



House of Commons
Public Administration Select
Committee

Investigating the conduct of ministers

Seventh Report of Session 2007–08



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minutes*

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The Public Administration Select Committee

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Summary

The post of Prime Minister's Independent Adviser on Ministerial Interests was created in March 2006, and extended by the incoming Prime Minister in July 2007. Part of the new Independent Adviser's role is to investigate allegations that the Ministerial Code has been breached. We and our predecessor Committees have been calling for an investigator into alleged ministerial misconduct for some time. It does not seem fair that the media can claim to take the place of due process when ministers are accused of misconduct. It also seems disproportionate that the only effective sanction for non-compliance with the Code (however minor) is dismissal.

This Report considers the suitability of the new mechanism for investigating alleged breaches of the Code. We welcome the creation of an investigatory capacity as an important step. However, we have identified limitations on the Independent Adviser's powers which cast doubt over the effective ability of any holder of the post to secure public confidence. In particular, the Independent Adviser should be free to instigate investigations. As it is, he is dependent on being invited to do so by the Prime Minister. The Prime Minister should also undertake that findings of investigations into the conduct of ministers will routinely be published.

Constitutional watchdogs such as this new investigator need to be demonstrably independent of those they regulate—in this case, ministers, including the Prime Minister. The post of Independent Adviser meets none of the criteria we associate with independence. The holder of the post, Sir Philip Mawer, has been appointed by the Prime Minister on a non-specific term of office which can be terminated by the Prime Minister at any time and on any grounds. He has no staff of his own, no office and no budget, but relies on the Cabinet Office for all these things. There has been no open advertisement process and no parliamentary involvement in the appointment. Until these defects are remedied, we have difficulty accepting the suggestion that the new investigator can meaningfully be considered to be independent.

1 Introduction

1. The Ministerial Code is now established as the rule book on ministerial conduct. Our predecessor Committee first considered the Code in a report of February 2001.¹ That report considered questions around the status and ownership of the Code, its purpose, and whether there should be a distinction between principles of ministerial conduct and simple procedural guidance. It also highlighted the need for an independent investigatory capacity to give fair consideration to any claims that the ethical standards in the Code were not being met.

2. The Committee on Standards in Public Life (CSPL) has also had occasion to consider the Ministerial Code on more than one occasion. Most recently, that Committee recommended in 2003 that two new offices should be created to ensure that standards of ministerial conduct were acceptable. The first proposal was that there should be, as our predecessors had recommended, independent investigation of alleged breaches of the Ministerial Code. The second proposal was that there should be an independent office-holder, called an Adviser on Ministerial Interests, to provide advice to ministers on compliance with those sections of the Ministerial Code which cover the avoidance of perceived and actual conflicts of interest. The CSPL also suggested that a list of ministerial interests should be published.²

3. The Government accepted the case for an adviser on ministerial interests, but not for an investigator of alleged Code breaches.³ After a lengthy delay, in March 2006 the then Prime Minister appointed Sir John Bourn (the then Comptroller and Auditor General) as the first Independent Adviser on Ministerial Interests. His terms of reference included the suggestion 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”.⁴ However, several controversies around the conduct of various Cabinet ministers had already led us to inquire once again into how ministerial misconduct was investigated. In July 2006, notwithstanding the recent appointment of Sir John Bourn, we found that there was a definite need for an investigator with sufficient independence from government to secure public confidence:

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.⁵

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- 1 Public Administration Select Committee, Third Report of Session 2000–01, *The Ministerial Code: Improving the Rule Book*, HC 235
 - 2 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
 - 3 *The Government’s Response to the Ninth Report of the Committee on Standards in Public Life*, Cm 5964, September 2003, pp. 1–4
 - 4 Cabinet Office, *Independent Adviser on Ministerial Interests: Terms of Reference*, 16 May 2006
 - 5 Public Administration Select Committee, Seventh Report of Session 2005–06, *The Ministerial Code: the case for independent investigation*, HC 1457, para 42

