciliation or refer it to the **Investigation Committee** (a body appointed by the Council). If the Investigation Committee finds a *prima facie* case, it may either deal with the case itself (for example, by way of a 'consent order' procedure) or refer it to the **Disciplinary Committee** (a body appointed by the Council) as a formal complaint.	The **Disciplinary Committee**, on receipt of a formal complaint, will set up a tribunal to hear the complaint. The hearing (which is in private) before the tribunal is informal and the strict rules of evidence do not apply. The tribunal is assisted by a Legal Assessor and includes a lay member. The defendant can be represented or appear in person. The tribunal, in the event of finding the complaint proved, has a range of powers including reprimand and severe reprimand, exclusion from membership and withdrawal of a member's practising certificate.	A defendant member can appeal against an order of the tribunal to a panel drawn from the **Appeal Committee** (a body appointed by the Council, the Chair and Vice-Chair of which have to be either a barrister or solicitor and not an accountant). The Committee may appoint a Legal Assessor to assist the panel. An appeal hearing may be held in public if the defendant requests this. The panel may, if it thinks fit, re-hear evidence and, on special grounds, receive fresh evidence. The panel has a range of powers including the power to affirm, vary or rescind an order of the tribunal and the power to direct that the complaint be re-heard by a new tribunal. The rules of judicial evidence do not apply to the appeal hearing.

INITIAL ACTION	FIRST INSTANCE HEARING	APPEAL PROCEDURE
G. THE GENERAL COUNCIL OF THE BAR		
A complaint is first considered by the **Complaints Commissioner** (who is not a barrister). The Commissioner may decide (a) to dismiss the complaint, (b) that the complaint should be resolved by conciliation, or (c) that the complaint should be investigated. Investigation is conducted by way of written submissions and following receipt of those submissions, the Commissioner reconsiders the case. The Commissioner will either dismiss the complaint or refer the matter to the **Professional Conduct and Complaints Committee** (a body consisting of a number of barristers appointed by the Chairman of the Bar, with two lay representatives).	The **Professional Conduct and Complaints Committee** may dismiss the complaint (but only with the consent of both lay representatives), or decide that the defendant barrister may have provided an inadequate professional service or be guilty of professional misconduct. If the committee thinks that the barrister may have provided an inadequate professional service, the complaint is considered (in private and on the papers) by an **Adjudication Panel**. If the committee thinks that the barrister may be guilty of professional misconduct, (a) the barrister may be called for **an informal hearing** before a panel to explain his or her conduct (and may be admonished or advised as to future conduct), or (b) in more serious cases where the facts are largely not in dispute, the barrister may be called before **a summary hearing panel** (which has the power to suspend a barrister), or (c) in the most serious cases, the barrister may be called before **a disciplinary tribunal** (chaired by a judge and which has the power to disbar). The complainant may only be called to attend (c) the disciplinary tribunal. The hearings of the tribunal will usually be in public.	The barrister may appeal against a decision (within 28 days or, if a case of a disciplinary tribunal or summary hearing procedure, 21 days). If it is an appeal from the **Adjudication Panel** or from **an informal hearing**, the appeal is heard by an **Appeals Panel** (established by the Bar Council) which may reverse the decision of the earlier panel or increase the award. If the appeal is against a finding of misconduct by a **summary hearing** or **a Disciplinary Tribunal**, then the appeal is to the **Visitors of the Inns of Court** and is heard by a High Court judge. An appeal to the Visitors will usually be in public. No witness may be called without the consent of the Visitors and fresh evidence will not be admissible save in exceptional circumstances and with consent.

OVERSEAS EXPERIENCE OF FORMAL REGULATION OF LOBBYISTS

1. This appendix describes the experience of formal regulation of lobbyists in three overseas countries. Two of the countries – Canada and Australia – share many constitutional features with the United Kingdom, while the prominence of lobbyists in the United States makes it an appropriate subject for this appendix.

United States

2. Attempts to regulate lobbyists attempting to influence decision-makers in the Federal institutions of the United States began over a century ago. In 1876, for example, an unsuccessful proposal was made that the House of Representatives should require lobbyists to register. From 1911 lobby regulation was considered in almost every session of Congress.

3. In 1938 came the enactment of the Foreign Agents Registration Act[1] prompted by concern over the propaganda activities of foreign governments. Under its provisions, any person representing a foreign government or organisation who lobbied a Member of Congress had to be registered. Reports were made to Congress on the activities of those registered.

4. The Federal Regulation of Lobbying Act[2] was passed in 1946. This provided for the registration of any person who was hired by someone else for the principal purpose of lobbying Congress, and for the submission of financial reports of lobbying expenditure. The Act required registration of any individual *"who, by himself or through an agent, or employee or other persons in any manner . . . solicits, collects or receives money or any thing of value to be used principally to aid . . . the passage or defeat of any legislation by the Congress."*

Other features included:

- Registration was obligatory only for those who lobbied Members of Congress, and not for those who lobbied members of their staffs, or the Executive Branch;
- Registration was obligatory only for individuals and organisations whose *"principal purpose"* was lobbying. Some organisations took many years to decide they were lobbying organisations – eg the National Association of Manufacturers only decided that in 1975;
- Some organisations did not register because they used their own financial resources and did not *"solicit, collect or receive"* money for lobbying.
- There was an explicit exemption from the requirement to register for religious groups.

