



House of Commons  
Public Administration  
Select Committee

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**The Ministerial Code:  
the case for  
independent  
investigation**

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**Seventh Report of Session 2005–06**





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# The Ministerial Code: the case for independent investigation

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**Seventh Report of Session 2005–06**

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## The Public Administration Select Committee

The Public Administration Select Committee is appointed by the House of Commons to examine the reports of the Parliamentary Commissioner for Administration, of the Health Service Commissioners for England, Scotland and Wales and of the Parliamentary Ombudsman for Northern Ireland, which are laid before this House, and matters in connection therewith and to consider matters relating to the quality and standards of administration provided by civil service departments, and other matters relating to the civil service.

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### Powers

The Committee is one of the select committees, the powers of which are set out in House of Commons Standing Orders, principally in SO No 146. These are available on the Internet via [www.parliament.uk](http://www.parliament.uk).

### Publications

The Reports and evidence of the Committee are published by The Stationery Office by Order of the House. All publications of the Committee (including press notices) are on the Internet at <http://www.parliament.uk/pasc>.

### Committee staff

The current staff of the Committee are Eve Samson (Clerk), Clive Porro (Second Clerk), Lucinda Maer (Committee Specialist), Phil Jones (Committee Assistant), Sue Holt (Secretary) and Louise Glen (Senior Office Clerk).

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# 1 Introduction

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1. Our predecessor Committee first considered the Ministerial Code in its report of February 2001, towards the end of the new Labour administration's first term in Government.<sup>1</sup> The Report made a number of recommendations which sought to improve the status and use of the Ministerial Code and give it greater coherence. The Committee on Standards in Public Life has also examined the Ministerial Code in a number of its reports.

2. The Ministerial Code is now established as the rule book on ministerial conduct. Our original report considered its main aspects in a comprehensive fashion. However, one issue still remains to be adequately addressed: investigation of alleged breaches of the Ministerial Code. The need for an adequate investigatory element to discover the facts about allegations of ministerial impropriety or misconduct was first raised in the Committee's report of 2001. Although a series of revisions and improvements have been incorporated into the Ministerial Code over the years, often as a result of recommendations by this Committee, the means by which it is enforced has yet to be satisfactorily resolved.

3. We announced in November 2005 that we would undertake a review of ethics and standards in public life some ten years after the setting up of the Committee on Standards in Public Life (CSPL). Consideration of the Ministerial Code was to be part of this review. While we prepared to announce our inquiry, one Cabinet Minister, David Blunkett, was forced to resign over his failure to heed the Ministerial Code's requirement that he should take advice on his business interests after leaving office. At the beginning of 2006 a second, Tessa Jowell, was also at the centre of intense media pressure about the declaration of her spouse's interests. Even more recently the Deputy Prime Minister, John Prescott, has been the focus of attention about possible breaches of the Ministerial Code. In all these cases, as in others previously, there has been a lack of clarity about the means for establishing the facts, and who should do so.

4. On 23 March 2006 the Prime Minister announced the appointment of Sir John Bourn, the Comptroller and Auditor General, as the independent adviser on ministerial interests. However, it is not clear that this will serve to allay the continuing concerns over how the facts about serious allegations of breaches of the Ministerial Code can be established.

## 2 More than a question of procedure

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5. During the course of World War II, cabinet ministers were given *ad hoc* guidance on procedures it was desirable they should follow. This was subsequently collected into one document and first issued to new ministers by the then Prime Minister, Clement Attlee, in 1945. Since then, the document has grown both in size and status. The original version of Questions of Procedure for Ministers (QPM) was 65 paragraphs long. In 1997 it had doubled in size to 135 paragraphs and in the latest edition, published on 21 July 2005, it has grown by over a quarter again, to 173 paragraphs.

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<sup>1</sup> Public Administration Select Committee, Third Report of Session 2000-01, *The Ministerial Code: Improving the Rule Book*, HC 235

6. The document has become equally weighty in status. When Attlee circulated his guidance he observed only that it might be “convenient” for colleagues. In 1992 the then Prime Minister, John Major, published the document for the first time, thus giving it unprecedented public profile. In 1997 QPM shed its narrowly procedural image and became a fully fledged Ministerial Code, taking its place alongside those for civil servants and special advisers.

