



House of Commons
Public Administration Select
Committee

Ethics and Standards: The Regulation of Conduct in Public Life

Fourth Report of Session 2006–07

Volume I



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*Report and Appendices, together with formal
minutes*

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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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Summary

There is now an extensive network of bodies concerned with the regulation of standards of conduct in public life. Some are long established; but many have been set up more recently.

These constitutional watchdogs have different functions, and are organised in a variety of different ways. They cover the essential ground and generally work well in safeguarding high standards of conduct; but they have often been set up in response to particular problems and insufficient attention has been paid to their design features and the need for coherence in the system as a whole.

The time has come to recognise that the machinery of ethical regulation is now an integral and permanent part of the constitutional landscape. This makes it necessary to ensure that it is sensibly organised and securely based. It should not be assumed that this will solve the problem of political trust, which is affected by a range of factors; but it will recognise that the protection of standards is an important objective in its own right. However, a rule-based system should never substitute for a culture of high standards.

This report identifies the principles of ethical regulation and what their application means for practice. It explores the balance between independence and accountability, and discusses possible organisational models. There should be no imposed reorganisation, but there should be arrangements that promote the security and coherence of the regulatory system as a whole.

Crucially there needs to be a new relationship to both Parliament and government for the key regulators, especially those currently sponsored by the Cabinet Office. The report recommends a new Public Standards Commission, established by statute, to take on this sponsoring role. This would reflect and encourage the collegiate character of the constitutional watchdogs, and provide a framework in which there could be coherent development of the regulatory system. Above all it would recognise the centrality and permanence of the arrangements for the regulation of conduct in public life.

1 Introduction

1. The British system of public administration contains a range of bodies at arm's length from government which are intended to ensure that government is properly carried out. Their functions vary widely. Some, like the National Audit Office or the Audit Commission, are concerned with the propriety and efficiency of expenditure. Some deal with administrative propriety, such as the Parliamentary Commissioner for Administration (the Parliamentary Ombudsman) and the Civil Service Commissioners. Others deal with wider ethical matters. Indeed, it is sometimes hard, or even impossible, to identify the distinction between the ethical and the administrative. For example, the Information Commissioner and the Electoral Commission deal largely with administrative matters, but they have been given their tasks because it is felt to be ethically important that decisions about the release of information, or about the regulation of political parties, should be taken at a distance from the government of the day. Some bodies have both regulatory and advisory roles. Some have an advisory function only, and this too may vary widely from body to body. The Advisory Committee on Business Appointments advises on specific cases; the Committee on Standards in Public Life advises on the ethical health of public life as a whole. There is no easy way to capture what is meant by "ethics" in government; we use the term to mean the qualities of good governance, such as integrity, legitimacy, accountability, and adherence to a commonly understood standard of behaviour. Similarly, there is no single term to encompass these bodies; in this Report we use the term "ethical auditors" to encompass the whole range of ethical advice and regulation. The term "ethical regulators" most naturally covers those bodies with power to make determinations, but is sometimes used more widely.

2. This inquiry has been a review of the regulation of conduct in government and public life, with a focus on the bodies set up by government itself for this purpose. We have asked a range of these ethical auditors for information about their offices, and this is summarised in Appendix 2 to this report. We have concentrated on the bodies most closely concerned with ensuring the integrity of the executive, namely the Committee on Standards in Public Life (CSPL), the Civil Service Commissioners (CSC), the Commissioner for Public Appointments (CPA/OCPA), the House of Lords Appointments Commission (HoLAC) and the Advisory Committee on Business Appointments (ACoBA). The information supplied by other regulators gave us a valuable basis for comparison and our views about the proper relationship of regulators and regulated, articulated in terms of principles, are likely to have wider application. We also examined the question of what trust in public life means in practice and how well it could be measured. We have been greatly assisted in this report by our Specialist Advisers, Professor Robert Hazell and Barry Winetrobe and by Oonagh Gay of the House of Commons Library. Their mapping of the bodies with broad responsibility for ethical or administrative regulation is reproduced at Appendix 1 of this report.