5. In 1995 the Lobbying Disclosure Act was passed.[3] It extended the registration requirement to include those who lobby a wider range of officials, from Members of Congress and their staffs and Congressional employees, to *"covered Executive Branch officials"*. These include the President and those in the President's office, as well as Executive Branch employees and members of the uniformed services. Lobbyists are required to register within 45 days of making their first lobbying contact with a person covered by Act, or being employed or retained to do so. There is an exemption from the reporting requirement for any lobbyist or any lobbying firm who does not receive or is not expecting to receive more than $5,000 in a six-month period for lobbying activities for a particular client. Also exempted is any organisation *"whose employees engage in lobbying activities on its own behalf"* and whose expenses on lobbying do not exceed or are not expected to exceed $20,000 in a six-month period.

6. Still exempted from the requirement to register are religious groups. Commentators have also pointed out that spending on "grassroots" campaigns, in which groups orchestrate the general public to write to members of the Legislative and Executive Branches, is not covered.[4]

7. By 1953, 38 States of the Union plus the Territory of Alaska had provisions for lobby regulation or monitoring in their own jurisdictions. In 1988, Arkansas became the last State to enact a lobby law, providing for lobbyist registration and reporting.

Canada

8. Lobbying regulation has long been an issue in Canada. Between 1969 and 1985, 19 Private Members' Bills were tabled in the Canadian House of Commons, seeking to introduce a register of lobbyists. Only three survived beyond First Reading and each of these was talked out at Second Reading.

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[1] 22 USC 611 et seq.

[2] 2 USC 261 et seq.

[3] PL 104–65.

[4] Clive S Thomas, "Interest Group Regulation Across the United States: Rationale, Development and Consequences," *Parliamentary Affairs,* vol 51, No 4 (October 1998), p 509.

9. After winning the 1984 general election, the new Government introduced a package of public-sector ethics measures, including a conflict of interest and post-employment code for public office holders as well as ethical standards for MPs and Senators. In addition, registration of lobbyists was proposed.

10. In 1985 the Canadian Government produced a discussion paper which was referred to a Parliamentary Committee, which reported in 1987, recommending, among other things, fee disclosure by lobbyists and a ban on contingency, success or performance fees for lobbying. The Government introduced a Bill which received Royal Assent in September 1988 and became operational as the Lobbyists' Registration Act in September 1989. The Act did not include fee disclosure or a ban on contingency fees. Registration requirements for in-house lobbyists (those working directly for organisations) were less extensive than those for lobbying firms or consultants. 'Lobbying' was defined as direct communication with federal office-holders for the purpose of influencing the formulation or implementation of public policy, and lobbyists offering only advice to clients were not required to register. Failure to register or provide information required is subject to criminal sanction. The register was to be publicly available.

11. In 1993, a Parliamentary Committee reviewed the Act, recommending that more information be required on the register and that lobbyists should be subject to a code of ethics. Following a change of government, an amending Act was passed in 1995.[5]

12. The 1995 legislation introduced a mandatory code of conduct for lobbyists and increased the amount of information which they had to provide on the register. Disclosure of contingency fees for success in lobbying is required. In-house lobbyists are required to register only if *"a significant amount"* of their time is devoted to lobbying.

13. In recent years, there has been much discussion of the question of what constitutes 'significant' in this context. The branch of the Canadian Government responsible for this policy have issued guidance defining this as 20 per cent of their time. Subsequently, there was a decrease in the registered number of corporate in-house lobbyists. Revised guidance may now be issued to clarify this point further.

14. A second review of the legislation is currently under way with fee disclosure and contingency fee prohibition as major issues, along with the rules for the registration of in-house lobbyists.[6]

Australia[7]

15. Following a number of allegations about the activities of lobbyists and their links with government officials, the Government issued a discussion paper on lobbying regulation in September 1983.

16. In December of that year, the Government set up (without legislation) a Lobbyists' Registration Scheme, which became operational in March 1984. This required registration of a number of activities defined as lobbying. The activities which were registrable included representations undertaken for financial or other advantage *"to make or amend legislation, to make or change Government guidelines or policies, to influence Government decisions on awarding contracts and tenders, or appointments to public office, and on other significant matters determined from time to time by the Minister"*. It defined a lobbyist as a *" a person (or company) who for financial or other advantage represents a client in dealings with Commonwealth Government ministers and officials"*. The lobbying of backbench MPs was not registrable.

17. Two registers were set up, one containing the names of those who represented Australian clients, the other lobbyists representing foreign clients. There was no public access to the information, the registers being available only to Ministers and Government officials with a *"need to know"* .