7. This change in title underlined how the nature of regulation of ethical standards in public life had changed and developed, even since the CSPL published its first report in 1996. As Peter Riddell of *The Times* pointed out to us:

We are now in a much more code-based system. Governments could still get round codes, like the Ministerial Code, but the fact these things are published and are public documents, your committee and the predecessor committee [...], getting the code more accepted - all of these things are gains.<sup>2</sup>

### 3 Previous reports

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8. This Committee’s predecessor and the Committee on Standards in Public (CSPL) have both, in the past, considered the functioning of the Ministerial Code and, in particular, whether it was desirable or necessary to appoint an independent figure to investigate allegations of breaches of the Ministerial Code. CSPL’s position has changed. When the Committee, then chaired by Lord Neill, first considered the matter in its sixth report in 2000, it concluded firmly that “no new office for the investigation of ministerial conduct should be established”.<sup>3</sup> However, in a subsequent report in 2003, the Committee, by then chaired by Sir Nigel Wicks, recommended that the Cabinet Secretary and permanent secretaries should have no responsibility for giving advice to Ministers on conflicts of interest arising from the Ministerial Code. Instead, an independent office holder, the Adviser on Ministerial Interests, should advise ministers on appropriate compliance with the Ministerial Code.<sup>4</sup>

9. It also recommended that, at the beginning of each Parliament, the Prime Minister should nominate “two or three individuals of senior standing” who could be asked by him to investigate any alleged breaches of the Ministerial Code.<sup>5</sup> The Government accepted the case for a ministerial adviser but had no wish to be constrained by the appointment of a panel of investigators.<sup>6</sup>

10. This Committee has consistently voiced its concern that Parliament lacks an effective investigatory capacity to act on its behalf where there are allegations of ministerial failure

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2 Oral evidence taken before the Public Administration Select Committee on 2 February 2006, HC (2005-06) 884-i, Q 8 [Mr Peter Riddell]

3 Sixth Report of the Committee on Standards in Public Life, *Reinforcing Standards: Review of the First Report of the Committee on Standards in Public Life*, Cm 4557, January 2000, recommendation 12, p. 53

4 Ninth Report of the Committee on Standards in Public Life, *Defining the Boundaries within the Executive: Ministers, Special Advisers and the permanent Civil Service*, Cm 5775, April 2003, Recommendation 3, p. 27

5 *Ibid.*, Recommendation 4, p. 29

6 The Government’s Response to the Ninth Report of the Committee on Standards in Public Life, Cm 5964, September 2003, pp. 1-4

or misconduct. This applies both to major questions about the conduct of the Government which may on occasion result in public inquiries, and to concerns about the behaviour of individual ministers.<sup>7</sup> The various proposals over the years for some form of independent and parliamentary investigation into ministerial conduct have been rejected by governments of both main parties on the grounds that “it would be undesirable to fetter the Prime Minister’s freedom to decide how individual cases should be handled”.<sup>8</sup> But, as we explore below, the track record for such (departmental) inquiries has not been good and it is arguable that different machinery might have yielded better outcomes for all concerned.

## 4 The use of inquiries

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11. The Government’s claim is that there is no single approach to the investigation of allegations of ministerial misconduct that would be helpful in all cases. It is this, in their view, which is the argument against a defined office, whether a panel or a single official. Lord Butler, the former Cabinet Secretary, was still very much of this view:

I have always said in the past that it depends on the circumstances. [...] you have to have, I think, horses for courses on these things. There are some things which, and many examples of it, where you need a judicial inquiry, a judge sort of person, particularly when people's reputations are at stake and you need to have a very fair process. There may be things where it is the police who ought to look at them. My view is I have always argued against having a set panel of people who do this. [...] I do not think that you can have a one-size-fits-all piece of machinery for dealing with these matters.<sup>9</sup>

12. Another of our witnesses, Professor Anthony King of Essex University, was equally discouraging:

My own disposition is to think that to give one person or the occupant of one role that job is probably misguided. There is a lot more to be said for the Prime Minister, in his own political interest quite apart from anything else, saying, "This is a complicated, difficult matter", and getting somebody who is appropriate to deal with that situation. That person may not be either Sir John Bourn or Gus O'Donnell; it may be somebody else who can do a good job. There are one or two instances in which that has happened.<sup>10</sup>

13. So governments have tended to institute *ad hoc* inquiries, in those instances where the case for some sort of inquiry has been ceded. Yet these have met with only partial success. Sir Anthony Hammond’s inquiry of January 2001, into the circumstances surrounding an

