

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

Executive Summary

The introduction of the seven Nolan Principles was a significant moment for standards regulation in the UK. These are an integral part of building positive social norms and practices in our democratic system. However, as they are by nature very broad, on their own it is entirely possible for those in public life to interpret them very differently in practice, whilst believing in good faith that they are upholding them. This inconsistency in approach, combined with poor transparency, limited scope of regulations, a lack of independence for key regulators and weak sanctions for breaches of the rules mean that ethical standards cannot be effectively upheld.

The UK has a wide ranging and complex patchwork of codes, laws and conventions that regulate ethical behaviour in public life at a local, devolved and UK level. The fact that key areas or risk have been identified and some attempt has been made to mitigate them, is very welcome. However, as these frameworks have often been developed in response to a specific scandal or incident, they are not always comprehensive or holistic in approach. They also frequently fall below international best practice. We welcome this review and the opportunity to reflect more comprehensively on the gaps in the existing framework for ensuring ethical standards.

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

Key recommendations

Independence and autonomy

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

Powers and Sanctions

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

Scope

¹ See Accountable Influence 2015

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

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

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

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

Transparency

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

Delayed and incomplete data

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

Question 1: Standards of Conduct in the UK

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

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

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

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

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

³ Article 19 UN Convention Against Corruption (UNCAC)

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

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

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

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

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

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

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

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

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

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

Resisting conventions of accountability

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

⁴ Audit of Political Engagement 16 Hansard Society 2019 <https://www.hansardsociety.org.uk/publications/reports/audit-of-political-engagement-16>

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

Attacking institutions

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

Politicising public appointments

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

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

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

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

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

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

Denying Freedom of Information requests

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

Bypassing due process

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

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

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

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

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

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

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

19. Similarly, concerns about appointments to the House of Lords, particularly regarding party donors, are not new. We note that for the first time a Prime Minister has personally intervened to confirm the appointment of a peer, against the wishes of the House of Lords Appointments Commission.¹³ The perception that money can buy a seat in legislature is a very damaging one and whilst political patronage continues to be a feature of these appointments we see merit in calls for the House of Lords Appointments Commission to be put on a statutory footing.¹⁴

Malign foreign influence

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

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

Question 3: The UK's arrangements for regulating standards

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

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

22. There are a number of areas in which the UK's institutional checks and balances against abuses of power for private gain continue to fall short of international good practice. These weaknesses are systemic, being repeated across different parts of the UK and different types of public body. Below we explore a number of case studies

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

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

¹⁵ Intelligence and Security Committee Russia report HC632 July 2020 https://b1cba9b3-a-5e6631fd-sites.googlegroups.com/a/independent.gov.uk/isc/files/20200721_HC632_CCS001_CCS1019402408-001_ISC_Russia_Report_Web_Accessible.pdf?attachauth=ANoY7cp5p7evF7OUk7_FJ46AbZi5cva5n0_ruDTwuvOjZLjjT0kWO_YKLE46Y8LeA2DzHWQn3OxzPN6mIVShUarOK6Xkm6V5kPZbavmhLG9YvXa6Nv5Z-pKnPrW_brSZ2Hayky7XzB8JndKhVky1pH1YXfowlW5P4WH2CoiHOHPeNreQtTxv7Xy8AoG-gbWv1ncZwvNWHAB_ISD2wVs8nKmHIKGuB36YJ7Arh20HETR63sb4jlvixCEUULMKNK6kQeOpOJkRONbxShfwxmWmy4izA6V_s0ovtPRqRYHH1Dw7SaBRREhr4XCUU%3D&attredirects=0

below that exemplify these deficiencies. The case studies predominantly focus on ethical frameworks for the UK Government and Parliament and should not be considered an exhaustive list. Many of the issues identified, particularly regarding transparency and scope, also apply to equivalent codes in the devolved nations or in local government.