18. Lobbyists had to register each time they accepted a brief and for each new client. Once registered, they had to produce the letter of acceptance from the Registrar whenever contacting Ministers or officials.

19. A parallel ministerial code of conduct was established at the same time. Ministers were advised to seek to avoid granting special access or privileges to any lobbyist because of their background. Ministers were also obliged to insist that where possible, lobbyists were accompanied by clients when visiting the offices of Ministers or officials. Ministers were advised not to deal with unregistered lobbyists.

20. A 1985 review of the scheme alerted the Government to a series of shortcomings, including the fact that Ministers rarely asked to see letters of acceptance held by lobbyists, and that there were few inquiries about the registers. Following this, the responsible Minister formally requested that his ministerial colleagues should alert their staff to the scheme's requirements.

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[5] R.S.C. 1985, c.44 (4th Supp.) as amended by S.C. 1995, c. 12.

[6] For more detail on Canadian regulation of lobbyists, see Michael Rush, ''The Canadian Experience: The Lobbyists Registration Act'', *Parliamentary Affairs*, vol 51, No 4 (October 1998), pp 516–23.

[7] For more detail on the Australian experience, see John Warhurst ''Locating the Target: Regulating Lobbying in Australia'', *Parliamentary Affairs,* vol 51, No 4 (October 1998), pp 538–50.

21. In the early 1990s, a Minister who had made a study of the Canadian and US schemes tried to persuade his colleagues to strengthen the Australian system by moving to the imposition of penalties for non-compliance with the requirement to register. In addition he proposed that the scheme should be extended to cover more activities and should be based on a register that would be published. Lobbying of MPs was to be included for the first time as a registrable activity. The Minister's proposal was turned down; one commentator has suggested that this was because of likely opposition from lobbyists' organisations and because few benefits would accrue from tougher regulation.[8]

22. In October 1996 a new Government abolished the scheme. The scheme's registrar explained that it was being abolished because of *"both changes which have taken place in the lobbying industry since 1984 and the general changes which have evolved in government processes and the role of Parliament to ensure that relevant community and business interests are consulted in the decision-making process."*

[8] Ibid, p 547.

SECTION 1 OF THE MINISTERIAL CODE

Ministers of the Crown

1. Ministers of the Crown are expected to behave according to the highest standards of constitutional and personal conduct in the performance of their duties. In particular, they must observe the following principles of ministerial conduct:

i. Ministers must uphold the principle of collective responsibility;

ii. Ministers have a duty to Parliament to account, and be held to account, for the policies, decisions and actions of their Departments and Next Steps Agencies;

iii. It is of paramount importance that Ministers give accurate and truthful information to Parliament, correcting any inadvertent error at the earliest opportunity. Ministers who knowingly mislead Parliament will be expected to offer their resignation to the Prime Minister;

iv. Ministers should be as open as possible with Parliament and the public, refusing to provide information only when disclosure would not be in the public interest, which should be decided in accordance with relevant statute and the *Government's Code of Practice and Access to Government Information* (2nd Edition, January 1997);

v. Similarly, Ministers should require civil servants who give evidence before Parliamentary Committees on their behalf and under their directions to be as helpful as possible in providing accurate, truthful and full information in accordance with the duties and responsibilities of civil servants as set out in the *Civil Service Code* (January 1996);

vi. Ministers must ensure that no conflict arises, or appears to arise, between their public duties and their private interests;

vii. Ministers should avoid accepting any gift or hospitality which might, or might reasonably appear to, compromise their judgement or place them under an improper obligation;

viii. Ministers in the House of Commons must keep separate their role as Minister and constituency Member;

ix. Ministers must not use resources for party political purposes. They must uphold the political impartiality of the Civil Service, and not ask civil servants to act in any way which would conflict with the *Civil Service Code*.

These notes detail the arrangements for the conduct of affairs by Ministers. They are intended to give guidance by listing the principles and the precedents which may apply. They apply to all Members of the Government (the position of Parliamentary Private Secretaries is described separately in Section 4). The notes should be read against the background of the duty of Ministers to comply with the law, including international law and treaty obligations, and to uphold the administration of justice, the general obligations listed above; and in the context of protecting the integrity of public life. Ministers must also, of course, adhere at all times to the requirements Parliament has itself laid down. For Ministers in the Commons, these are set by the Resolution carried on 19 March 1997 (Official Report, Columns 1946–47): the terms of the Resolution are repeated at ii to v above. For Ministers in the Lords, see Official Report Col 1057. It will be for individual Ministers to judge how best to act in order to uphold the highest standards. They are responsible for justifying their conduct to Parliament. And they can remain in office only for so long as they retain the Prime Minister's confidence.

THE CIVIL SERVICE CODE

1. The constitutional and practical role of the Civil Service is, with integrity, honesty, impartiality and objectivity, to assist the duly constituted Government of the United Kingdom, the Scottish Executive or the National Assembly for Wales constituted in accordance with the Scotland and Government of Wales Acts 1998, whatever their political complexion, in formulating their policies, carrying out decisions and in administering public services for which they are responsible.