4. One of the first acts of the Rt Hon Gordon Brown MP on coming into office as Prime Minister was to re-announce the post of Independent Adviser on Ministerial Interests. In July 2007 the Government published a Green Paper entitled *The Governance of Britain*.⁶ The text of the Green Paper implied that the post had been expanded:

- a new Independent Adviser will be appointed to advise on Ministers' interests. He or she will be able, at the Prime Minister's request, to investigate alleged breaches of the Ministerial Code;
- the Independent Adviser on Ministers' Interests will publish an Annual Report and List of Ministers' Interests. Subsequent lists will be published with the Independent Adviser's Annual Report;
- the Annual Report will be laid before Parliament to ensure proper scrutiny of ministerial conduct.⁷

5. Subsequently, the Prime Minister appointed Sir Philip Mawer, previously the Parliamentary Commissioner for Standards, to serve as his Independent Adviser. Sir Philip took up office early in 2008, and we took evidence from him a few weeks into his role on 28 February. We used this evidence session to examine the detail of the role to which Sir Philip had been appointed, and to discover whether it satisfied the need for independent investigation which we and others had identified in the past. The remainder of this report is primarily concerned with this question of independence. First, though, we consider recent changes to the Ministerial Code itself.

2 The Ministerial Code

6. The provision of behavioural guidance to Cabinet ministers dates back to the Second World War, when ministers were issued with *ad hoc* instructions from the Prime Minister. These guidelines were first collected into a single document (known as Questions of Procedure for Ministers, or QPM) by Clement Attlee, the then Prime Minister, who distributed the document to incoming ministers in 1945. Since then, the document has been continuously revised and extended by incoming Prime Ministers. Originally 65 paragraphs long, QPM had doubled in size to 135 paragraphs by 1997, when it was restyled as the Ministerial Code. By 2005, it had grown to 173 paragraphs. The Code has also been published, ever since the decision to do so was taken by John Major as Prime Minister in 1992.

7. Gordon Brown has emulated his predecessors by approving his own version of the Code within a few days of becoming Prime Minister.⁸ Unlike many, however, he also took the opportunity to revise and substantially refocus the Code. The Green Paper on "The Governance of Britain" set out the Prime Minister's position:

6 Ministry of Justice, *The Governance of Britain*, Cm 7170

7 Ministry of Justice, *The Governance of Britain*, Cm 7170, p 39

8 Cabinet Office, *Ministerial Code*, July 2007

The Ministerial Code outlines the behaviour that is expected of Ministers. Until now, it has developed over decades as an amalgam of good practice, but it has become outdated and unwieldy. The Prime Minister has therefore tightened the Code.⁹

8. In practice, this tightening of the code has meant removing much of the detailed procedural guidance in the Code, leaving a document which is more clearly based around the principles of ministerial conduct. The shortened Code, now down to a relatively modest 119 paragraphs, is divided into ten chapters, each headed by a statement of a general principle such as “Ministers of the Crown are expected to behave in a way that upholds the highest standards of propriety”.¹⁰ Although many of the provisions underneath these principles are the same as in previous Codes, there has been noticeable trimming; for example, the 2005 Code contained specific guidance for ministers with partnerships, directorships and membership of Lloyds which has not been reproduced in the latest edition. Similarly, the details relating to the supply of parliamentary publications and money resolutions have been removed from the Ministers and Parliament Section, while the chapter on Ministerial Pensions has been taken out in its entirety. A summary of the changes in the 2007 Code was provided for us by Catherine McGrath and is appended to this report.¹¹ While not all of the procedural guidance has been removed - it is still against the terms of the Code to make important policy announcements on the Today programme while Parliament is in session - it seems fair to say that the revised Code is more principle-based than previous versions.