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

Transparency

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

28. These are not new concerns, and we support the recommendations from this committee in your 2009 report² and again in your 2018 report.³ In 2017, we spent a significant amount of time working with the Parliamentary Digital Service to create the framework for a system that would help make MPs' financial interests more accessible and analysable for the public. Despite our clear blueprint for reform, nothing substantive appears to have happened since and we are at a loss as to why.
29. APPG registers are key to understanding where their funding comes from and assessing risks of influence from foreign governments. All APPGs are required to publish information including details of their membership, who the elected officers are, who the public contact is, date of the last meeting, details of any financial interests and whether there is an external secretariat providing support and the monetary value of that support. This information is all published on Parliament's website, so is in the public domain.
30. However, the registers are only published in HTML and pdf formats. These are not machine readable and makes meaningful scrutiny of the data both difficult and extremely time consuming. This only gets worse when attempting to read across from the different data sources to see where, if at all, there are any links. It is both feasible and highly desirable for APPG data to link seamlessly with other integrity registers, including the register of consultant lobbyists and the register of members' financial interests.
31. It should be easy for a constituent or interested organisation to easily find out how many APPGs and individual MP is a member of, how many APPGs have financial support from outside of Parliament or how many APPGs have not met within the last quarter. In principle this information is all freely available. In practice it is very difficult to access without significant IT skills and the knowledge of the Python programming language.¹⁶ As long as this data is not available in machine readable format, we cannot be sure of the full extent of the corruption risks within the work of APPGs.
32. A lack of transparency can also undermine the work of a regulator by creating a perception of inactivity or uniform approval where this is not in fact the case. The Parliamentary Commissioner for Standards is currently prevented from revealing whether or not they are investigating a matter that has been brought to their attention. This means that they are exposed to accusations of refusing to act and the perception is created that there is no interest in investigating potential breaches of the MPs code of conduct. While there are some matters that may need to be kept confidential, such as in cases of bullying, harassment and sexual harassment, there is a clear public interest in knowing if our parliamentarians are subject to investigation on corruption issues.

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

33. Moreover, as the Commissioner has previously outlined, publishing ongoing cases can uphold the integrity of both the Commissioner and MPs. Announcing that an investigation has begun cultivates the public's trust in the Commissioner's ability to hold politicians to account.
34. Equally the fact that the Advisory Council on Business Appointments (ACoBA) does not publish any information about how it makes decisions and in particular, decisions it may make not to allow a former Minister from taking on a private sector role, creates the perception that all requests are approved. It is understandable that personal information would need to be kept confidential and that attention should be paid to ensuring nothing published would damage the reputation of the individual concerned, or deter others from making an application. However, the lack of any information about refusals creates the perception that ACoBA simply approves every application and that there are no real restrictions on what roles can be taken.

Limited scope undermining the purpose of the regulation

35. Another challenge to the regulation of ethical standards in public life is where the narrow scope of the data collected makes it difficult, or in some cases impossible get a complete picture. The Statutory Register of Consultant Lobbyists is a good example of this problem.
36. The UK has now had a lobbying register for six years, but the public is still largely left in the dark about who is trying to influence public-policy decisions that affect their everyday lives. The UK's Statutory Register of Consultant Lobbyists and records of ministerial meetings, which when combined are supposed to provide a complete picture of lobbying activity, provide us with very little useful information with which to hold the powerful or influential to account.
37. There are two broad and fundamental problems which mean that it is not possible for the lobbying register to be effective. These are structural problems, rather than failures of implementation or operation. The first is the scope of the register. The UK is unique in only seeking to regulate the activity of consultant lobbyists who contact Government Ministers or Permanent Secretaries.
38. In 2013 when the proposed register was being debated in Parliament, lobbying trade bodies and campaigners came together to warn that the register would capture less than 1 per cent of lobbying activity¹⁷. The concern was that the very narrow definition, focusing on consultant lobbyists, rather than the lobbying activity, meant that little would be revealed about those seeking to influence the Government. This has proven to be the case.