2. Civil servants are servants of the Crown. Constitutionally, all the Administrations form part of the Crown and, subject to the provisions of this Code, civil servants owe their loyalty to the Administrations in which they serve.

3. This Code should be seen in the context of the duties and responsibilities set out for UK Ministers in the Ministerial Code, or in equivalent documents drawn up for Ministers of the Scottish Executive or for the National Assembly for Wales, which include:

- accountability to Parliament;
- or, for Assembly Secretaries, to the National Assembly;
- the duty to give Parliament or the Assembly and the public as full information as possible about their policies, decisions and actions,and not to deceive or knowingly mislead them;
- the duty not to use public resources for party political purposes,to uphold the political impartiality of the Civil Service, and not to ask civil servants to act in any way which would conflict with the Civil Service Code;
- the duty to give fair consideration and due weight to informed and impartial advice from civil servants, as well as to other considerations and advice, in reaching decisions; and
- the duty to comply with the law, including international law and treaty obligations, and to uphold the administration of justice;

together with the duty to familiarise themselves with the contents of this Code.

4. Civil servants should serve their Administration in accordance with the principles set out in this Code and recognising:

- the accountability of civil servants to the Minister or, as the case may be, to the Assembly Secretaries and the National Assembly as a body or to the office-holder in charge of their department;
- the duty of all public officers to discharge public functions reasonably and according to the law;
- the duty to comply with the law, including international law and treaty obligations, and to uphold the administration of justice; and
- ethical standards governing particular professions.

5. Civil servants should conduct themselves with integrity, impartiality and honesty. They should give honest and impartial advice to the Minister or, as the case may be, to the Assembly Secretaries and the National Assembly as a body or to the office-holder in charge of their department, without fear or favour, and make all information relevant to a decision available to them. They should not deceive or knowingly mislead Ministers, Parliament, the National Assembly or the public.

6. Civil servants should endeavour to deal with the affairs of the public sympathetically, efficiently, promptly and without bias or maladministration.

7. Civil servants should endeavour to ensure the proper, effective and efficient use of public money.

8. Civil servants should not misuse their official position or information acquired in the course of their official duties to further their private interests or those of others. They should not receive benefits of any kind from a third party which might reasonably be seen to compromise their personal judgement or integrity.

9. Civil servants should conduct themselves in such a way as to deserve and retain the confidence of Ministers or Assembly Secretaries and the National Assembly as a body, and to be able to establish the same relationship with those whom they may be required to serve in some future Administration. They should comply with restrictions on their political activities. The conduct of civil servants should be such that Ministers, Assembly Secretaries and the National Assembly as a body, and potential future holders of these positions can be sure that confidence can be freely given, and that the Civil Service will conscientiously fulfil its duties and obligations to, and impartially assist, advise and carry out the lawful policies of the duly constituted Administrations.

10. Civil servants should not without authority disclose official information which has been communicated in confidence within the Administration, or received in confidence from others. Nothing in the Code should be taken as overriding existing statutory or common law obligations to keep confidential, or to disclose, certain

information. They should not seek to frustrate or influence the policies, decisions or actions of Ministers, Assembly Secretaries or the National Assembly as a body by the unauthorised, improper or premature disclosure outside the Administration of any information to which they have had access as civil servants.

11. Where a civil servant believes he or she is being required to act in a way which:

- is illegal, improper, or unethical;
- is in breach of constitutional convention or a professional code;
- may involve possible maladministration; or
- is otherwise inconsistent with this Code;

he or she should report the matter in accordance with procedures laid down in the appropriate guidance or rules of conduct for their department or Administration. A civil servant should also report to the appropriate authorities evidence of criminal or unlawful activity by others and may also report in accordance with the relevant procedures if he or she becomes aware of other breaches of this Code or is required to act in a way which, for him or her, raises a fundamental issue of conscience.

12. Where a civil servant has reported a matter covered in paragraph 11 in accordance with the relevant procedures and believes that the response does not represent a reasonable response to the grounds of his or her concern, he or she may report the matter in writing to the Civil Service Commissioners, Horse Guards Road, London SW1P 3AL. Telephone: 0171-270 5066.

13. Civil servants should not seek to frustrate the policies, decisions or actions of the Administrations by declining to take, or abstaining from, action which flows from decisions by Ministers, Assembly Secretaries or the National Assembly as a body. Where a matter cannot be resolved by the procedures set out in paragraphs 11 and 12 above, on a basis which the civil servant concerned is able to accept, he or she should either carry out his or her instructions, or resign from the Civil Service. Civil servants should continue to observe their duties of confidentiality after they have left Crown employment.

MODEL CONTRACT FOR SPECIAL ADVISERS, MAY 1997, SCHEDULE 1 (PART 1)

The Role and Duties of Special Advisers

This Schedule sets out the role of Special Advisers and indicates what a Special Adviser may and may not do.

