

## STRENGTHENING THE MINISTERIAL CODE

---

*Transparency International UK Briefing – August 2024*

### SUMMARY

Trust in politics is perilously low. Polling shows the majority of people believe that politicians are ‘out for themselves’ and that the system of government is rigged to the advantage of the rich and powerful.<sup>1</sup>

Perceptions of undue secrecy or conflicts of interest further damage public trust in institutions as well as individuals. Research from Carnegie UK shows that democratic wellbeing is both a means to greater social, economic and environmental wellbeing and an end in itself, impacting directly on personal wellbeing.<sup>2</sup>

Recent events in Scotland including transparency around informal messaging app use during the Covid-19 pandemic as well as other alleged breaches of the Ministerial Code have brought into question the adequacy of current checks to protect integrity in high office.<sup>3</sup> Presently, the First Minister of the day produces a code of conduct outlining the standards expected of their colleagues, which they alone have the ability to enforce.

Transparency International UK recommends that in order to rebuild trust and ensure consistent upholding of the standards of integrity in public office, the Ministerial Code:

- Be placed on a statutory footing.
- Include an explicit commitment to the seven Principles of Public Life (the Nolan principles) in a First Minister’s foreword.
- Allow for the appointment of an Independent Adviser on Ministerial Interests with the ability to initiate and set the terms of investigations into breaches of the code without needing the explicit consent of the First Minister.
- Provide enhanced transparency over ministerial activities by committing to publishing ministerial meetings on a monthly basis and affirm that meetings which occur in a social setting which discuss official business should also be declared publicly.
- Extend the requirement to record meetings to Special Advisers in order to better understand the full range of influence on Ministers.

---

<sup>1</sup> Polling undertaken on behalf of the UK Anti-Corruption Coalition in September 2023

<https://www.ukanticorruptioncoalition.org/work/report-reflections-trust-politics>

<sup>2</sup> Democratic wellbeing is one of the four domains identified by Carnegie UK as contributing to collective wellbeing, the others being social, economic and environmental wellbeing. <https://carnegieuktrust.org.uk/publications/gdwe-a-spotlight-on-democratic-wellbeing/>

<sup>3</sup> <https://www.transparency.org.uk/vaughan-getting-imessage-leak-row-must-now-be-investigated>

## 1. STRENGTHENING THE MINISTERIAL CODE

We have several long-standing recommendations to strengthen the Ministerial Code and improve the transparency of ministerial accountability.

### 1.1 PLACING THE MINISTERIAL CODE ON A STATUTORY FOOTING

Transparency International UK recommend all Ministerial Codes be placed on a statutory footing. This law requiring the publication of a Ministerial Code of Conduct would include that in setting the rules of conduct, the Nolan Principles should be used as a guide. While the protections of statute have their limits, they provide a much stronger set of defences than the existing arrangements. Putting the Ministerial Code on a statutory footing would ensure a First Minister was unable to choose not to adopt a Ministerial Code of Conduct. This statutory protection should also be viewed in-light of parallel and sometimes overlapping arrangements for ensuring integrity in high-office, including enhanced lobbying transparency.

#### 1.2 A COMMITMENT TO THE NOLAN PRINCIPLES

To further embed the Nolan Principles at the heart of the Ministerial Code, we recommend that the Code include a foreword from the First Minister and for that foreword to explicitly commit Ministers to these principles of public life.

#### 1.3 THE APPOINTMENT OF AN INDEPENDENT ADVISER

The appointment of independent advisers to investigate alleged breaches of the Ministerial Code was a welcome step. However, even with an independent adviser, instigating an inquiry and the parameters of the work in these jurisdictions remains in the gift of the First Minister. There is no formal recruitment process and no official role for Parliament. The patronage this endows on the FM creates an unacceptable risk of jeopardising the adviser's independence.

Transparency International UK recommends the Scottish Government appoint an independent adviser on ministerial interests with that appointment being undertaken through a transparent process, removed from the First Minister.

The role will require the resources and powers necessary to deliver on its objectives. Without these it will inevitably fall short of the task at hand. Establishing sufficient, independent and sustainable resourcing to support this role is crucial to protecting it from being hobbled by political interference. In order to establish the facts of each case, the independent adviser should have the power to obtain relevant documents, data and details in a timely manner. Giving them this power and meaningful penalties for those who do not comply, would help to ensure they can collect all relevant facts and conduct their role properly.

In adopting this model, Scotland could again set a precedent within the UK of ensuring operational autonomy for the office that monitors and enforces adherence to the Ministerial Code.

#### 1.4 REPORTING OF MINISTERIAL MEETINGS AND ENGAGEMENTS

Across the UK, reporting of ministerial engagements is ineffective and provides little insight for the public into what is being discussed in meetings with stakeholders. The lag in reporting these meetings also diminishes its value and makes it harder to see where meetings might be influencing decision making. We recommend publishing ministerial meetings and engagements on a monthly basis. Analysis from Canada in 2021 shows it takes an average of 28 days from the day of a communication to publish similar information with almost one in ten of these disclosures released within five days of the communication taking place. In the EU, publication of meetings with European Commissioners is required within two weeks of them taking place.