9. 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. Our predecessor Committee recommended this course of action in 2001, and it has also been recommended more than once by the Committee on Standards in Public Life.¹² **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.**

Ministerial interests

10. One novel aspect of the 2007 Code, as we have seen, is that an annual statement will be published covering ministers’ relevant outside interests. Ministers have considerable powers beyond those of other Members of Parliament, for example in the awarding of contracts, and it has long been recognised that the information required for the Register of Members’ Interests is not sufficient for ministers (not all of whom, in any event, are Members of the House of Commons). There is a clear public interest in transparency over the personal interests of ministers. However, although ministers have been required by the Ministerial Code to declare their interests to their permanent secretaries, there has not previously been any requirement to make this information public. **We welcome the Prime**

9 *The Governance of Britain*, Cm 7170, p 39

10 Cabinet Office, *Ministerial Code*, July 2007, p 1

11 Appendix 1

12 Public Administration Select Committee, Third Report of Session 2000–01, *The Ministerial Code: Improving the Rule Book*, HC 235; 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

Minister’s decision to publish a list of ministerial interests. The list will be an important safeguard against impropriety.

11. The list of ministerial interests will be published by the new Independent Adviser, who will also be available—as the title suggests—to provide advice to ministers and permanent secretaries on what interests should be declared and what constitutes a conflict of interest. We have not examined whether such independent advice is necessary. However, the lack of such advice does not strike us as having been the major gap in the regulation of ministerial conduct. **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.**

3 The new investigatory role

12. In our 2006 report on the need for an independent investigatory machinery, we set out key principles against which such a machinery should be judged:

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.¹³

It is against these principles that we have judged the appropriateness of the new machinery for investigating alleged breaches of the Ministerial Code. In its response to our report, the Government did not explicitly disagree with any of these principles.¹⁴ Any disagreements, therefore, arise out of different interpretations of the principles—and how this has affected their implementation.

The scope of the role

13. The remit of the Independent Adviser, with regard to investigating alleged breaches of the Ministerial Code, has been substantially clarified since we last reported on this subject in 2006. In particular, 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. This represents real progress, given

¹³ Public Administration Select Committee, Seventh Report of Session 2005–06, *The Ministerial Code: the case for independent investigation*, HC 1457, para 25

¹⁴ Public Administration Select Committee, Fourth Special Report of Session 2006–07, *The Ministerial Code: the case for independent investigation: Government Response to the Committee’s Seventh Report of Session 2005–06*, HC 1088

that in 2006 the Cabinet Secretary had told us that not all issues covered by the Code were appropriate for independent investigation.¹⁵ **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.**

14. We also recognise that the investigatory function that Sir Philip Mawer will perform meets two of the most important principles that we have argued for—that he will concern himself only with establishing the facts of the case, and 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. As long as the Prime Minister determines the content of the Code, and is thus the arbiter of what constitutes acceptable ministerial behaviour, it can only be the Prime Minister who decides the consequences of unacceptable behaviour. 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. **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.**

Publishing the findings of investigations

15. It is less clear that another of our principles will be fulfilled—that information uncovered in an investigation will be made available to Parliament and the public. The Government told us that it must be “for the Prime Minister to account for his decision including making public any findings of fact”.¹⁶ This appears ambiguous; while it could be read as guaranteeing publication of findings of fact, it could equally signify that the Prime Minister will retain a discretion. We asked Sir Philip Mawer for his understanding, and he advised that the latter interpretation was more accurate:

It will be for the Prime Minister to decide, at the end of the day, whether or not my reports are published. I will make my report to the Prime Minister; he will decide whether or not to publish it.¹⁷

However, Sir Philip did not envisage that, in practice, there were any circumstances in which the Prime Minister would gain by not publishing the findings of an investigation:

I have assumed that the whole point of my appointment to the role, and the creation of the role by the Prime Minister in its current form, is to provide public reassurance, and, therefore, I think it unlikely that I am going to be asked to conduct inquiries the result of which will not become, in one way or another, public knowledge ... I think he has already made clear that he will make public the facts on the basis of which he reaches decisions about what to do in any particular case.¹⁸

16. 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

15 HC (2005–06) 884–v, Qq 252 and 253

16 Public Administration Select Committee, Fourth Special Report of Session 2006–07, *The Ministerial Code: the case for independent investigation: Government Response to the Committee’s Seventh Report of Session 2006–07*, HC 1088, p 3

17 Q 56

18 As above

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.