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7 HC (2000-01) 235 and Public Administration Select Committee, First Report of Session 2004-05, *Government by Inquiry*, HC 51

8 Public Administration Select Committee, Second Report of Session 2001-02, *The Ministerial Code: Improving the Rule Book: Government Response to the Committee Third Report of Session 2000-01*, HC 439

9 Oral evidence taken before the Public Administration Select Committee on 2 March 2006, HC (2005-06) 660-iii, Q 156 [Lord Butler]

10 Oral evidence taken before the Public Administration Select Committee on 8 June 2006, HC (2005-06) 884-vii, Q 402 [Professor King]

application for naturalisation by Mr S P Hinduja in 1998, may have finally established the facts but came too late to save Peter Mandelson's ministerial career. It was, in any case, never part of its function "to examine the reasons which led to Mr Mandelson's resignation".<sup>11</sup> Sir Alan Budd's investigation into allegations that the then Home Secretary had misused his position in an application for indefinite leave to remain, produced circumstantial evidence to suggest that officials may have been prioritising a visa application in the belief that this was at ministerial request. It was not conclusive, but Mr Blunkett resigned. Nonetheless Sir Alan was clear in his report that he had:

... not regarded it as appropriate [...] to express views on the application of the Ministerial Code of Conduct to the conduct of Mr Blunkett. These are matters for others and there is a well-established machinery for examining these issues, including the propriety of Ministers' actions as Members of Parliament.<sup>12</sup>

14. Giving evidence to the Committee at the time, Sir Alan regarded "the Ministerial Code of Conduct and inquiries relating to such matters as a special topic to be dealt with in a special way by special bodies whose job it is to make such inquiries".<sup>13</sup> However, when he was pressed what such machinery was he conceded that he had "always rather liked the British genius for improvisation and variety and those sorts of things so that you do not have a set solution".<sup>14</sup>

## 5 The role of the Cabinet Secretary

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15. More usually, it is a permanent secretary, often the Cabinet Secretary, who is asked by the Prime Minister to establish the facts. This has been so despite a broad consensus over the years that permanent secretaries are not only ill-equipped to undertake such investigations but that doing so places them in an invidious position with regard to the ministers they are meant to serve. The Ministerial Code itself states categorically that:

Ministers are personally responsible for deciding how to act and conduct themselves in the light of the Code and for justifying their actions and conduct in Parliament. The Code is not a rulebook, and it is not the role of the Secretary of the Cabinet or other officials to enforce it or to investigate Ministers although they may provide Ministers with private advice on matters which it covers.<sup>15</sup>

16. Nonetheless, the current Cabinet Secretary was drawn into controversy concerning alleged breaches of the Ministerial Code by David Blunkett and Tessa Jowell earlier this year. Lord Butler defined the limits of a Cabinet Secretary's role in these situations:

In the end it must be, in terms of Ministerial Code, for the Prime Minister in the first instance and Parliament ultimately to judge whether the Code has been broken and

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11 Sir Anthony Hammond KCB, QC, *Review of the Circumstances Surrounding an Application for Naturalisation by Mr S P Hinduja in 1998*, HC 287, March 2001, para 1.6

12 Sir Alan Budd, *An Inquiry into an Application for Indefinite Leave to Remain*, HC 175, December 2004, para 1.16

13 Oral evidence taken before the Public Administration Select Committee on 12 January 2005, HC (2004-05) 51-iii, Q 808 [Sir Alan Budd]

14 *Ibid.*, Q 866 [Sir Alan Budd]

15 *Ministerial Code, A Code of Ethics and Procedural Guidance for Ministers*, Cabinet Office, July 2005, para 1.3

whether Ministers have lived up to their standards. I am quite sure that all my successors, including the present one, would agree that their role can be no more than advisory.<sup>16</sup>

17. He suggested that the idea of an investigation by the Cabinet Secretary was based on a misunderstanding:

I think actually the media have got very excited about the current issue and it may be easy to be misled by the rather dramatised reports in the media about what the current function of the Cabinet Secretary is. That is all I would say. There have been words about "investigation": I think that is, as it were, a word that has been used outside rather than by the government itself.<sup>17</sup>

18. Yet in a confusing reply to Theresa May MP, who had asked him to investigate Tessa Jowell's conduct, Sir Gus O'Donnell began by restating the position in the Ministerial Code before describing how "In the first instance, the Secretary of State for Culture, Media and Sport had worked closely with her Permanent Secretary, in close consultation with me, to establish the facts".<sup>18</sup> He goes on to say that he reported these facts to the Prime Minister.