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

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

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

43. The scope of the definition of lobbying activity also creates problems in the MP’s Code of Conduct. Currently, the code of conduct bans paid advocacy, but the current wording may be causing a degree of ambiguity. The guide accompanying the code states that members must not lobby government if this would ‘confer benefit exclusively’ on the organisation or individual employing the Member¹⁹. This definition is unnecessarily narrow and it provides room for evading the rule’s intent. Moreover, the presentation

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

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

and explanation of the code of conduct may allow misunderstanding, as seen in the case of David Morris, who the Commissioner found to have inadvertently breached the rules due to a ‘misunderstanding’ on Morris’s behalf. Ian Paisley Jr argued that he had not breached the rules on paid advocacy when he opposed imposing sanctions on the Sri Lankan Government after his family had been on two holidays in Sri Lanka paid for by the Sri Lankan Government worth about £50,000, because of the exclusive benefit rule. This was not accepted by the Parliamentary Commissioner for Standards, but it is significant that this was considered a legitimate defence.²⁰

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

Delayed and incomplete data

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

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

46. There is also an issue with the timeliness of the data. Departments have three months after the end of the quarter when they can publish the data and are inconsistent about when they do this. There can be significant delays in publication. TI UK’s Accountable Influence report found that the ministerial meetings data available in September 2015 was over a year old.²² This remains a problem – both HMT and FCO took nearly a

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

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

²² Transparency International UK Accountable Influence 2016 p16

year to publish the details of meetings that took place in quarter 4 of 2019. This makes it impossible for the public to understand at the time a policy is being debated who may be seeking to influence the Government.

47. Departments are also inconsistent in their approach as to what information needs to be published about ministerial meetings and there have been a number of instances where Ministers have failed to declare meetings. This means that it is not possible to rely on the accuracy of the published information.

48. In 2011, Theresa Villiers, then a DfT Minister, failed to declare a lunch with a university friend who was also the principal lobbyist for developers Helioslough. The developers had been campaigning since 2006 to build a £400m international rail freight exchange on 300 acres of green belt land near St Albans in Hertfordshire. The Minister described the event as a private engagement, which did not need to be disclosed, despite acknowledging that the development was discussed over lunch and that emails followed the meeting from said friend asking the Minister to lobby colleagues in government.

49. More recently in 2020, Robert Jenrick, Secretary of State for Housing, was found to have expedited Conservative Party donor Richard Desmond's planning application for a development in East London in a way that meant Desmond would not have to pay community infrastructure levy money to Tower Hamlets Council. The meeting between Jenrick and Desmond was not included in the ministerial meetings data.

50. We believe that a more comprehensive approach to reporting on ministerial meetings data would often save Ministers from having to judge whether a meeting needed to be declared given their various roles, and from the consequent public accountability for those decisions. Meetings that Ministers have at events organised by a political party which would have been declared had they been hosted by their government department, should also be reported among their ministerial meetings.

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

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

51. While there are clear rules on the reporting of financial interests for MPs and Ministers, to ensure there are no conflicts of interest in decision making, there are often errors and delays in reporting. There can also be significant differences in the level of reporting that is deemed necessary.
52. There have been a number of recent examples where MPs either failed to correctly declare their financial interests or failed to do so within the required 28 days. Given how difficult it is to scrutinise this data it is likely that there are more errors and inaccuracies than become public knowledge.
53. Ian Paisley Jr MP failed to register a holiday to the Maldives which was paid for by a corporate body (the resort) rather than, as Ian Paisley claimed 'a personal friend'. The Parliamentary Standards Commissioner concluded that Mr Paisley had 'no direct relationship with the donor' and that the complimentary rooms from the resort "might reasonably consider to influence Mr Paisley, which made registration a requirement" The Registrar of Financial Interests also stated that Mr Paisley's status as an MP might have been an element of the 'friendship'²³. This was not the first time Mr Paisley had failed to declare his financial interest correctly. In 2013 he failed to register two visits to Sri Lanka in 2013 with his family, paid for by the Sri Lankan government, worth, according to Ian Paisley himself, around £50,000.²⁴
54. Richard Drax MP recently added properties to his declaration of financial interests, correcting a number of errors and omissions, following a newspaper investigation into his business interests.²⁵
55. In 2018 there were two investigations in quick succession into Boris Johnson's declarations of financial interests. Johnson was found to have breached the parliamentary code by failing to register nine payments (totalling £52,711.80) on four occasions within the 28 day period specified. He apologised and made assurances that his parliamentary interests were now up to date. Just over three months later the Commissioner investigated him again for late registrations. The Committee found that Johnson had, again, breached the parliamentary code for failing to register a share of a Somerset property within the 28 days of acquiring it.²⁶