Instigating investigations

17. Superficially at least, there appears to be one significant barrier to the necessary independence of the post—an inability to instigate investigations. The Government has been quite clear that the Independent Adviser will only investigate allegations of breaches of the Code if the Prime Minister asks him to. Indeed, Sir Philip Mawer envisaged that the Cabinet Secretary would carry out a preliminary investigation first, and then the Prime Minister would decide whether to ask the Independent Adviser to investigate.¹⁹ **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.** We had very public examples of this when the previous Prime Minister did not ask Sir John Bourn to investigate the conduct of either Rt Hon John Prescott MP or Rt Hon Tessa Jowell MP, both of whom were the subject of media allegations of improper conduct in 2006. Indeed, **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.**

18. Sir Philip Mawer told us that this question “poses some difficulties for the Prime Minister”.²⁰ He himself was accustomed, from his time as Parliamentary Commissioner for Standards, to being the person who made decisions on whether or not complaints should be investigated.²¹ However, he did give a reason why his new post was not directly analogous:

The Prime Minister's position is different to this extent, I think, that he remains ultimately responsible for the conduct of his administration and, because of that, the first question that is inevitably asked when a newspaper story breaks is: what is the Prime Minister going to do about it?²²

There are clearly circumstances where, for political reasons, the Prime Minister might want to be seen as immediately decisive, and decide to dismiss a minister prior to any investigation. Equally, there are cases where ministers admit their wrongdoing and no investigation is necessary. This is not, however, necessarily an argument against giving discretion to the investigator. A sensible Independent Adviser would undoubtedly take such factors into account when deciding if there is any purpose to conducting an investigation.

19 Q 5

20 As above

21 As above

22 As above

19. Sir Philip assured us that, in practice, he would form his own view on whether he ought to conduct an investigation:

I can assure you that I am not going to sit there supine. If I believe that something, on the basis of the facts available to me, requires investigation, I shall make that view known to the Cabinet Secretary and the Prime Minister. I have not been brought into this job just to be somebody's foot stool or patsy.²³

He also told us that he had already had several meetings with the Prime Minister, and that he expected to maintain a regular channel of communication through the Cabinet Secretary.²⁴

20. 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.

4 Improving the investigatory capacity

21. The appointment of Sir Philip Mawer as the Prime Minister's Independent Adviser on Ministerial Interests is a positive step. It is clear that the post has developed beyond that which was undertaken by Sir John Bourn. Sir Philip was also at pains to assure us that he would take his independence very seriously, and that his longstanding acquaintance with the Prime Minister would not in any way restrain him from being critical where necessary. We have no reason to doubt this. However, Sir Philip also told us that one of his aims in the post was to try and make it "an accepted part of our overall regulatory framework", so that the job would still be done "whatever the political colour of the particular government".²⁵ We share that goal. **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.**

22. Sir Philip told us that he would not let his independence be compromised, going so far as to say that he would resign if any attempt was made to sway him unreasonably:

What it rests on is my own willingness, if I thought I was being crossed in the job or prevented from doing it properly, to walk away from it. Frankly, I would do that ... It would be a very public act and it would be done in a very public context, and the ladies and gentlemen of the press would be very interested in it.²⁶

23 Q 6

24 Q 7

25 Q 36

26 Q 46

Such a guarantee is welcome, but we cannot assume that every future incumbent of the post will have Sir Philip's strength of character. We cannot expect every possible incumbent to be as willing to walk away from the job. It must surely be preferable to ensure that the Government is not in a position to prevent independent action in the first place.