3. As that Appendix shows, there are a very large number of bodies exercising some form of regulation over standards in public life. It also shows that there is no uniformity in their structure. Some have a high degree of independence, others little or none. Only half of them have a statutory basis; the rest, being non-statutory, could be abolished at any time. No fewer than half these bodies have been created in the last five years, many to address

particular problems. Perhaps inevitably in a system that has grown so rapidly, there now seems little coherence. We were concerned that this might have reduced the effectiveness of individual bodies, or even of the system as a whole.

4. The Committee on Standards in Public Life, originally chaired by Lord Nolan, was established in response to the climate of “sleaze” of the 1990s, and its early work was directed toward developing a series of regulators to ensure probity, such as the Commissioner for Public Appointments and the Parliamentary Commissioner for Standards. Other bodies, such as the House of Lords Appointments Commission or the Electoral Commission, were set up as a result of constitutional changes.¹ As a consequence more thought was given to the tasks they should perform than to the nature of the institutional design they should follow. Ethical regulation and audit is now conducted by an illogical and unplanned patchwork of unconnected bodies, of various institutional designs, with budgets which vary from £164,000 to over £65 million.²

5. It is noteworthy that our witnesses were convinced that public life in the early twenty-first century was cleaner than it had been before.³ International studies of standards in government show that, in general, the United Kingdom ranks highly for its lack of corruption, and for its regulation of public life. In its First Report, the Committee on Standards in Public Life said “we believe that the great majority of men and women in public life are honest and hard working, and observe high ethical standards”.⁴ Sir Hayden Phillips, in his *Review of the Funding of Political Parties*, recently noted that “when compared to other jurisdictions, the British political system, taken as a whole, has been remarkably free of abuse”.⁵ Nonetheless, public trust in political institutions is low,⁶ and the new institutional arrangements introduced since 1994 do not appear to have improved matters. Indeed, Professor Dawn Oliver of UCL thought they might even have reduced trust and lowered standards:

The existence or creation of watchdogs signals the collapse of a trust based system and also a loss of belief in the trustworthiness of civil servants etc. If trust and trustworthiness have broken down watchdogs may be able to counteract unethical selfish activity by those providing public services, but in doing so will generate even more mistrust and possibly unethical behaviour and legalism—focus on the letter rather than the spirit of the rules—if the person thinks they can get away with it.⁷

6. Some commentators point to a contemporary culture of mistrust or even of contempt for politics and politicians, reflected in much of the media, that shapes public perceptions irrespective of the objective evidence; while others identify tendencies in contemporary

1 The creation of the Electoral Commission was also prompted by the recommendations in the Fifth Report of the Committee on Standards in Public Life, *The Funding of Political Parties in the United Kingdom*, Cm 4057-I, October 1998.

2 House of Lords Appointments Commission and NAO respectively.

3 Q 7, Q 142, Q 166, Qq 246-7

4 First Report of the Committee of Standards in Public Life, CM2850-I, May 1995, para 2.

5 *The Review of the Funding of Political Parties: An Interim Assessment*, October 2006, p 13.

6 See Chapter 3 below

7 Ev 142

political behaviour that contribute to diminished trust.⁸ This inquiry has been conducted against the background of a police investigation into honours, donations and loans, which has fuelled the belief that British public life is riddled with sleaze and corruption. Given all this, it seemed timely to examine the current machinery of ethical regulation in government: to look at the accountability, independence and contribution to public administration of the bodies which are central to our inquiry, to consider whether there are ways to make the system more coherent and effective, and to recognize its permanence. Even if standards are generally high, this does not mean that complacency is justified or that there is no room for improvement. While the present arrangements are haphazard, they do provide most, if not all, of the oversight necessary. Wholesale and immediate change is unlikely. But there need to be coherent principles underlying the system. Proposals for new bodies or changes in the system, which are bound to arise in the future, should be tested against those principles so that, over time, a more coherent, logical and effective system can emerge.

