



House of Commons
Public Administration Select
Committee

**Investigating the
conduct of ministers:
Government
Response to the
Committee's Seventh
Report of Session
2007–08**

**Ninth Special Report of Session
2007–08**

*Ordered by The House of Commons
to be printed 9 October 2008*

HC 1056
Published on 14 October 2008
by authority of the House of Commons
London: The Stationery Office Limited
£0.00

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 Commissioner for England, 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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Committee staff

The current staff of the Committee are Steven Mark (Clerk), Laura Dance (Second Clerk), Pauline Ngan (Committee Specialist), Louise Glen (Committee Assistant), Anne Woolhouse (Secretary) and Miguel Boo (Senior Office Clerk).

Contacts

All correspondence should be addressed to the Clerk of the Public Administration Select Committee, Committee Office, First Floor, 7 Millbank, House of Commons, London SW1P 3JA. The telephone number for general enquiries is 020 7219 3284; the Committee's email address is pasc@parliament.uk

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Ninth Special Report

The Public Administration Select Committee reported to the House on *Investigating the conduct of ministers* in its Seventh Report of Session 2007–08, published 12 May 2008 as HC 381. The Government Response was received on 21 August 2008 and is published below as an Appendix to this Report.

Appendix

1. We applaud the Prime Minister's decision to revise the Ministerial Code and to focus it on questions of general principle rather than detailed guidance on procedure. Procedural guidance is necessary, but the Ministerial Code is not the place for it. A principle-based Code should be simpler for ministers to use and simpler for Parliament and the public to judge them by. (Paragraph 9)

The Government welcomes the Committee's support for the new principles-based Ministerial Code which was substantially revised in July 2007, taking account of recommendations made by the Committee and the Committee on Standards in Public Life. The Government shares the Committee's view that the tightening of the new Code leaves a document which is more clearly based around the principles of ministerial conduct, making it simpler for Ministers, Parliament and the public to be clear about the standards of conduct expected of Ministers.

2. We welcome the Prime Minister's decision to publish a list of ministerial interests. The list will be an important safeguard against impropriety. (Paragraph 10)

The Government welcomes the Committee's support for the Prime Minister's decision to publish a list of Ministers' Interests. As the foreword to the Ministerial Code makes clear, the acceptance of ministerial office brings with it a serious responsibility and duty to the nation. The List will provide further reassurance to Parliament and the public that no conflict exists between a Minister's public duties and their private interests, financial or otherwise. It will also provide greater transparency in relation to Ministers' interests which has not existed previously. The first ever such List will be published after the summer recess.

3. We do not believe the public is greatly exercised by how ministers obtain advice on avoiding conflicts of interest. The primary concern around the Code has never been its content. Nor has it been a lack of advice for ministers on compliance. The major issue remains what happens when it appears that the Code has been breached. (Paragraph 11)

The Government notes the Committee's conclusion. It believes that the appointment of Sir Philip Mawer as the independent adviser on Ministers' interests provides an independent validation to Ministers and their Permanent Secretaries on the handling of Ministers' interests, and will provide reassurance to Parliament and the public that appropriate advice and action has been taken to avoid any conflict of interest between a Minister's official duties and his or her private interests.

4. We welcome the assurance that the Independent Adviser is no longer to be limited to investigating only breaches of certain parts of the Ministerial Code. (Paragraph 13)

The Government welcomes the Committee's conclusion that it is a positive development that there is now no doubt that the independent adviser can investigate alleged breaches of any part of the Code, and not just those sections regarding Ministers' private interests. The Government believes this is an important development which will help to strengthen and promote public confidence in the Ministerial Code and its application.

5. It is right that the Independent Adviser should investigate the facts of allegations, and not determine the penalty if ministers are found to have breached the Code. Prime Ministers must ultimately be accountable for who serves in their governments. (Paragraph 14)

The Government agrees with the Committee that it is for the independent adviser to investigate the facts of allegations, but it is for the Prime Minister, as the ultimate judge of the standards of behaviour expected of a Minister, to determine the appropriate consequence of a breach of those standards. The Government shares the Committee's view that it would not be appropriate to our Constitution for an independent adviser to dismiss a Minister or arguably even to recommend such a course of action. Ministers can only remain in office for so long as they retain the confidence of the Prime Minister, and ultimately it must be for the Prime Minister to be accountable for the conduct of his administration. This point is reinforced in the Ministerial Code.

6. We welcome Sir Philip Mawer's understanding that the facts uncovered in his investigations will be made public. Like him, we believe that public confidence requires it. However, he acknowledges that the Prime Minister retains a discretion, and it is easily foreseeable that some investigations might uncover information which is potentially embarrassing or even damaging to the government, and which therefore the Prime Minister might not want to publish. For the avoidance of doubt, therefore, we invite the Prime Minister to state unambiguously that he will make public any relevant findings of fact. (Paragraph 16)

The Government believes that it is important for the Prime Minister to be able to make decisions after a balanced consideration of the facts of an individual case. It must therefore be for the Prime Minister to account for his decision, including making public any findings of relevant fact.