(i) Special Advisers must always be guided by the basic principle that they are employed to serve the objectives of the Government and the Department in which they work. It is this which justifies their being paid from public funds and being able to use public resources. The same principle also explains why their participation in party politics is carefully limited.

(ii) Special Advisers are exempt from the general Civil Service requirement that appointments be made on merit on the basis of fair and open competition, so long as they are appointed "for the purpose only of providing advice to any Minister" (Article 3(2) of the Civil Service Order in Council 1995 as amended by the Civil Service (Amendment) Order in Council 1997). Although they will have direct access to their Minister, they stand outside the departmental hierarchy, and do not work directly under a permanent civil servant or have permanent civil servants working directly for them apart from providing assistance through the Minister's private office.

(iii) Special Advisers are appointed to advise the Minister in the development of Government policy and its effective presentation. It is in these two areas of activity that the Government and the Party overlap:

- the Civil Service has no monopoly of policy **analysis and advice**. The Government takes account of inputs from many sources of which the Government Party is legitimately one. Although public funds and resources must not be used to support such an input, the Government may need to interact with the Party, as it does with others, to obtain a full and accurate understanding of the Party's policy analysis and advice;
- the Government needs to **present its policies and achievements** positively, in order to aid public understanding and so maximise the effectiveness of its policies, and that is a legitimate use of public funds and resources. It would be damaging to the Government's objectives if the Government Party took a different approach to that of the Government itself, and the Government will therefore need to liaise with the Party to make sure that Party publicity is factually accurate and consistent with Government policy. To secure this consistency, the Government will also want to make sure that Party MPs and officials are suitably briefed on issues of Government policy.

In providing a channel of communication in these two areas of Government/Party overlap Special Advisers paid from public funds have a legitimate role in support of the Government's rather than the Party's interest, which they can discharge with a degree of party political commitment and association which would be impermissible for a permanent civil servant.

(iv) Special Advisers will discharge this role by carrying out such of the following duties as their Minister may require (note: this list may be amended from time to time):

- reviewing papers as they go to the Minister, drawing attention to problems and difficulties, especially ones having party political implications, and ensuring sensitive political points are handled properly;
- "devilling" for the Minister, and checking facts and research findings;
- preparing speculative policy papers which can generate long-term policy thinking within the Department;
- contributing to policy planning within the Department, contributing ideas which extend the existing range of options available to the Minister;
- liaising with the Party, including the Party's own research department, to ensure that the Department's own policy reviews and analysis take full advantage of ideas from the Party; and encouraging presentational activities by the Party which contribute to the Government's and Department's objectives;
- helping to brief Party MPs and officials on issues of Government policy;
- liaison with outside interest groups to assist the Minister's own access to their contribution;
- speech writing and related research, including adding party political content to material prepared by permanent civil servants;
- providing expert advice as specialists in a particular field.

(v) In this connection, Special Advisers may:

- attend Party functions (but they may not speak publicly at the Party Conference) and maintain contact with Party members;

- take part in policy reviews organised by the Party, or officially in conjunction with it, for the purpose of ensuring that those undertaking the review are fully aware of the Government's views and their Minister's thinking and policy. It is not open to Special Advisers in such a connection to advocate policies going beyond or departing from those of the Government as a whole;
- when appropriate, including when their Minister is taking part in Party political activities, advise on any departmental business that may arise.

(vi) In all contacts with the Party, Special Advisers must observe normal Civil Service rules on confidentiality unless specifically authorised, in a particular instance, by their appointing Cabinet Minister.

(vii) Special Advisers must not take part in the work of the Party's national organisation; and although they may continue, during Elections, to give specialist or political advice to their Ministers they must be careful not to take any active part in the campaign going beyond the provision of such advice.

(viii) Special Advisers must not take public part in political controversy (either through speeches or in letters to the Press, or in books, articles or leaflets), must observe discretion and express comment with moderation, and avoid personal attacks; and they would not normally speak in public for their Minister or the Department.

(ix) The rules governing the involvement of Special Advisers in a private capacity in national and local political activities are set out in Part 2 of Schedule 1.

QUESTIONNAIRES ON PUBLIC APPOINTMENTS

1. Questionnaire for NHS Bodies

Although we are aware that appointments to the board (or its equivalent) of an NHS body are not normally made by the body itself, we would be interested in your views on the appointments system, and specifically the issue of 'proportionality', following the introduction of the revised code of practice and guidelines promulgated by the Commissioner for Public Appointments in July 1998.

By 'proportionality', we mean the principle that the length and complexity of appointment procedures should be commensurate to the nature and responsibilities of the post being filled: see paragraph 5.3 of the Issues and Questions consultation paper.

1. Are you aware of the code of practice and revised guidance produced by the Commissioner for Public Appointments in July 1998? Do you believe that it is helpful?
2. Are you aware of whether any additional procedures have been put in place as a result of the Commissioner's revised guidelines and, if so, what are they?
3. Do you believe that the Department of Health is over-cautious in its approach to proportionality in the public appointments process?
4. Are there any changes which you would like to see made to the test of proportionality applied by the department?
5. Have you any evidence which suggests that the time taken to make public appointments deters people from applying for such appointments? If so, can you provide us with details of examples?