## 6 Creating an investigatory capacity

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19. The current arrangements lack a clear and well-defined system of independent investigation into alleged breaches of the Ministerial Code. The conventional argument against the use of an independent investigator is that it would constrain the Prime Minister's right to exercise what are, in the end, political judgements about the conduct of his ministers, and introduce a quasi-judicial element into what is essentially a matter of political practice. As the Ministerial Code states:

Ministers only remain in office for so long as they retain the confidence of the Prime Minister. He is the ultimate judge of the standards of behaviour expected of a Minister and the appropriate consequences of a breach of those standards...<sup>19</sup>

20. Professor King warned that an independent investigator might turn into an arbiter of conduct, and so fetter the Prime Minister's discretion:

...it seems to me that whether or not a Prime Minister keeps a minister in place is a political judgment to be made by the Prime Minister. If one gets into a situation that looks rather juridical and somebody out there is seeing whether the Ministerial Code has been broken one gets into a situation in which a Prime Minister might have good reasons for wanting to keep the Minister there, even though he had broken the Ministerial Code, but that would now be very difficult. Equally, there might be a situation in which the Sir John Bourn figure went away and said that the Ministerial Code had not been broken, in which case the Prime Minister might nevertheless

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16 HC (2005-06) 660-iii, Q 157

17 *Ibid.*, Q 158

18 Letter from Sir Gus O'Donnell to Theresa May MP, 2 March 2006

19 *Ministerial Code*, para 1.4

have had good political and governmental reasons for wanting the Minister to depart.<sup>20</sup>

21. We do not believe that some form of independent investigator would undermine the doctrine of ministerial accountability to Parliament. Governments can and do commission individuals to undertake inquiries on their behalf about their conduct when the political demand is overwhelming. **We agree that, ultimately, the Prime Minister must judge what the right course of action is and account for it to Parliament. However, we remain convinced that an independent investigatory capacity can be created which does not undermine the Prime Minister's right to decide whether a minister has breached the Ministerial Code and what the consequences might be. It would also promote public confidence in the Ministerial Code as a handbook on propriety.**

22. We described how such a mechanism might function once before.<sup>21</sup> We still find much to commend in this approach and consider that its underlying rationale is still sound. However, we recognise that in light of subsequent developments the practicalities of such a proposal could be the subject of further consideration. The following key factors would need to be addressed:

- i. It would be better if responsibility for independent investigation was shared with Parliament. If ministers are accountable to the House, then Parliament should have an effective means of putting its demands for an inquiry in place. However, it must be made absolutely clear that the role of such an investigator would be to establish the facts, not to judge what sanctions, if any, should be imposed. The system should recognise the Prime Minister's right to form his Cabinet, and Parliament's right to hold it to account.
- ii. The ethical regulatory landscape is already well-inhabited. We should not seek to create any new regulators. In our last report on the Ministerial Code we proposed that the Parliamentary Ombudsman should take on this job. We welcome the fact that the Government, in appointing Sir John Bourn, has now accepted the principle that an Officer of the House can undertake this sort of role. It is a precedent that should be built on.
- iii. Independent scrutiny should not mean that every complaint, however frivolous or vexatious, would have to be investigated. Indeed, one advantage of an independent investigator would be that they would be able to advise on whether a complaint merited further examination.

23. Two former Cabinet Ministers and members of CSPL, Lord Smith of Finsbury and Lord King of Bridgwater, favoured the sort of arrangements we describe above. Lord Smith said to us:

I should go for an independent body, which is in fact what the Committee on Standards in Public Life recommended, probably small, say three people of eminence and standing and unimpeachability who would be appointed for the duration of a parliament and, as [Lord King] was hinting at, it would be sensible to have them reporting to a committee of Parliament. Now whether that is this Committee or the

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20 HC (2005-06) 884-vii, Q 399 [Professor King]

21 HC (2000-01) 235, para 30

Committee on Standards and Privileges might be up for discussion, but reporting on their work and answering questions in public on their work would be sensible.<sup>22</sup>