7. During the course of the inquiry two related issues arose: matters of propriety surrounding the honours system and further concerns about the policing of the Ministerial Code. This illustrates the continuing significance of issues of ethical regulation. As a result we have recently produced two separate reports: *Propriety and Honours: Interim Findings*⁹ and the *Ministerial Code: the case for independent investigation*¹⁰, and have discussed HoLAC and matters affecting the Ministerial Code in these reports. On the initiative of the Prime Minister, the business appointment rules for civil servants and the armed forces were recently reviewed by Sir Patrick Brown, and on publication of his review the Government asked this Committee to reflect on the implications of the Brown recommendations.¹¹ These involved the transfer of supervision to the Civil Service Commission.¹² We deal with these proposals in a separate report to be published shortly.

8. Alongside this inquiry we have also been examining the relationship between politics and administration. Many of the questions in these two inquiries are interrelated. This report deals with the regulatory structure, rather than with the details of the relationship between the political and administrative worlds. We consider the detailed rules covering political involvement in appointments in our report on Ministers and Civil Servants.¹³ We conclude that, although political patronage should not determine appointment or promotion within the civil service, politicians have a legitimate role in the administration of the state and regulatory systems need to recognise this.

9. We undertook nine oral evidence sessions and received 11 memoranda in response to our Issues and Questions Paper. We visited Edinburgh on 24-25 April 2006 and met informally the Scottish Commissioners, many MSPs and officials of the Parliament, as well as the Scottish Executive's Minister for Finance and Public Service Reform. It will be

8 John Lloyd, *What the Media do to our Politics* (London, 2004) Peter Osborne, *The Rise of Political Lying*, (London, 2005).

9 Fourth Report of Session 2005-06, HC 1119

10 Seventh Report of Session 2005-06, HC 1457

11 HC Deb, 20 December 2005, c202WS

12 *Review of the Business Appointment Rules* Dep 05/1677 25 February 2005. The report was not published until December 2005.

13 Third Report of Session 2006-07, *Politics and Administration: Ministers and Civil Servants*, HC 122-I

evident from this report that we found this extremely illuminating. We have also had the advantage of the Report from the Finance Committee of the Scottish Parliament, which has greatly informed our thinking.¹⁴

2 A brief history of ethical regulation

10. Dr David Hine, lecturer in Politics at the University of Oxford, told us in his written evidence that:

It is tempting to argue, in relation to liberal democracies against which reasonable comparisons can be made, that the UK's system of ethics-management lies at the far end of a scale that runs from rule-based and detection/repression-systems at one end, to integrity-management, flexibility, and trust on the other.¹⁵

However, as he went on to say, the distinctions are not really as tidy as that. For example, the propriety of the honours system is regulated in part by the law, in the form of the Honours (Prevention of Abuses) Act 1925, and in part by committees set up on the Prime Minister's authority. The honours example illustrates how systems to regulate public ethics are older than is sometimes recognised, and based on a mixture of statute and prerogative authority.

11. This chapter will indicate the haphazard way in which a system of ethical regulation has been established in the past century and will offer some context before we consider the design principles which seem most appropriate for ethical regulators. This chapter does not cover every body with responsibilities in this field, but gives an overview of developments in ethical regulation at United Kingdom level. Appendix 1 to this report lists the regulatory bodies currently in existence in the United Kingdom and in devolved Scotland. It also provides an overview of features designed to promote their independence and accountability, themes discussed later in the report.

12. The first wave of regulation came into existence in the Victorian era. The Civil Service Commissioners were established in 1855 to administer the open, competitive examination recommended in the Northcote Trevelyan report to counter patronage in the public service. Financial regulation is also long established. The Comptroller and Auditor General (C&AG) and his office, the National Audit Office (NAO), were established in 1866 as an attempt to bring order to the system of parliamentary control over public money. Both offices have been subject to evolution in role and structure.

13. By the mid-twentieth century the Civil Service Commissioners had become responsible for the appointment of most civil servants.¹⁶ Their role changed from direct responsibility for appointment to an auditing duty following the delegation and privatisation of the recruitment function during the 1980s and 1990s. In 1996 the Commissioners were given a new role as an independent appeal body for civil servants under the Civil Service Code. Most recently, our predecessor committee recommended their transformation into a

14 Finance Committee, 7th report, 2006, Inquiry into Accountability and Governance (SP 631)

15 Ev 114

16 A brief history is offered at www.civilservicecommissioners.gov.uk/about_us/index.asp

statutory body, accountable to Parliament, as part of civil service legislation, with additional powers to initiate investigations.¹⁷ This has not so far been achieved. In 1937 the Government introduced the requirement for departing senior Crown servants to seek permission to take up business appointments. The task of considering applications for permission to take up business appointments was passed from ministers to a committee of Privy Counsellors in 1975, and in 1995 these provisions were extended to include advice to former ministers of the Crown, and the Committee became the Advisory Committee on Business Appointments (ACoBA).