2. Questionnaire for Executive NDPBS

Although we are aware that appointments to the board (or its equivalent) of an NDPB are not normally made by the NDPB itself, we would be interested in your views on the appointments system, and specifically the issue of 'proportionality', following the introduction of the revised code of practice and guidelines promulgated by the Commissioner for Public Appointments in July 1998.

By 'proportionality', we mean the principle that the length and complexity of appointment procedures should be commensurate to the nature and responsibilities of the post being filled: see paragraph 5.3 of the Issues and Questions consultation paper.

1. Are you aware of the code of practice and revised guidance produced by the Commissioner for Public Appointments in July 1998? Do you believe that it is helpful?
2. Are you aware of whether any additional procedures been put in place as a result of the Commissioner's revised guidelines and, if so, what are they?
3. Do you believe that your sponsoring Department is over-cautious in its approach to proportionality in the public appointments process?
4. Are there any changes which you would like to see made to the test of proportionality applied by the department?
5. Have you any evidence which suggests that the time taken to make public appointments deters people from applying for such appointments? If so, can you provide us with details of examples?

3. Questionnaire for Government Departments

1. To how many executive Non-Departmental Public Bodies (including NHS Trusts) do Ministers in your department make appointments?
2. Approximately how many appointments and reappointments were made by your department in 1998?
3. Are you aware of the code of practice and revised guidance produced by the Commissioner for Public Appointments in July 1998? Have you found it helpful?
4. Have any additional procedures been put in place as a result of the Commissioner's revised guidelines and, if so, what are they?
5. What test of proportionality does your department apply when deciding on the procedure for filling appointments to executive NDPBs?
6. What was the average time taken to complete the appointments process in 1998? Is this more or less than in previous years?
7. Have you any evidence which suggests that the time taken to make public appointments deters people from applying for such appointments? If so, can you provide details of examples?

Appendix X

A LIST OF RESPONDENTS TO THE QUESTIONNAIRES ON PUBLIC APPOINTMENTS

(The numbers following each of the names listed below indicate the chronological order of receipt of responses.)

NHS Trusts

Ashworth Hospital Authority (18/174)
Barnet Health Authority (18/118)
Barnet Healthcare NHS Trust (18/132)
Bay Community NHS Trust (18/115)
Bexley & Greenwich Health Authority (18/124)
Blackburn Hyndburn & Ribble Valley Healthcare NHS Trust (18/131)
Blackpool, Wyre and Fylde Community Health Services NHS Trust (18/147)
Bury Healthcare NHS Trust (18/92)
Camden and Islington Community Health Services NHS Trust (18/180)
Chelsea and Westminster Healthcare NHS Trust (18/159)
Cheshire Community Healthcare Trust (18/137)
Christie Hospital NHS Trust (18/117)
CommuniCare NHS Trust (18/97)
Countess of Chester Hospital (18/41)
Croydon Health Authority (18/153)
East Cheshire NHS Trust (18/133)
Enfield & Haringey Health Authority (18/116)
Great Ormond Street Hospital for Children NHS Trust (18/105)
Greenwich Healthcare NHS Trust (18/169)
Guild Community Healthcare NHS Trust (18/152)
Guy's & St Thomas's Hospitals NHS Trust (18/27)
Hillingdon Hospital NHS Trust (18/130)
Homerton Hospital NHS Trust (18/93)
Kensington, Chelsea & Westminster Health Authority (18/120)
Lancashire Ambulance Service (18/139)
Lewisham Hospital NHS Trust (18/18)
Liverpool Women's Hospital Trust (18/150)
Manchester Health Authority (18/76)
Mayday Healthcare NHS Trust (18/176)
Merton, Sutton & Wandsworth Health Authority (18/178)
Mid Cheshire Hospitals NHS Trust (18/112)
Moorfields Eye Hospital NHS Trust (18/128)
Morecambe Bay Hospitals NHS Trust (18/121)
NHS Supplies (18/142)
North Cheshire Health Authority (18/114)
North Manchester Healthcare NHS Trust (18/145)
North Middlesex Hospital NHS Trust (18/111)
Oldham NHS Trust (18/87)
Preston Acute Hospitals NHS Trust (18/154)
Queen Mary's Sidcup NHS Trust (18/143)
Ravensbourne NHS Trust (18/10)
Redbridge Health Care NHS Trust (18/146)
Rochdale HealthCare NHS Trust (18/123)
Royal Brompton and Harefield NHS Trust (18/67)
Royal Hospitals NHS Trust (18/101)
Salford and Trafford Health Authority (18/14)
Salford Community Healthcare NHS Trust (18/96)
Salford Royal Hospitals NHS Trust (18/144)
Sefton Health Authority (18/95)
South Manchester University Hospitals NHS Trust (18/30)
South West London and St George's Mental Health NHS Trust (18/149)
St George's Healthcare NHS Trust (18/134)
St Helen's & Knowsley Community Health NHS Trust (18/122)
St Helen's & Knowsley Health Authority (18/113)
Stockport Health Authority (18/172)
Tameside and Glossop Community and Priority Services NHS Trust (18/140)