24. Given these considerations, there are a number of possibilities as to who should take this task on. CSPL recommended the setting up of a panel of advisers. However, this would create a further regulatory body, contrary to its own earlier view, and its members would not necessarily enjoy a particularly close relationship with Parliament. A good case could be made for each of the three ‘regulators’ accorded the status of Officers of the House. Most straightforwardly, Sir John Bourn, the Comptroller and Auditor General, could have his current role as ministerial adviser clarified and extended to enable him to undertake inquiries into breaches of the Ministerial Code. The Parliamentary Commissioner for Standards would be another possible candidate, with experience in handling complaints about the conduct of Members and reporting to the Committee on Standards and Privileges. We suggested in our previous report that the Parliamentary Ombudsman might be the right official because she has a right of access to papers, including Cabinet papers, and is used to investigating and putting together the evidence on cases of alleged maladministration by departments drawing on other sources of expertise as required. A precedent for this is the way in which the Ombudsman took on the policing of the Government’s compliance with the Code of Conduct on Access to Government Information from 1994 until the full entry into force of the Freedom of Information Act 2000 in 2005.

25. **Whatever the final form for such an investigatory machinery it should:**

- **be manifestly independent of the Executive;**
- **not involve the creation of yet a further regulatory office and, ideally, should be undertaken by an official connected to the House;**
- **concern itself only with establishing the facts of the case;**
- **make its findings available to Parliament and the public;**
- **reserve to the Prime Minister the right to judge whether the facts amount to a breach of the Ministerial Code and what the consequences should be;**
- **avoid the proliferation of frivolous or vexatious complaints.**

## 7 Fairness and proportionality

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26. There is, in our view, an overwhelming consideration in favour of an independent investigation of alleged breaches of the Ministerial Code, which goes beyond matters of perception. An independent investigator would inject not only independence but fairness into the process. Professor King believes that politics can sort such matters out:

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<sup>22</sup> Oral evidence taken before the Public Administration Select Committee on 16 March 2006, HC (2005-06) 884-iii, Q 131 [Lord Smith]

More empirically, ministers in the present Government have departed the scene. I seem to remember that Peter Mandelson and David Blunkett have departed twice. You refer to the notion that Prime Ministers just face these things down from time to time. John Major tried to do it but David Mellor and Tim Yeo went eventually. Curiously, some of these suggest that you as elected politicians do not believe in your own profession. I think you are perfectly capable of making life so difficult for somebody who tries to face down the critics. Do it and it will work.<sup>23</sup>

27. Yet such an instrument can be blunt. Ministers accused of breaching the Ministerial Code could be reassured by an independent, objective analysis of the facts of the case rather than be faced with the rush to political judgements which may be unfair, premature and dictated by political and media pressure. It is possible to question, for example, whether Peter Mandelson would have been forced to resign for a second time if an independent investigator had existed and been empowered to conduct an investigation beforehand.

28. Lord Smith saw the advantage and the fairness of such an independent system for the government, and indeed for the individual minister, at the centre of allegations about his or her conduct:

I do think that it is in the interests of the Prime Minister and the Government to establish such a system. I can only surmise that there is a concern about the loss of 'control' of the process. That is a mistaken concern because I would rather that control were in the hands of a proper process than that control was in the hands of the *Daily Mail*.<sup>24</sup>

29. He could envisage an independent investigator being called in aid not just by the Prime Minister or the Cabinet Secretary but even by a minister who felt that accusations were being made and wanted the air to be cleared.<sup>25</sup>

30. We remain concerned therefore that the lack of independence, and potentially of fairness, in the process can lead to a lack of proportionality in applying the Ministerial Code. One of our witnesses, Simon Jenkins, wrote in fairly dramatic terms about proportionality and ministerial accountability:

It is ludicrous that David Blunkett, a politician of some stature, can have vanished overnight not because of his various ministerial failings but for a trivial failure to comply with the Ministerial Code. It was equally absurd that Peter Mandelson should have vanished for the same reason. These people enjoyed the Prime Minister's total support yet evaporated, allegedly "without a stain on their character".<sup>26</sup>

31. Bringing some form of proportionality to these questions is not an easy task. As Lord King observed "You cannot suspend a minister for a month; he has a public responsibility.