23. The inability to instigate investigations is a significant check on the supposed independence of the Prime Minister's Independent Adviser on Ministerial Interests. It is by no means, however, the only restriction on the Adviser's independence. Indeed, our discussions with Sir Philip suggested a number of flaws with the post as currently constituted – to the extent that we were led to question whether the title of “Independent Adviser” was itself a misnomer.

24. In our report of 2007 on the regulation of conduct in public life, we set out some key design principles for all bodies assessing the conduct of public office-holders:²⁷

To achieve a high degree of independence, constitutional watchdogs should:

- have secure legal foundations, so they cannot easily be abolished or their governance arrangements inappropriately amended;
- be appointed by resolution of one or both Houses, ideally for a single non-renewable term;
- be removable only on address from both Houses;
- have secure funding arrangements, beyond the sole or direct control of the Executive;
- have their own staffing, accommodation and access to the other services and facilities they require;
- have operational autonomy, with freedom to initiate their own inquiries.

27 Public Administration Select Committee, Fourth Report of Session 2006–07, *Ethics and Standards: the regulation of conduct in public life*, HC 121, para 49

To achieve sufficient accountability, constitutional watchdogs should

- report regularly to Parliament and the public in their activities;
- be regularly scrutinised by parliamentary committees;
- be scrutinised by bodies responsible for providing their resources, in particular in relation to their budgets and corporate plans and performance;
- be subject to audit arrangements supervised by the NAO;
- be subject to the supervision of the courts through judicial review;
- be transparent and subject to the Freedom of Information Act;
- be subject to the appropriate statutory Ombudsman scheme;
- be subject to the OCPA Code in relation to their own appointments;
- create and maintain a comprehensive and accessible public website.

The post of Independent Adviser on Ministerial Interests meets very few of the accountability requirements—and none of those associated with independence.

Securing independence

25. Having listed factors needed to secure independence for Sir Philip Mawer and his successors, we do not propose to discuss them each in turn. However, certain particular concerns do warrant a particular mention. Those concerns are: the security of the postholder's tenure; the level of reliance on the Cabinet Office; and the lack of public visibility for the post.

26. Security of tenure is crucial to independent action. We saw in 2007 that there was controversy over the Government's decision not to reappoint Sir Alistair Graham as the Chairman of the Committee on Standards in Public Life. As long as the Government determines whether a person will stay in their job, there is a powerful incentive for that person to not displease the Government. This is not compatible with independence from government. The Government has in fact conceded this point when it accepted our recommendation that "the most effective safeguard against concerns that regulators' independence may be influenced by a desire for reappointment is to provide for a reasonably lengthy single non-renewable term."²⁸ Yet Sir Philip Mawer was not appointed on such a term. He told us that he was employed by the Cabinet Office as "a consultant",²⁹ and for no fixed term:

28 Public Administration Select Committee, First Special Report of Session 2007–08, *Ethics and Standards: The Regulation of Conduct in Public Life: Government Response to the Committee's Fourth Report of Session 2006–07*, HC 88, p 4

29 Q 41

It is an appointment by the Prime Minister and by the Prime Minister of the day. It, therefore, follows that if this Prime Minister loses office, for whatever reason, stands down, resigns, retires, what have you, the new Prime Minister would have to make a new appointment.³⁰

27. If the possibility of dismissal by someone who may himself be under investigation is troubling, so too is the reliance on government for staffing, housing and funding. Sir Philip told us that he did not have a dedicated staff of his own.³¹ Unlike other regulators supported by the Cabinet Office, whose staff were civil servants but on secondment to the regulators, he was to be supported by serving civil servants in the Propriety and Ethics team in the Cabinet Office. **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.**

28. The scrutiny of government is a function which constitutionally ought to be performed by Parliament. We have argued before that Sir Philip's job should be carried out by a serving Officer of Parliament. The Government, while stressing the helpfulness of Sir Philip's experience in Parliament, disagrees:

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.³²

Given that the only previous occupant of the post, Sir John Bourn, was a serving Officer of the House combining the post with his work as Comptroller and Auditor General, it is baffling that the Government now thinks such an arrangement is inappropriate. **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.**