Tavistock and Portman NHS Trust (18/170)
Teddington Memorial NHS Trust (18/186)
The Royal National Orthopaedic Hospital Trust (18/151)
The Whittington Hospital NHS Trust (18/90)
Wigan Leigh Health Services (18/98)
Wirral and West Cheshire Community Healthcare NHS Trust (18/89)

Executive Non-Departmental Public Bodies

Accounts Commission for Scotland (18/177)
Advisory, Conciliation and Arbitration Service (ACAS) (18/119)
Biotechnology and Biological Sciences Research Council (18/125)
British Educational Communications and Technology Agency (18/75)
British Tourist Authority (18/185)
Castle Vale Housing Action Trust (18/43)
Central Council for Education and Training in Social Work (18/141)
Commission for Racial Equality (17/20)
Construction Industry Training Board (18/86)
Council for the Central Laboratory of the Research Councils (18/56)
Criminal Injuries Compensation Authority (18/13)
Dental Practice Board (18/5)
Economic and Social Research Council (18/35)
Engineering and Physical Sciences Research Council (18/73)
Engineering Construction Industry Training Board (18/126)
English Heritage (18/94)
English Nature (18/26)
Environment Agency (18/179)
Equal Opportunities Commission (17/13)
Funding Agency for Schools (18/162)
Health Education Board for Scotland (18/36)
Heritage Lottery Fund (18/33)
Higher Education Funding Council for England (18/83)
Highlands and Islands Enterprise (18/52)
Horserace Betting Levy Board (18/49)
Horticulture Research International (18/167)
Imperial War Museum (18/20)
Legal Aid Board (18/168)
Liverpool Housing Action Trust (18/61)
Meat and Livestock Commission (18/70)
Medical Research Council (18/62)
Museums and Galleries Commission (18/15)
National Blood Authority (18/156)
National Institute for Biological Standards and Control (18/166)
National Library of Scotland (18/163)
National Maritime Museum (18/158)
National Museum and Galleries of Wales (18/51)
National Museum of Scotland (18/79)
National Radiological Protection Board (18/109)
Natural Environment Research Council (18/45)
Northern Lighthouse Board (18/24)
Particle Physics and Astronomy Research Council (18/71)
Police Authority for Northern Ireland (18/175)
Policyholders Protection Board (18/181)
Probation Board for Northern Ireland (17/21)
Public Health Laboratory Service (18/161)
Qualifications and Curriculum Authority (18/12)
Rowett Research Institute (18/82)
Royal Air Force Museum (17/15)
Royal Botanic Gardens (18/63)
Royal Navy Submarine Museum (18/16)
Scottish Council for Postgraduate Medical and Dental Education (18/74)
Scottish Crop Research Institute (18/127)
Scottish Enterprise (18/4)
Scottish Environment Protection Agency (18/44)
Scottish Homes (18/59)

Scottish Natural Heritage (18/155)
Scottish Qualifications Authority (18/9)
Scottish Tourist Board (18/160)
Sea Fish Industry Authority (18/39)
South East England Development Agency (18/135)
Sport England (18/99)
Sports Scotland (18/157)
Stonebridge Housing Action Trust (18/21)
Tate Gallery (18/66)
The Arts Council of England (18/58)
The Arts Council of Wales (18/173)
The Coal Authority (18/40)
The National Gallery (18/64)
The National History Museum (17/10)
The Scottish Arts Council (18/80)
The State Hospitals Board for Scotland (18/171)
The United Kingdom Atomic Energy Authority (18/53)
Traffic Director for London (18/22)
UK Sports Council (18/164)
Wales Tourist Board (18/184)
Waltham Forest Housing Action Trust (18/165)
Welsh Development Agency (18/182)
Welsh Funding Councils (18/17)
Welsh National Board for Nursing, Midwifery & Health Visiting (18/37)

Government Departments

Cabinet Office (18/31)
Crown Prosecution Service (18/91)
Department for Culture, Media & Sport (18/103)
Department for Education and Employment (18/69)
Department for International Development (18/55)
Department of Health (18/88)
Department of Social Security (18/102)
Department of the Environment and Transport & the Regions (18/65)
Department of Trade and Industry (18/84)
Foreign and Commonwealth Office (18/32)
Health and Safety Executive (18/78)
HM Customs and Excise (18/23)
HM Treasury (18/77)
Home Office (18/29)
Inland Revenue (18/47)
Lord Chancellor's Department (18/42)
Ministry of Agriculture, Fisheries and Food (18/54)
Ministry of Defence (18/34)
NHS Executive (18/104)
Northern Ireland Civil Service (18/85)
The Scottish Office (18/81)
Welsh Office (18/106)