14. In 1983 the C&AG was made an Officer of the House, presenting the reports of the NAO to the Public Accounts Committee (PAC), but maintaining operational independence. A new statutory Public Accounts Commission was established, to offer strategic oversight over the business plan and finances of the NAO. The C&AG's staff are independent of the civil service and the Public Accounts Commission is chaired by a back bench Member of this House (by convention of the official opposition), not by a minister, although ministers are on the Commission.¹⁸ The reshaping came about through a Private Member's Bill following a long parliamentary campaign. Government on its own would have been very unlikely to have established the new model.

15. The Office of the Parliamentary Commissioner for Administration (Parliamentary Ombudsman) was created in 1967 as a response to growing concerns about abuse of bureaucratic power. Its primary role is to deal with complaints of maladministration made by citizens about Government departments and agencies. The Health Service Commissioners were established in 1977–78 (now consolidated in the Health Service Commissioners Act 1993), and the two posts of Parliamentary Ombudsman and Health Service Ombudsman for England have always been held by the same person.

16. There has been a regulator to ensure that personal data is not misused since the creation of the post of Data Protection Registrar in 1984. Originally, access to official information was dealt with separately, with the Parliamentary Ombudsman given power to monitor adherence to the Code of Practice on Access to Government Information in 1994. The Freedom of Information Act 2000 merged the two functions and the Information Commissioner, a statutory officer, became responsible for the oversight of both data protection and freedom of information.

17. The separate evolution of these regulators illustrates the pragmatic approach taken to design issues in the United Kingdom. Another almost universal factor is the tendency of governments to react to scandal by establishing a new regulatory body. For example, in 1925 the Political Honours Scrutiny Committee was set up in response to the systematic abuse of the honours system by David Lloyd George.

18. Following media and parliamentary concern about a number of instances of alleged impropriety by individual Ministers and Members, in October 1994 the then Prime Minister, John Major,¹⁹ set up the Committee on Standards in Public Life (CSPL).

17 Public Administration Select Committee, First Report of Session 2003-04, *A Draft Civil Service Bill: Completing the Reform*, HC 128-I

18 A Cabinet Minister, the Leader of the House, is an *ex officio* member. The Public Accounts Committee is similarly chaired by a member of the opposition.

19 Now Sir John.

Constituted as a standing body, able to keep the overall “ethical framework” under continuing review, the CSPL has been responsible for a wave of new ethical regulators, which has considerably broadened the areas of public life subject to oversight. It also enunciated the Seven Principles of Public Life which have become the key operational values, adopted to a greater or lesser extent by other bodies. The CSPL reports to the Prime Minister, and both Conservative and Labour administrations have acted in partnership in the creation of this new ethical landscape.

19. The design aspects of the different bodies set up as a result of the work of the CSPL are interesting.²⁰ The House’s creation of a Parliamentary Commissioner for Standards through Standing Orders (the Scottish Parliament’s Standards Commissioner is a statutory creation) was in response to the CSPL’s First Report. It took the model of an individual regulator responsible to a parliamentary committee with less operational independence than that afforded to the C&AG. The Parliamentary Commissioner for Standards’ reports are published by the authority of the Standards and Privileges Committee and his finances are established by the House administration. The principle behind this model was that the House itself was ultimately responsible for the discipline of Members.

20. The Office of the Commissioner for Public Appointments (OCPA) was also set up following the first CSPL report, but as a non-statutory officer reporting to the Crown, appointed, like the Civil Service Commission, by Order in Council.²¹ The Commissioner’s role is to regulate, monitor, report and advise on appointments made by UK Ministers to public bodies. The first report from the CSPL also transformed the role of the Business Appointments Committee (now ACoBA) to include self-referrals from ministers and helped formalise rules for civil servants. ACoBA remains a Non Departmental Public Body, serviced by the Cabinet Office.