We also expect the ministerial code to determine that meetings which occur in a social setting which discuss official business should also be declared publicly.

We would reiterate our recommendation that meetings data include a short summary of the discussion outlining any public interest it served and including any specific outcomes, rather than simply stating the subject area in question.

## 1.5 SPECIAL ADVISERS

Special Advisers (SpAds) are appointed by and responsible to Ministers so should be covered by the same principles of accountability in order that the influence on and actions of any Minister can be fully understood. In acting as a direct link between stakeholders and Ministers the external meetings SpAds undertake should be recorded and reported so it is possible to better understand any influence had on Ministers.

## 1.6 SANCTIONS

The Ministerial Code should provide clarity on the range of sanctions available should a breach be found to have occurred. This will both instil confidence that there are sanctions available which seem proportionate, with the most egregious breaches subject to more serious sanctions. This should also act as a deterrence to wrongdoing and aid any determination process as there would be a clear expected sanction.<sup>4</sup>

## 2. THE CABINET MANUAL

In order for the public to adequately understand the application of rules and how Ministers are held to account, it is necessary for them to be able to view the guidance that relates to those accountability mechanisms.

Being clear on how something happens, for instance, how a decision made using a messaging app is transferred to the official record, is important to engender public trust in the system. Trust has to be demonstrated not simply stated.

To provide for this scrutiny, we recommend that the Scottish Government Cabinet Handbook be published,<sup>5</sup> alongside any other relevant guidance, including around how emails and informal communications are recorded.

## 3. COMPLAINTS UNDER THE MINISTERIAL CODE AND THE ROLE OF INDEPENDENT ADVISERS

As noted at [1.3](#) above, we recommend that genuinely independent advisers be appointed and provided with adequate resource and powers to investigate any alleged breaches of the code.

Whilst the decision of who should take on Ministerial roles will always be for the First Minister, we recommend a 'back-stop' process should there be a case where the First Minister fails to take action on the results of any independent investigation.

The procedure could follow the model of the current process undertaken by the Ethical Standards Commissioner, with decisions on sanctions being taken by the Standards, Procedures and Public Appointments Committee and debated by the full Parliament.

Regardless, to avoid political capture of the committee process, we recommend that Scotland follow the example set by the Committee on Standards at Westminster and appoint lay members to the Standards, Procedures and Public Appointments Committee (and any other ad hoc Committee charged with investigating a breach of the Ministerial Code). These lay members should always be involved in consideration of complaints and sanctions, of both MSPs and if the process is applied to them, Ministers.

---

<sup>4</sup> Further detail on our recommendations for complaints procedures can be found at [4 below](#).

<sup>5</sup> It may be necessary for some elements to be withheld from publication for security reasons, but the principle of proactive publication remains.

## 4. THE ROLE OF CIVIL SERVANTS IN APPLYING THE MINISTERIAL CODE

Experience suggests that civil servants, whilst available for advice, should not be charged with investigation of alleged breaches of the ministerial code. The process should be at arms-length from the operations of government as the relationships between Ministers and civil servants could be perceived to present a conflict of interest.

This would both serve to ensure that the investigation was *seen* to be independent as well as *being* independent of government. It would also serve to protect the civil service who should not be at risk of being considered to have made any partial decisions about the investigation based on their responsibilities to the government of the day.

## 5. ELECTRONIC MESSAGING APPS AND THE MINISTERIAL CODE

The deletion of electronic messages since the ubiquitous use by those in government of applications such as WhatsApp has posed serious challenges for Freedom of Information and subsequent inquiries into the Covid-19 pandemic. To avoid this recurring, we recommend:

### 6.1 RETENTION OF INFORMATION

Policies for information retention should be revised to reflect digital-first modes of communication and administration and should be included in the Ministerial Code of Conduct with clarity on how communications using mobile devices or apps should be transferred to the historical record and made public.

### 6.2 DISCLOSING OF INFORMATION

Publicly disclosing information which Ministers have failed to record in line with the Code of Conduct should be treated as an act of whistleblowing with the associated protections. Any investigation to determine if the disclosure was in the public interest should be conducted by an independent investigator and the findings made public, including lessons learned for future record keeping.

## WHO WE ARE

Transparency International UK is the UK-based chapter of Transparency International, the world's leading non-governmental anti-corruption organisation. We raise awareness about corruption; advocate legal and regulatory reform at national and international levels; design practical tools for individuals and companies wishing to combat corruption; and act as a leading centre of anti-corruption expertise. We base our advocacy on robust research, and, as a registered charity, are independent and non-political. We support the Open Government Partnership and the principles it espouses and are a member of the UK Open Government Network and co-chair the Open Government Scotland Steering Group.

## CONTACT

Juliet Swann, Nations and Regions Programme Manager ([juliet.swann@transparency.org.uk](mailto:juliet.swann@transparency.org.uk))