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

²⁴ https://publications.parliament.uk/pa/cm201719/cmselect/cmstandards/1397/139703.htm#_idTextAnchor002

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

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

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

Recommendation There needs to be clear, publicly available, guidance given to Ministers about the scope of the Ministerial Code and the level of reporting expected to ensure a greater degree of consistency. We also support the recommendation of the Standards Committee²⁸ that there should be a new suite of sanctions that will address the 'sanctions gap' that exists between issuing an MP suspension and requiring an MP to make an apology.

Autonomy and Independence

57. Effective monitoring and regulation of ethical standards requires independence and autonomy from both government and those that are being regulated. The expenses scandal demonstrated the damage that can be done to public trust in institutions when the relationship between regulator and those they are regulating is seen to be too close. Although swift action was taken to create an independent body to oversee MPs expenses, other areas of regulation still lack the necessary autonomy in decision making.

58. Leadership is very important in creating an ethical culture and it is important that the Prime Minister is able to set the tone of the standards and ethics that they expect their ministers to uphold. However, the level of control the Prime Minister can exert over the process is a concern. Investigations into a potential breach of the code can only be triggered by the Prime Minister. The investigation is then run by the Independent Adviser on Ministerial Standards and the report is delivered to the Prime Minister who decides what if any sanctions are appropriate. The Independent Adviser is appointed by and reports to, the Prime Minister. This is not to suggest that investigations by the Independent Adviser are not independent, just that the lack of autonomy in deciding when an issue should be investigated means compliance with integrity and ethical standards for ministers are essentially based on self-regulation and the risk of reputational damage. There is also no consistency over which allegations warrant and investigation and which do not. This is not a strong enough framework to ensure trust in

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

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

political system and to prevent the perception that wrongdoing in high office goes unchecked.

59. In recent years there have been a number of cases where serious allegations of misconduct by ministers were made but there were no investigations. In 2012 the close relationship between Secretary of State for Culture Media and Sport and both James Murdoch and Fred Michel, News Corporation's lobbyist, was raised at the Leveson Inquiry. It was revealed that the Secretary of State had lobbied the Prime Minister to encourage him to approve the takeover, writing a memo against the advice of his officials and contradicting his statements to Parliament.²⁹ The Secretary of State and his Special Adviser remained in contact with Murdoch and Michel even when the Secretary of State knew he would be making a decision on whether to allow News Corporation's takeover of BSkyB. There were calls for an investigation into potential breaches of the Ministerial Code which were declined by the Prime Minister.
60. The examples cited above where Ministers were found to have misled Parliament were potential breaches of the Ministerial code. Equally the example last year of the Housing Secretary failing to declare meetings and correspondence with Richard Desmond about a planning application may have been a breach of the code. Calls for an investigation to do not mean that there has been a breach of the rules, but the lack of an investigation in the face of serious allegations creates the perception that those in government are above the law.
61. The value of the ministerial code as a safeguard of conduct in public office was further undermined by the recent case involving the Home Secretary. The Independent Adviser on the Ministers' Interests found that the Home Secretary had engaged in bullying behaviour but the Prime Minister declined to take action and expressed his support for the Home Secretary. This led to the resignation of the Independent Adviser on the Ministerial Interests.
62. In their 5th evaluation round report on the UK, GRECO drew attention to concerns about the lack of autonomy for both the Ministerial Code of Conduct and ACoBA and concluded that,

“both institutions may gain in being considerably more autonomous from government and being capable of investigating breaches on their own initiative leading to sanctions”

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

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

63. We do not believe that it is possible for the Ministerial Code to be an effective tool in upholding ethical standards whilst its implementation is so closely tied to the Prime Minister.