21. Not all the bodies created in response to CSPL recommendation were non-statutory. The third CSPL report led to the creation of the statutory Standards Board for England and its fifth report, on party funding, underpinned the Political Parties and Referendums Act 2000, which established the Electoral Commission. The CSPL has recently produced a major report on the operation of the Electoral Commission which, in assessing its independence and accountability, and making substantive recommendations for greater transparency and clarity in these arrangements, grappled with many of the issues our inquiry has had to examine in the wider context.

22. The existence of some offices has prompted the creation of others, especially in the area of public appointments. For example, following a report from the Public Appointments Commissioner, a NHS Appointments Commission was established, which has just undergone further statutory revision. A Judicial Appointments Commission came into existence following an independent scrutiny report by Sir Leonard Peach, former Commissioner for Public Appointments, in December 1999. This was remodelled in the Constitutional Reform Act 2005.

20 For more detail see Appendix 1.

21 The Scottish equivalent is a statutory creation.

23. Government responses to the growing demand for the regulation of public life began before the establishment of the CSPL and the regulatory structure has evolved alongside it, often influenced by its reports. In 1992 the then Prime Minister, John Major, published the Questions of Procedures for Ministers (QPM) for the first time. In 1994 the Treasury and Civil Service Committee first proposed a Civil Service Code defining the constitutional duties of civil servants. In January 1996 the Government introduced such a Code, and it was revised in 2006 (with separate Codes by the Scottish and Welsh devolved administrations for their civil servants). In 1997 QPM became a fully fledged Ministerial Code, which has since been regularly revised and strengthened, incorporating some recommendations made by this Committee. Following a recommendation from CSPL in 2000, the Government agreed to introduce a separate code of conduct for special advisers.²² Ministers, civil servants and special advisers are now therefore subject to their own separate codes, which have been the subject of a series of reports from this Committee.

24. Following the initial stage of House of Lords reform, a non-statutory House of Lords Appointments Commission was established in May 2000, as a NDPB, funded and serviced from the Cabinet Office. The Government has published a series of White Papers proposing a statutory basis for the Commission, as yet unimplemented. At the initiative of Government in response to a recommendation from this Committee, the Political Honours Scrutiny Committee was merged into the Commission in June 2005, which took on a new role in vetting peerage nominations for propriety. Honours regulation is the subject of a separate report from this Committee.²³

25. For local government, in addition to the Standards Board mentioned above, the Audit Commission has had responsibility for a number of different functions relating to the inspection and audit of local authority and health services in England and its functions have evolved since it was first established by the Local Government Finance Act 1982. The Commission for Local Government provides the local government ombudsman service.

26. There are also a number of bodies responsible for ensuring that functions which have a certain distance from government operate with proper independence. For example, the integrity of government statistics is currently overseen by the Statistics Commission, but legislation currently before Parliament is intended to make the statistical system still more independent of government.

Regulation: effects and side-effects

27. It will be seen from even this brief outline that Britain has developed a wide range of ethical regulators and independent scrutineers. Dr Hine was concerned that “we have charged ahead with a lot of institutions without thinking quite how much we are changing the system”.²⁴

28. Our system of regulation may have evolved, rather than being the product of design, but it has nevertheless been effective, not least in providing the scrutiny and transparency

22 Government response to Sixth Report of the Committee on Standards in Public Life, Cm 4817, 26 July 2000

23 Fourth Report of Session 2005-06, HC 1119

24 Q 408

that has brought attention to matters such as the funding of political parties, and the alleged links between donations and peerage. This is a demonstration of the increased effectiveness of regulation, through such bodies as the Electoral Commission and the House of Lords Appointments Commission. Even Simon Jenkins, who believed that the public appointments system had now become disproportionate, considered that the need to appoint on merit, and to think about the range of experience required on a public body, had improved the quality of appointments.²⁵ More generally, as Peter Riddell said, “it is very useful to have grit in the machine”²⁶, and “the whole thing is shedding light”.²⁷ Existing regulatory bodies perform an important and necessary task.