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23 HC (2005-06) 884-vii, Q 401 [Professor King]

24 HC (2005-06) 884-iii, Q 130 [Lord Smith]

25 *Ibid.*, Q 134

26 "Blair won't jump... and he's made sure he can't be pushed", *The Times*, 6 November 2005

I think it is the tougher, harder line”. He thought that “Maybe they [can] reappear later [...]. Go and come back”.<sup>27</sup>

32. A breach of the Ministerial Code should not always require the dismissal or resignation of a minister. In some cases the breach is of a minor or technical nature; what another of our witnesses, Peter Riddell, called sins of omission.<sup>28</sup> Within the parliamentary system the Committee on Standards and Privileges may impose a range of penalties, or indeed none at all, on an erring colleague, depending on the magnitude and nature of the offence. While we would not condone a lowering of standards, natural justice would imply a similar proportionality in respect of ministers who are, of course, also Members of Parliament. **In our view an independent investigation would make it easier for Prime Ministers to take more balanced decisions about the fate of colleagues. It would inject a sense of proportionality and indeed common sense into what is often a political and media frenzy and would ensure that ministers are held to account for their actions rather than for what is alleged about them in the media and elsewhere.**

## 8 Advice on ministerial interests

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### Permanent secretaries and advice to ministers

33. Section 5 of the Ministerial Code already provides a procedure for dealing with ministers’ private interests. The ability of permanent secretaries to advise ministers on these matters has never been at issue. In fact the collegiate nature of this group, the most senior officials in Whitehall, who will face or have faced a variety of cases from incoming ministers allows for the informal exchange of experience, precedent and best practice. In fact, paragraph 5.2 of the Ministerial Code states that:

The role of the Permanent Secretary is to ensure that advice is available when it is sought by the Minister, either by providing it personally, drawing on precedent and if need be other parts of government including the Secretary of the Cabinet, or to arrange for expert or professional advice from inside or outside Government. In cases of serious difficulty or doubt the matter may be referred to the Prime Minister for a view.

34. However, CSPL did recommend that permanent secretaries should exercise no responsibility for giving advice to ministers on conflicts of interest arising under the Ministerial Code. This was because providing this sort of advice risked putting officials in a difficult position with regard to their ministers.

35. The real question is not the source, or indeed the nature, of the advice but what happens when it is either ignored or just not sought. It is of course possible to strengthen the procedure further. An obvious and straightforward improvement would be to create a duty to declare ministerial interests to permanent secretaries. **Instead of being “advised” to declare their interests as at present, ministers should be under an obligation to do so. Ministers coming into a department should be required to provide their permanent**

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27 HC (2005-06) 884-iii, Q 151 [Lord King]

28 “Sleaze scrutiny needs clean up”, *The Times*, 10 March 2006

**secretaries with a full list in writing of interests which might be thought to give rise to a conflict. Paragraph 5.3 of the Ministerial Code should be amended accordingly.**

36. In addition, the position of a permanent secretary could be strengthened further by vesting in him or her powers akin to those of an accounting officer. In the latter case the rules state that where a minister in charge of a department is contemplating a course of action involving a transaction which the Principal Accounting Officer (PAO) considers would infringe the requirements of propriety and regularity, the PAO should set out in writing his objections and the reasons for them and his duty to refer the matter to the Comptroller and Auditor General and Treasury if his advice is overruled.<sup>29</sup> **A procedure similar to that of an accounting officer's letter of direction, referring matters to the Cabinet Secretary and Prime Minister, could be devised for ministerial interests in the event that a permanent secretary's advice is disregarded.**

### The appointment of a ministerial adviser

37. Although the Government had agreed in principle to CSPL's recommendation to appoint an adviser on ministerial interests, the Prime Minister finally felt moved to act by the confluence of events and bad headlines which surrounded not only the Blunkett and Jowell cases but also allegations surrounding propriety, party funding and the honours system. We have reported separately on that.<sup>30</sup> On 23 March 2006, the Prime Minister announced the appointment of Sir John Bourn as the 'independent adviser on ministerial interests'.<sup>31</sup> In evidence to us Sir Gus O'Donnell was positive about the move and his role in bringing it about:

I certainly strongly advised him that I thought this was the right thing to do, in that I think what we really need is someone who is involved right from the start of the process. So when ministers fill in their replies to the letters their permanent secretaries will give them, laying out their financial interests and any potential conflicts, there is one person who has all that information and has time to look at that, assess it carefully, and then have a relationship which is not the same as the relationship the Cabinet Secretary has with Cabinet members.<sup>32</sup>