7. It is hard to see how the Independent Adviser can command public confidence if the Prime Minister can decide that prima facie breaches of the Code will not be investigated. (Paragraph 17)

The Government notes this conclusion but continues to believe that if there is an allegation about a breach of the Code, and the Prime Minister, having consulted the Cabinet Secretary, feels that it warrants further investigation, the matter will be referred to the independent adviser. In deciding whether or not to refer a matter to the independent adviser for investigation, the Prime Minister will wish to take into account a range of factors, including whether the facts are already known. In line with the Government's response to the Committee's recommendation 5, the Government

believes it must ultimately be for the Prime Minister to account to Parliament for his decisions and actions in relation to the appointment of his Ministers.

8. The Government has confirmed that Sir John Bourn was not asked to conduct any investigations while he was Independent Adviser. Put simply, there is no point in having an investigator in post if he is not given discretion to investigate very public allegations that the Code has been breached. (Paragraph 17)

9. We welcome Sir Philip Mawer's assurance that he would make his views clear to the Prime Minister if he felt that a particular allegation required investigation. It is encouraging that he has already had a number of meetings with the Prime Minister, and that his views will be heard. Nonetheless, the decision to instigate an investigation still lies with the Prime Minister. The Prime Minister is clearly not an impartial figure when it comes to deciding whether or not to instigate an investigation. If the regulatory system is to have credibility, that decision must be taken out of political hands. (Paragraph 20)

The Government notes these conclusions. For the reasons set out in response to recommendation 7, it believes that it must be for the Prime Minister to decide whether to refer a matter to the independent adviser for investigation, and to account for his decision to Parliament and the public.

10. The post of Independent Adviser should become a permanent part of the regulatory framework for conduct in public life. If the post is to become permanent, however, it is important not just that the postholder's personal independence is unimpeachable, but also that there are institutional safeguards to guarantee that independence of action. (Paragraph 21)

The Government welcomes the Committee's support for the appointment of Sir Philip Mawer as the Prime Minister's independent adviser on Ministers' interests. It also welcomes the Committee's acknowledgement that the post has developed beyond the role which was undertaken by Sir Philip's predecessor. The Government shares the Committee's view that the post of independent adviser should become a permanent part of the regulatory framework for conduct in public life. It also believes there are safeguards in place to ensure independence of action. The fact that the role of the independent adviser is set out in the Ministerial Code provides reassurance and confirmation of the Government's position.

11. Effective regulators ought to be at a healthy distance from those they regulate. While the Independent Adviser is accommodated in the Cabinet Office, staffed by the Cabinet Office and funded by the Cabinet Office, it is hard to see how that distance will be maintained. (Paragraph 27)

In carrying out his role, the independent adviser works closely with the Propriety and Ethics team located in the Cabinet Office. The reason for this is that it is this team which advises Ministers and permanent secretaries on the handling of propriety and ethics issues, including issues relating to the Ministerial Code. It therefore makes sense for their knowledge and expertise to be shared rather than to establish a separate team which will only serve to duplicate activity, adding unnecessary cost to the taxpayer. Both the Government and the independent adviser believe the current arrangements work well. However, as with all working practices, the arrangements will be kept under review by both the independent adviser and the Government.

12. Having appointed Sir John Bourn to the job as recently as 2006, we do not understand how the Government can argue it is not appropriate for a serving Officer of Parliament to be the Independent Adviser on Ministerial Interests. (Paragraph 28)

The Government remains of the view that it would not 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. Sir John's appointment was a personal appointment by the former Prime Minister and was completely separate from his role as Comptroller and Auditor General.

13. The Independent Adviser should be appointed, if not by Parliament, then at least through a transparent open competition, regulated by the Commissioner for Public Appointments. This would still allow the Prime Minister the final say, but only after a rigorous, safeguarded process. The appointment should then be made on a fixed term, and it should be subject to a pre-appointment hearing. (Paragraph 29)

The Government notes the recommendation that the independent adviser should be appointed through an open competition. Since the role involves the provision of advice to the Prime Minister on issues of a highly sensitive nature, it is essential that he or she has trust and confidence in the post-holder. Moreover, the main part of the job is advising Ministers and their permanent secretaries on the handling of Ministers' interests. This involves handling often sensitive information and this part of the role therefore also requires a relationship of confidence between the adviser and Ministers and Permanent Secretaries. These requirements reinforce the government's belief that the post-holder should be a personal appointment by the Prime Minister, for which he or she is accountable.

The Government has also considered carefully the proposal that the appointment should be subject to a pre-appointment hearing. Because of the nature of the role, the Government believes the post is more suitable for post-appointment rather than pre-appointment scrutiny. However, in the light of comments made by both the Committee and the Liaison Committee, this and other aspects of the post will be kept under review in the light of experience.