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

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

64. In addition to independence and autonomy an effective standards regulator needs the power to conduct investigations into potential breaches of the rules and the ability to impose powerful sanctions for breaches to act as a deterrent and sufficient resources to carry out these roles. This is frequently not the case in the UK as can be seen with ACoBA and the Electoral Commission.
65. In the UK most public officials recognise the potential for conflicts and try hard to avoid them. However, a number of prominent cases have come to light in recent years in which former Ministers and civil servants have taken lucrative consultancies or directorships with companies that have relationships with their old departments.
66. The current system does not lend itself to building public confidence in the integrity of the UK's political institutions. At times, appointments may have the appearance of impropriety, even if it often remains unclear whether an actual distortion of public policy has taken place. And that in itself damages trust in government.
67. The Public Administration Select Committee called for ACoBA to be abolished and replaced with an independent, statutory body in 2012. Its successor committee the Public Administration and Constitutional Affairs Select Committee found that the situation had got worse and also called for urgent reform of ACoBA.
68. One of the main reasons for this is that ACoBA is just an advisory body – it has no authority to ensure that its advice is carried out. Even where ACOBA does impose conditions, it lacks the power to monitor whether those decisions are respected, or to impose sanctions on individuals who disregard their advice.
69. This lack of monitoring capacity is arguably the greatest weakness of the current system for scrutinising post-public employment. It means that it falls to the media or NGOs to provide scrutiny, on an ad hoc basis, of how former Ministers and civil servants behave once they have left office. PACAC found that Private Eye was more effective at tracking post Ministerial appointments than ACoBA. Yet the media is not always interested in portraying the complexities of these cases, with some media tending to sensationalise the risks and ignore any potential benefits.

70. PACAC called ACoBA “a toothless regulator”³¹ as it cannot impose sanctions for breaches of its rules. There are numerous examples of individuals, including the current Prime Minister,³² applying to ACoBA retrospectively once they have already taken up a role. This is often noted in the decision letter, in the case of Boris Johnson, the delay in notifying ACoBA was deemed unacceptable. However, no action can be taken so there is no deterrent to prevent future rule breaking.
71. The challenges of regulating the revolving door, preventing conflicts of interest and regulatory capture are not new, but neither are they going to go away. The civil service is no longer considered a ‘job for life’ and political careers are notoriously unstable. Whilst the creation of ACoBA demonstrates an understanding that this is an area that needs to be regulated, the current system is inadequate. As Sir Bernard Jenkin, then Chair of PACAC, said it “represents a failure of governance in public life—it inspires no public confidence, nor does it protect the reputations of those it is intended to protect.”³³
72. The Electoral Commission is also hindered in its role of regulation elections in the UK. As we set out in our evidence to this committee’s inquiry into electoral regulation, the level of fine that the Commission can impose for breaches of the rules is so low that they can be considered the cost of doing business. This means that there is no meaningful deterrent to breaking the rules.
73. One of the challenges facing regulators is that in many cases they identify the need for additional powers and sanctions but are not able to make these changes. As outlined above select committees have been calling for fundamental reforms of ACoBA since 2012. The Electoral Commission has also been asking for additional powers and sanctions for many years. There are blocks to achieving change and the protracted delays contribute to the undermining of trust in our democracy.

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

ABOUT TRANSPARENCY INTERNATIONAL UK

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

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

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

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

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