29. However, although the regulatory system has brought major benefits, there are also concerns about its coherence and proportionality. We do not explore here the complaints about overregulation or excessive inspection, which have been made about some regulatory structures. But in our inquiry witnesses expressed concern about the confusion and overlap between regulators, the extent to which regulators were properly embedded in the constitutional system, and the effect of regulation on public trust.²⁸ There were also concerns that there was little informed awareness of the system by the public, and little information about the system itself given by the media, so the distinct roles of these bodies are not appreciated.²⁹

30. Moreover, the increase in regulatory activity, both in the bodies which we scrutinise, and in the wider public service, may have had unintended effects. Although the developments in the 1990s and the codification of ministerial and civil service responsibilities were a continuation of previous developments, they brought marked change in the regulatory structure. The crystallisation of broad understandings into formal codes of conduct, and the creation of a series of bodies to pronounce on standards, has served to shift the common understanding of the role of government, Parliament and the civil service with regard to the conduct of public life. The significance of this fashion for code making has been described variously as either a written-down form of what civil servants had always understood or “constitution-making by stealth”.³⁰ This was why Dr Hine was concerned about the recent growth in ethics management agencies:

because we have not, in such a short time as ten years, managed to embed new structures and procedures in our existing constitutional and political order, so that we understand what to expect from the new enforcement agencies, we respect, and from their behaviour learn to respect, their impartiality and neutrality, and we have an honest and open debate about what they can achieve, given the nature of political competition, communication, and debate in contemporary public life.³¹

25 Q 43

26 Q 7. The discomfort sometimes felt by some bodies and people, even including Members of this House, to the application of the FoI scheme to them is a good example of this.

27 Q 11

28 Q 378, Q 390, Ev 103

29 Q 380, Ev 114

30 Christopher Hood et al, *Regulation inside Government* (Oxford, 1999) p. 78 and Peter Hennessy, *The Hidden Wiring* (London, 1995), p 206

31 Ev 115

31. The Committee on Standards in Public Life first set out what have come to be known as the ‘Nolan’ Principles³²; standards of conduct for those in public office. These Seven Principles of Public Life are: Selflessness; Integrity; Objectivity; Accountability; Openness; Honesty and Leadership. While the principles themselves are generally accepted, there is room for argument about what they might mean in any particular circumstance. A wide range of bodies which have a legitimate role in considering this now exists. It is time to assess the shape and purpose of ethical regulation, to see whether a more considered and coherent structure can be produced so that Government, Parliament and the public can recognise and appreciate that ethical regulation is rightly a permanent part of the constitutional landscape.

3 Trust and regulation

32. One expressed aim of ethical regulation has been to increase public trust. When Sir John Major announced the establishment of the Committee on Standards in Public Life (CSPL) on 25 October 1994, he said:

This country has an international reputation for the integrity and honour of its public institutions. That reputation must be maintained and be seen to be maintained. I hope that the standing committee I have announced today will enjoy the support of the House and reassure the people of this country about our determination to maintain high standards of conduct in public life.³³

Yet although the CSPL was established to increase trust, Dr Hine warned that the increase in ethics based regulation:

may be a bad thing because it applies unevenly, and in particular it applies ineffectively and with deleterious consequences for trust, at the highest levels of the political world, and perhaps most notably in the application of some high-level rules—the ministerial code, party-funding, perhaps electoral law.³⁴

Thus, the extent to which we should judge the success of our regulatory system by its effect on trust is less straightforward than it might seem.

33. Trust matters in public life. As Sir Alistair Graham, the Chairman of CSPL, told us, “a lack of trust, a lack of confidence, leads to cynicism which leads to disengagement”.³⁵ However, it is important to be careful in making connections. It is, by definition, very hard to gain accurate comparative measures of the level of corruption in different countries. Transparency International, the leader in this field, publishes an annual *Corruption Perceptions Index* [our emphasis], based on surveys and expert opinion. The United Kingdom has consistently ranked at number 11 in this index (the 2006 index included 163 countries), indicating that its standards are considered relatively high.³⁶ This perception is

32 Named after the first Chairman of the CSPL.

33 HC Deb, 25 October 1994, c 759

34 Ev 115

35 Q 198

36 See Q 407