14. We welcome the fact that an annual report will be published, but more active pursuit of publicity will be needed. At the very least, as Sir Philip acknowledged, his post should have a dedicated website. (Paragraph 30)

The Government accepts the Committee's recommendation that the independent adviser should have a dedicated website. A webpage has now been set up for the Independent Adviser, which can be accessed from the Cabinet Office website. Information on the nature of the independent adviser's role and contact details can be found on his webpage.

15. We are also attracted to the notion that dismissal should not be the only punishment available for a breach of the Code. (Paragraph 32)

16. Sir Philip Mawer told us that he supported some "equivalent of a yellow card" for ministers whose offence did not warrant their removal from office. It is, as Sir Philip acknowledged, difficult to imagine what that "yellow card" might be, but this does not mean it is not an idea worth pursuing. Expecting ministers to come to the House

and make a formal statement of apology is one option; simple naming and shaming is another. We recommend that the Government considers whether there are any suitable penalties for breaching the Ministerial Code that fall short of dismissal. Whatever penalty is preferred, however, it will only be credible if the investigation which preceded it is also credible. (Paragraph 33)

The Government agrees with the notion that dismissal should not be the only recourse available for a breach of the Code. It is for the Prime Minister, as the ultimate judge of the standards of behaviour expected of a Minister, to determine the appropriate consequence of a breach of those standards. However, the Government notes the Committee's proposals for suitable penalties, which will be given further consideration in the light of any future allegation of a breach of the Ministerial Code.

17. This report sets out the steps needed to give credibility to the investigation of alleged breaches of the Ministerial Code. By appointing an investigator, the Prime Minister has shown that he understands the need for fair, impartial investigation. It is a significant step towards fair, defined accountability for ministerial conduct. The potential benefits of such a post, however, will not be felt unless the investigator is widely seen to be entirely independent and impartial. Current arrangements do not provide for that independence. Until the changes we outline have taken place, it is inappropriate to refer to the new investigator as an Independent Adviser. We therefore urge the Prime Minister to adopt the Committee's recommendations for change, and in so doing to build upon the significant improvements already made to the machinery for investigating the conduct of ministers. (Paragraph 34)

The Government welcomes the Committee's acknowledgement that by appointing an investigator, the Prime Minister has shown that he understands the need for fair, impartial investigation, and that it is a significant step towards fair, defined accountability for ministerial conduct. The Government notes the Committee's recommendations to go further in relation to independent investigation. However, it believes that the action it has set out in response to the Committee's report demonstrates its commitment to ensuring that Ministers uphold the highest standards of propriety. It also believes that the open and transparent processes which it has put in place to underpin and reinforce the role of the independent adviser demonstrates its commitment to the role.

August 2008

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 2007–08

First Report	Machinery of Government Changes: A follow-up Report	HC 160 (<i>HC 514</i>)
Second Report	Propriety and Peerages	HC 153 (<i>Cm 7374</i>)
Third Report	Parliament and public appointments: Pre-appointment hearings by select committees	HC 152 (<i>HC 515</i>)
Fourth Report	Work of the Committee in 2007	HC 236 (<i>HC 458</i>)
Fifth Report	When Citizens Complain	HC 409 (<i>HC 997</i>)
Sixth Report	User Involvement in Public Services	HC 410 (<i>HC 998</i>)
Seventh Report	Investigating the Conduct of Ministers	HC 381 (<i>HC 1056</i>)
Eighth Report	Machinery of Government Changes: Further Report	HC 514
Ninth Report	Parliamentary Commissions of Inquiry	HC 473 (<i>HC 1060</i>)
Tenth Report	Constitutional Renewal: Draft Bill and White Paper	HC 499
Eleventh Report	Public Services and the Third Sector: Rhetoric and Reality	HC 112
Twelfth Report	From Citizen's Charter to Public Service Guarantees: Entitlement to Public Services	HC 411
Thirteenth Report	Selection of a new Chair of the House of Lords Appointments Commission	HC 985
Fourteenth Report	Mandarins Unpeeled: Memoirs and Commentary by Former Ministers and Civil Servants	HC 664

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 (<i>HC 1057 Session 2007–08</i>)
Fourth Report	Ethics and Standards: The Regulation of Conduct in Public Life	HC 121 (<i>HC 88 Session 2007–08</i>)
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 (<i>HC 90 Session 2007–08</i>)
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>)
Ninth Report	Skills for Government	HC 93 (<i>HC 89</i>)
First Special Report	The Governance of Britain	HC 901

Session 2005–06

First Report	A Debt of Honour	HC 735 (Cm 1020)
Second Report	Tax Credits: putting things right	HC 577 (HC 1076)
Third Report	Legislative and Regulatory Reform Bill	HC 1033 (HC 1205)
Fourth Report	Propriety and Honours: Interim Findings	HC 1119 (Cm 7374)
Fifth Report	Whitehall Confidential? The Publication of Political Memoirs	HC 689 (HC 91, Session 2007–08)