29. **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.**

Ensuring credibility

30. Independence is a prerequisite of effectiveness for the new post. But it is not the only factor which needs to be considered. Public confidence will not be increased unless the post is also publicly visible and accountable. At the moment, this does not appear to be the case. Establishing a public profile will take some work—a point Sir Philip Mawer acknowledged:

30 Q 71

31 Q 37

32 Public Administration Select Committee, Fourth Special Report of Session 2006–07, *The Ministerial Code: the case for independent investigation: Government Response to the Committee's Seventh Report of Session 2006–07*, HC 1088, p 4

Drawing on my past experience, what makes for public awareness of your role is when there is a crisis and the newspapers carry your name and then the allegations, and all the rest of it, flood in.³³

We accept this point, but at the moment it is difficult even for informed and engaged members of the public to find about his role and what he is doing. Part of that responsibility lies with us, and we will work to hold Sir Philip and his successors to account. The primary responsibility, though, will lie with Sir Philip and his staff. The Independent Adviser will not increase public confidence if the public do not know that the post exists. **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.**

5 Conclusions

31. Two years ago we welcomed the creation of the post of Independent Adviser on Ministerial Interests as “a small step towards adequate investigation of breaches of the Ministerial Code”.³⁴ The extension of this post is another, arguably more significant, step. Yet there remains some way to go before an investigatory machinery is in place that will achieve its purpose. As we have noted, the inability to instigate investigations is a significant flaw in the institutional design of the post. So too is the continued uncertainty over whether findings of investigations will be published. Public confidence in ministers will not be improved by investigations which are instigated by the Prime Minister, staffed by civil servants, and reported only to the Prime Minister.

32. Independent investigation of allegations is in the interests of government. A system which was seen to work well, and commanded public trust, would produce fairer outcomes than are achieved at present, where ministers are essentially subjected to trial by media. **We are also attracted to the notion that dismissal should not be the only punishment available for a breach of the Code.** There is currently no other sanction to deter non-compliance, but some breaches of the Code (especially where they are effectively concerned with procedural matters) clearly do not warrant dismissal.

33. **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.**³⁵ 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.**

34. **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**

33 Q 54

34 Public Administration Select Committee, Seventh Report of Session 2005–06, *The Ministerial Code: the case for independent investigation*, HC 1457, para 41

35 Q 21

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.

Conclusions and recommendations

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)
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)
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)
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)
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)
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)
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)
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)

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)
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)
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)
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)
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)
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)
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)

Appendix 1: Note from Catherine McGrath on changes to the Ministerial Code in 2007

As has become customary, Gordon Brown published an updated Ministerial Code when he became Prime Minister in the summer of 2007. The Code updated the 2005 version, keeping many of its principles, and adding to them, while removing most of the procedural guidelines. This note outlines the key changes that were made.

Previous Codes

A code of conduct for ministers was first published in 1992 in the form of Questions of Procedure for Ministers (QPM). Previously this document had been a private internal memo. Since then it has become customary for each new administration and new Parliament to publish a new code. In 1997 the Blair Government published a Ministerial Code to replace QPM. The Code had a foreword written by the Prime Minister and contained a number of new provisions, such as requiring all major media interviews and appearances to be cleared by the Number 10 Press Office.

The Code was revised again in 2001. This time the Prime Minister was given explicit responsibility for the standards adopted by his ministers and new provisions were added on the treatment of Special Advisers and leaked Select Committee reports. It also offered more advice on special interests and introduced an annex listing the Seven Principles of Public Life. The 2005 Code enacted the Committee on Standards in Public Life's recommendation that the Code distinguishes between the ethical principles and general procedural guidance for Ministers.

2007 Code

The 2007 Code builds upon the 2005 Code. Many of the provisions remain the same, but there are some significant differences in drafting and structure.