38. Sir Alistair Graham, current Chairman of CSPL, was unsure about the role of the new ministerial adviser and how far it met CSPL's original recommendation.<sup>33</sup> In fact the full terms of reference were not deposited in the Library of the House until 16 May, when the Cabinet Secretary gave evidence to this Committee. These clarify his role to an extent and are more specific in suggesting that the Prime Minister "may ask the Independent Adviser to establish the facts in certain cases concerning the Ministerial Code and to provide private advice to him". The Prime Minister would "take account of the facts established by

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29 *Government Accounting 2000*, Annex 4.1, para 16

30 Public Administration Select Committee, Fourth Report of Session 2005-06, *Propriety and Honours: interim findings*, HC 1119

31 HC Deb, 23 March 2006, col 33WS

32 Oral evidence taken before the Public Administration Select Committee on 16 May 2006, HC (2005-06) 884-v, Q 249 [Sir Gus O'Donnell]

33 Oral evidence taken before the Public Administration Select Committee on 27 April 2006, HC (2005-06) 884-iv, Q 194 [Sir Alistair Graham]

Sir John as appropriate”. It would also be up to the Prime Minister to decide whether to make public Sir John Bourn’s findings. Subsequent newspaper reports, however, have suggested this role may be more limited. In reference to investigations on whether the Deputy Prime Minister had breached the Ministerial Code, Sir John Bourn’s spokesman was reported as saying that he was only mandated to advise the Prime Minister on the financial interests of ministers.<sup>34</sup>

39. Sir Gus O’Donnell sought to clarify the role when he came before us by explaining that “Sir John Bourn will look at all of those [matters] covered by his terms of reference, which is essentially section 5 of the Code [Ministers’ Private Interests]”; adding “He will be a wide-ranging investigator, yes, but not all issues covered by the Ministerial Code will be appropriate for him to investigate, I think”.<sup>35</sup>

40. The terms of reference given to Sir John Bourn are, at best, a half way house which recognise the existence of a problem but fail to provide a clear answer to it. A certain amount of confusion surrounds the role. For example, it is unclear whether its remit is restricted to ministerial financial interests or whether it can cover other aspects of the Ministerial Code. Similarly, it seems that any active investigation by the adviser will require an invitation from the Prime Minister and he does not appear to have the capacity to follow up any problems he may uncover. This appointment interposes a further layer of advice between ministers and their most senior officials but does not provide any of the additional powers necessary for discharging this task effectively.

**41. We welcome the appointment of Sir John Bourn as Independent Adviser on Ministerial Interests as a small step towards adequate investigation of breaches of the Ministerial Code. We particularly welcome the principle that an Officer of the House should be asked to undertake this role, albeit in an independent capacity. This is consistent with our original proposals for the Parliamentary Ombudsman to undertake a similar role. However, we remain concerned that Sir John’s role is limited; inappropriately weighted in favour of an additional layer of advice over that of Permanent Secretary; and lacks a genuine investigatory dimension.**

42. Despite the rhetoric which usually surrounds the issue, objective evidence dispels any charge that ministerial conduct has fallen away from some imagined golden age of propriety. Standards of ministerial behaviour are higher, the rules much tighter, the regulation more extensive, the surveillance much closer, than they were in the past. All parties have contributed to bringing that about and making improvements to the Ministerial Code. Public expectations are consequently higher. Yet we cannot become complacent. **Making provision for an independent investigatory mechanism for alleged breaches of the Ministerial Code is long overdue. Its establishment would benefit not just public confidence but also the interests of the Prime Minister, the government and especially those at the centre of allegations who deserve a fair hearing.**

43. The Ministerial Code is now established as the public framework of rules against which ministerial conduct is judged. That is a positive development. However, it also means that

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34 ‘Prescott to escape scrutiny over affair’, *The Guardian*, 25 April 2006

35 HC (2005-06) 884-v, Qq 252 and 253

it is regularly invoked, by opposition politicians and the media, to sustain attacks on ministers, without there being any mechanism to investigate whether such attacks are justified. This is why it is puzzling that governments have resisted attempts to establish an independent investigatory mechanism for the Ministerial Code, to which allegations can be taken. Those making such allegations would then have to put up or shut up. It would not interfere with the political accountability of ministers, or with the political responsibility of the Prime Minister for the fate of ministers; but it would reduce the regular frenzy and provide a more informed basis upon which political judgements can be made.

