



House of Commons
Public Administration Select
Committee

**The Ministerial Code:
the case for independent
investigation:
Government Response
to the Committee's
Seventh Report of
Session 2005–06**

**Fourth Special Report of Session
2006–07**

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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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The following Members were also members of the Committee for part of this inquiry: Grant Shapps MP (*Conservative, Welwyn Hatfield*) and Julia Goldsworthy MP (*Liberal Democrats, Falmouth and Cambourne*)

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.

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), James Gerard (Second Clerk), Louise Glen (Committee Assistant), Anne Woolhouse (Secretary) and James Bowman (Senior Office Clerk).

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Fourth Special Report

The Public Administration Select Committee reported to the House on *The Ministerial Code: a case for independent investigation* in its Seventh Report of Session 2005–06, published 6 September 2006 as HC 1457. The Government Response was received on 16 October 2007 and is published below as an Appendix to this Report.

Appendix

The Government is grateful to the Committee for its work on the Ministerial Code. It becomes the Committee's acknowledgement that the Ministerial Code is now established as the public framework of rules against which ministerial conduct is judged and that this is a positive development.

A new Ministerial Code was published in July 2007. It is focussed on the key principles which should guide Ministers' conduct and has been strengthened in a number of areas aimed at improving Ministerial accountability and ensuring that Ministers uphold the highest standards of public life.

One of the most important changes to the Code is the appointment of a new independent adviser on Ministers' interests, Sir Philip Mawer. Sir Philip's role will be independent of Government. Where there is an allegation of a breach of the Ministerial Code and the Prime Minister, having consulted the Cabinet Secretary feels that it warrants further investigation, the matter will be referred to Sir Philip. In addition, for the first time, an annual report covering Ministers' interests will be published. The rules on Ministers seeking advice in relation to taking up jobs after leaving office have also been strengthened to make it clear that Ministers will be expected to follow the advice of the independent Advisory Committee on Business Appointments, a process which up until now has been voluntary.

The Government believes that the new Code will provide for greater transparency and accountability in relation to Ministers' conduct and will help ensure that Ministers maintain the highest standards of conduct as they go about their official duties.

The Government's response to the conclusions and recommendations set out in the Committee's Seventh Report of the 2005–2006 Session is set out below.

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)

The Government agrees with the Committee that ultimately it must be for the Prime Minister to judge what the right course of action is in relation to a breach of the Code and to account for his decision to Parliament. This principle is set out in Section 1 of the new Ministerial Code. For the first time ever, the Code makes clear that if there is an alleged breach of the Code, and the Prime Minister, having consulted the Cabinet Secretary feels that it warrants further investigation, he will refer the matter to the independent adviser on Ministers' interests. The Government believes that this is an important development which will help to strengthen and promote public confidence in the Ministerial Code.

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)**

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)

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)

Sir Philip Mawer has been appointed as the independent adviser on Ministers' interests. The Government believes that his experience and expertise as the Parliamentary Commissioner for Standards and an Officer of the House place him in an exceptionally strong position to maintain the independence of the role.

The Government agrees with the Committee that it would be inappropriate to create a further regulatory office and so the independent adviser will be supported in his work by the Propriety and Ethics Team in the Cabinet Office.

Where the independent adviser on Ministers' interests has investigated an alleged breach of the Ministerial Code, he will report his findings to the Prime Minister. It is

important that the Prime Minister is able to make decisions after a balanced consideration of the facts of the case. The Government shares the Committee's view that it must be for the Prime Minister to judge whether the facts amount to a breach of the Ministerial Code and the consequences of any such breach. It must also be for the Prime Minister to account for his decision including making public any findings of fact.

The Government agrees with the Committee that Ministers should be held to account for their actions rather than for what is alleged about them in the media and elsewhere. It is hoped that the new arrangements will help to avoid the proliferation of frivolous or vexatious complaints.

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)

The Government accepts this recommendation. The new Ministerial Code, published in July, updated the previous version in relation to the declaration of interests and now states that on appointment to each new office, Ministers **must** (emphasis added) provide their Permanent Secretary with a full list in writing of all interests which might be thought to give rise to a conflict.

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)

The Ministerial Code is clear that Ministers must record in writing what action has been taken in relation to their interests and provide the Permanent Secretary and independent adviser on Ministers' interests with a copy of that record.

Any dispute between an individual Minister and the independent adviser on Ministers' interests about action to be taken in a particular case would be referred to the Cabinet Secretary and the Prime Minister. The Government believes that this commitment will ensure greater transparency and therefore accountability in relation to Ministers' interests.

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)

The Government does not believe that it would be appropriate for a serving Officer of the House to investigate alleged breaches of the Ministerial Code as to do so could blur the lines of accountability. However, the Government believes that the appointment of Sir Philip Mawer with his recent Parliamentary experience and expertise will serve to ensure that Ministers fully account for their actions and decisions and that, where needed, there is a genuine investigatory dimension.

October 2007

List of Reports from the Committee during the current Parliament

The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

Session 2006-07

First Report	The Work of the Committee in 2005-06	HC 258
Second Report	Governing the Future	HC 123 (<i>cm 7154</i>)
Third Report	Politics and Administration: Ministers and Civil Servants	HC 122
Fourth Report	Ethics and Standards: The Regulation of Conduct in Public Life	HC 121
Fifth Report	Pensions Bill: Government Undertakings relating to the Financial Assistance Scheme	HC 523 (<i>HC 922</i>)
Sixth Report	The Business Appointment Rules	HC 651 (<i>HC 1087</i>)
Seventh Report	Machinery of Government Changes	HC 672
First Special Report	The Governance of Britain	HC 901
Eighth Report	The Pensions Bill and the FAS: An Update, Including the Government Response to the Fifth Report of Session 2006-07	HC 922 (<i>HC 1048</i>)
Second Special Report	The Pensions Bill and the FAS: An Update	(<i>HC 1048</i>)
Third Special Report	The Business Appointment Rules	(<i>HC 1087</i>)
Fourth Special Report	The Ministerial Code: the case for independent investigation	(<i>HC 1088</i>)

Session 2005–06

First Report	A Debt of Honour	HC 735
Second Report	Tax Credits: putting things right	HC 577 (<i>HC 1076</i>)
Third Report	Legislative and Regulatory Reform Bill	HC 1033 (<i>HC 1205</i>)
Fourth Report	Propriety and Honours: Interim Findings	HC 1119
Fifth Report	Whitehall Confidential? The Publication of Political Memoirs	HC 689
Sixth Report	The Ombudsman in Question: the Ombudsman's report on pensions and its constitutional implications	HC 1081
Seventh Report	The Ministerial Code: the case for Independent Investigation	HC 1457 (<i>HC 1088</i>)
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 (Session 2004-05)	HC 853
Third Special Report	Inquiry into the Scrutiny of Political Honours	HC 1020

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Government Response to the Committee's Seventh Report of Session 2005–06