The Code was published on the same day as the Governance of Britain Green Paper, which explained some of the changes that had been made. The Green Paper described the 2005 Code as “outdated and unwieldy”, having been “developed over decades as an amalgam of good practice” (Ministry of Justice, 2007, para.121). To combat this, the Code has been restructured to focus on the principles that should govern ministerial actions: it is now arranged into ten chapters, each headed by a principle.

The Code has also been heavily edited, with the majority of the procedural recommendations having been removed. For example, the Ministers and Private Interests section of the 2005 Code contained specific guidance for those with partnerships, directorships and membership of Lloyds which have not been included in the latest version. Similarly the details relating to the supply of parliamentary publications, money resolutions and the requirements for oral and written announcements have been removed from the Ministers and Parliament Section and the chapter on Ministerial Pensions has been taken out in its entirety.

Key Additions and Amendments

Creation of an Independent Adviser on Ministerial Interests:

Previously the Prime Minister was solely responsible for considering accusations of breaches of the Code. However, in 2006 Tony Blair appointed Sir John Bourn as Independent Adviser on Ministers' Interests, offering confidential advice to Ministers and information and guidance to the Prime Minister.

Sir John Bourn did not conduct any investigations during his time in the role and in July 2007 Phillip Mawer was appointed to the post by Gordon Brown. His remit, outlined briefly in the 2007 Code, is broader and more transparent than that of his predecessor:

“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, he will refer the matter to the independent adviser on Ministers' interests.” (2007 Code, 1.3).

He is also required to publish an Annual Report and a list of relevant Ministers' Interests.

Annual Statement of Interests

Under the 2007 Code “an annual statement covering relevant Ministers' interests will be published” (7.5). Ministers must provide their Permanent Secretary with a list of all interests that might give rise to a conflict; previously they were only advised to. If necessary they will also meet with the Independent Adviser on Ministers' Interests.

Obligation to uphold the recommendations of the Advisory Committee on Business Appointments

Under the 2005 Code Ministers were required to “seek advice from the independent Advisory Committee on Business Appointments about any appointments or employment they wish to take up within two years of leaving office”. This provision has been carried to the 2007 Code with the addition that Ministers are “expected to abide by the advice of the Committee” (7.25).

No involvement with constituent complaints to the PCA about their Department

Ministers are now required to refer complaints to the Parliamentary Commissioner for Administration from their constituents to a neighbouring MP when the complaint concerns the Minister's Department. Previously they could investigate unless the case involved them directly. (6.10)

Emphasis on obligation to pay council tax on at least one property

Added to the Ministers' Interests section is a provision requiring them to “personally pay council tax on at least one property” in addition to “ensuring all personal tax liabilities...are properly discharged” (7.10)

Omissions

The 2007 Code has excluded a number of references to the Queen that included in the 2005 version. For example, failure to attend Privy Council was described in the 2005 Code as “discourteous to The Queen” (2005, 6.1) and in some cases required Ministers “to seek the Queen’s permission to leave country” (2005 Code, 10.2b).