## Conclusions and recommendations

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1. We agree that, ultimately, the Prime Minister must judge what the right course of action is and account for it to Parliament. However, we remain convinced that an independent investigatory capacity can be created which does not undermine the Prime Minister's right to decide whether a minister has breached the Ministerial Code and what the consequences might be. It would also promote public confidence in the Ministerial Code as a handbook on propriety. (Paragraph 21)
2. Whatever the final form for such an investigatory machinery it should:
  - be manifestly independent of the Executive;
  - not involve the creation of yet a further regulatory office and, ideally, should be undertaken by an official connected to the House;
  - concern itself only with establishing the facts of the case;
  - make its findings available to Parliament and the public;
  - reserve to the Prime Minister the right to judge whether the facts amount to a breach of the Ministerial Code and what the consequences should be;
  - avoid the proliferation of frivolous or vexatious complaints. (Paragraph 25)
3. In our view an independent investigation would make it easier for Prime Ministers to take more balanced decisions about the fate of colleagues. It would inject a sense of proportionality and indeed common sense into what is often a political and media frenzy and would ensure that ministers are held to account for their actions rather than for what is alleged about them in the media and elsewhere. (Paragraph 32)
4. Instead of being "advised" to declare their interests as at present, ministers should be under an obligation to do so. Ministers coming into a department should be required to provide their permanent secretaries with a full list in writing of interests which might be thought to give rise to a conflict. Paragraph 5.3 of the Ministerial Code should be amended accordingly. (Paragraph 35)
5. A procedure similar to that of an accounting officer's letter of direction, referring matters to the Cabinet Secretary and Prime Minister, could be devised for ministerial interests in the event that a permanent secretary's advice is disregarded. (Paragraph 36)

6. We welcome the appointment of Sir John Bourn as Independent Adviser on Ministerial Interests as a small step towards adequate investigation of breaches of the Ministerial Code. We particularly welcome the principle that an Officer of the House should be asked to undertake this role, albeit in an independent capacity. This is consistent with our original proposals for the Parliamentary Ombudsman to undertake a similar role. However, we remain concerned that Sir John's role is limited; inappropriately weighted in favour of an additional layer of advice over that of Permanent Secretary; and lacks a genuine investigatory dimension. (Paragraph 41)
7. Making provision for an independent investigatory mechanism for alleged breaches of the Ministerial Code is long overdue. Its establishment would benefit not just public confidence but also the interests of the Prime Minister, the government and especially those at the centre of allegations who deserve a fair hearing. (Paragraph 42)

# Formal Minutes

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**Thursday 20 July 2006**

Members present:

Dr Tony Wright, in the Chair

Paul Flynn

David Heyes

Kelvin Hopkins

Mr Ian Liddell-Grainger

Julie Morgan

Mr Gordon Prentice

Paul Rowen

Jenny Willott

Draft Report [*The Ministerial Code: the case for independent investigation*], proposed by the Chairman, brought up and read.

*Ordered*, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 43 read and agreed to.

*Resolved*, That the Report be the Seventh Report of the Committee to the House.

*Ordered*, That the Chairman make the Report to the House.

*Ordered*, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

[Adjourned till 12 October at 9.45 a.m.]

# Reports from the Public Administration Select Committee

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The following reports have been produced during the current session.

## Session 2005–06

First Report	A Debt of Honour	HC 735
Second Report	Tax Credits: putting things right	HC 577
Third Report	Legislative and Regulatory Reform Bill	HC 1033
Fourth Report	Propriety and Honours: Interim Findings	HC 1119
Fifth Report	Whitehall Confidential? The Publication of Political Memoirs	HC 689
Sixth Report	Ombudsman in Question: the Ombudsman's report on pensions and its constitutional implications	HC 1081
First Special Report	The Attendance of the Prime Minister's Strategy Adviser before the Public Administration Select Committee	HC 690
Second Special Report	Ministerial Accountability and Parliamentary Questions: Government Response to the Committee's Fifth Report	HC 853
Third Special Report	Inquiry into the Scrutiny of Political Honours	HC 1020
Fourth Special Report	Tax Credits: putting things right: Government Response to the Committee's Second Report	HC1076