LIST OF ABBREVIATIONS AND ACRONYMS

ACAS	Advisory, Conciliation and Arbitration Service
ACoBA	Advisory Committee on Business Appointments
ANDPB	Advisory Non-Departmental Public Body
APPC	Association of Professional Political Consultants
BBC	British Broadcasting Corporation
BG	British Gas
Bt	Baronet
CB	Order of the Bath
CBE	Commander (of the Order) of the British Empire
CBI	Confederation of British Industry
CID	Criminal Investigation Department
Cm	Command Paper
Cmnd	Command Paper
CPS	Crown Prosecution Service
CVO	Commander of the Royal Victorian Order
DCMS	Department for Culture, Media and Sport
DL	Deputy Lieutenant
EHRR	European Human Rights Reports
ENDPB	Executive Non-Departmental Public Body
FA	Football Association
FCO	Foreign and Commonwealth Office
FDA	Association of First Division Civil Servants
GCB	Knight Grand Cross, Order of the Bath
GICS	Government Information and Communication Service
GM	Genetically modified
GMC	General Medical Council
HC	House of Commons
HL	House of Lords
HR	Human Resources
ICP	Integrated Communication Projects Ltd
IPR	Institute of Public Relations
KCB	Knight Commander of the Order of the Bath
MP	Member of Parliament
MSP	Member of the Scottish Parliament
NDPB	Non-Departmental Public Body
NHS	National Health Service
OBE	Officer of the Order of the British Empire
PCC	Professional Conduct Committee
PhD	Doctor of Philosophy
PL	Public Law
PPC	Preliminary Proceedings Committee
PR	Public Relations
PRCA	Public Relations Consultants Association
QC	Queen's Counsel
QPM	Questions of Procedure for Ministers
RSPB	Royal Society for the Protection of Birds
RSPCA	Royal Society for the Prevention of Cruelty to Animals
SASC	Senior Appointments Selection Committee
SCS	Senior Civil Service
UK	United Kingdom
UKCC	United Kingdom Central Council (for Nursing, Midwifery & Health Visiting)
USC	United States Code
WA	Written Answer

ABOUT THE COMMITTEE

Terms of Reference

The then Prime Minister, the Rt Hon John Major MP, announced the setting up of the Committee on Standards in Public Life in the House of Commons on 25 October 1994 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.
>
> For these purposes, public office should include: Ministers, civil servants and advisers; Members of Parliament and UK Members of the European Parliament; Members and senior officers of all non-departmental public bodies and of NHS bodies; non-ministerial office holders; members and other senior officers of other bodies discharging publicly-funded functions; and elected members and senior officers of local authorities. (*Hansard* (HC) 25 October 1994, col 758.)

The then Prime Minister made it clear that the remit of the Committee does not extend to investigating individual allegations of misconduct.

On 12 November 1997 the terms of reference were extended by the 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 on Standards in Public Life has been constituted as a standing body with its members appointed for three years. Lord Neill succeeded Lord Nolan as Chairman on 10 November 1997.

Lord Neill of Bladen QC
(*Chairman*)

Sir Clifford Boulton GCB
Professor Alice Brown
Sir Anthony Cleaver
Lord Goodhart QC
Frances Heaton
The Rt Hon John MacGregor OBE MP
The Rt Hon The Lord Shore of Stepney
Sir William Utting CB
Baroness Warwick of Undercliffe

The Committee is assisted by a small secretariat:

Sarah Tyerman (*Secretary* from 7 June 1999), Richard Horsman (*Secretary* until 4 June 1999), Christine Salmon (*Assistant Secretary*), Andrew Brewster, Nassar Hameed, Balbir Deol (until 15 January 1999), Harsha Pitrola (from 11 October 1999), Jalal Farooqui (from 22 March to 31 August 1999), Rani Dhamu (from 21 June 1999), Juliet Amarquaye (until 4 June 1999), Julie Botley (until 15 January 1999), Ann-Marie Lugay (from 7 June 1999), Sue Carr (until 12 May 1999), Nancy Rogers (from 18 January to 26 February 1999), Joan Brine (from 1 February to 4 June 1999), Philip Aylett (*Press Secretary* from 7 June 1999), Peter Rose (*Press Secretary* until 4 June 1999).

Advice and assistance to the Committee for this study was also provided by:

Radio Technical Services Ltd for the provision of sound recording, Palantype Services Ltd for the provision of transcription services during the public hearings; and Heather Bliss for editing the draft report.

Expenditure

The estimated gross expenditure of the Committee on this study to the end of December 1999 is £580,574. This includes staff costs; the cost of printing and distributing (in March 1999) 15,000 copies of a paper setting out the key issues and questions which the Committee would address; costs associated with public hearings which were held at the Royal United Service Institute for Defence Studies, London from 18 June to 15 July 1999; and estimated costs of printing, publishing and distributing this report.

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