Summary of the 2007 Code: Principles, Additions and Omissions

Principles 2007 (by chapter)	Added to the 2007 Code	2005 Provisions Omitted from 2007 Code
<p>1. Ministers of the Crown: Ministers of the Crown are expected to behave in a way that upholds the highest standards of propriety.</p>	<ul style="list-style-type: none"> - Position of independent adviser on ministers' interests created, to whom the Prime Minister refers allegations of breaches of the Code. 	<ul style="list-style-type: none"> - The Prime Minister as sole judge of the standards of behaviour.
<p>2. Ministers and the Government: Collective responsibility requires that Ministers should be able to express their views frankly in the expectation that they can argue freely in private while maintaining a united front when decisions have been reached. This in turn requires the privacy of opinions expressed in Cabinet and Ministerial Committees, including in correspondence, should be maintained.</p>	<ul style="list-style-type: none"> - "Government's discretion" added to the rules governing ex-ministers accessing the documents they handled. 	<ul style="list-style-type: none"> - List of cases in which "it will normally be appropriate to consult the Law Officers". - Reference to the monarchy in regulations for attending Privy Council. - Guidance for legal proceedings involving ministers. - Procedural guidance on preparing business for Cabinet and Ministerial Committees. - Procedures for amending Cabinet conclusions and Ministerial Committee minutes.
<p>3. Ministers and Appointments: Ministers have a duty to ensure that influence over Civil Service and public appointments is not abused for partisan purposes. Civil service appointments must be made in accordance with the requirements of the Civil Service Order in Council and the Civil Service Commissioners' Recruitment Code. Public appointments should be made in accordance with the requirements of the law and, where appropriate, the Code of Practice issued by the Commissioner for Public Appointments.</p>	N/A	<ul style="list-style-type: none"> - Requirements to consult the Prime Minister on certain public appointments. - Guidance on the appointment of unpaid advisers.
<p>4. Ministers and their Departments: The Prime Minister is responsible for the overall organisations of the executive and the allocation of functions between Ministers in charge of departments.</p>	N/A	<ul style="list-style-type: none"> - Guidelines for contact with outside interest groups, including lobbyists. - Guidance on providing references for constituents.
<p>5. Ministers and Civil Servants: Ministers must uphold the political impartiality of the Civil Service, and not ask civil servants to act in any way which would conflict with the Civil Service Code.</p>	N/A	<ul style="list-style-type: none"> - Guidelines in relation to civil servants and party conferences.
<p>6. Ministers' Constituency and Party Interests: Ministers should not use for Party or constituency work facilities provided at Government expense to enable them to carry out their official duties.</p>	<ul style="list-style-type: none"> - If a complaint to the Parliamentary Commissioner for Administration from a constituent is against the Minister's own department, they should ask a neighbouring MP to take the case up on their constituent's behalf. - Where Ministers have to take 	<ul style="list-style-type: none"> - Minister's right to take on a constituent complaint to the PCA if it relates to their departments, as long as it did not directly involve them.

	<p>decisions within their departments which might have an impact on their own constituencies, they must take particular care to avoid any possible conflict of interest. Within departments, the Minister should advise their Permanent Secretary and, in the case of a junior Minister, their Secretary of State, of the interest and responsibilities should be arranged to avoid any conflict of interest.</p>	
<p>7. Ministers and Private Interests: Ministers must ensure that no conflict arises, or could reasonably be perceived to arise, between their public duties and their private interests, financial or otherwise.</p>	<ul style="list-style-type: none"> - Section on official residences. Ministers must pay all personal tax liabilities on official residences and should personally pay council tax on at least one property. - Role of independent adviser on ministers' interests extended to gifts and hospitality and maintenance of other public appointments. - Ministers must consult the Law Officers on legal proceedings in which they are involved in a personal capacity. - Ministers now required to seek advice from Advisory Committee on Business Appointments about employment on leaving office, and expected to abide by advice. 	<ul style="list-style-type: none"> - Specific guidance on Partnerships, blind trusts, Directorships and Membership of Lloyds.
<p>8. Minister and the Presentation of Policy: Official facilities paid for out of public funds can be used for Government publicity and advertising but may not be used for the dissemination of material which is essentially party political. The conventions governing the work of the Government Communication Network are set out in Guidance on Government Communications.</p>	<ul style="list-style-type: none"> - Should normally decline surveys. - Permission from No10 Chief Press Secretary necessary if a Minister wishes to make a complaint against the press. 	<ul style="list-style-type: none"> - Explicit permission of PM to make a complaint against the press. - Requirement to consult with PM if Minister is invited to address a Royal Commission or Commission of Inquiry. - Detailed guidance on press conferences, broadcasting and publication of consultation and White Papers.
<p>9. Ministers and Parliament: When Parliament is in session, the most important announcements of Government policy should be made in the first instance, in Parliament.</p>	N/A	<ul style="list-style-type: none"> - Details relating to supply of parliamentary publications, money resolutions and details of oral and written announcements.
<p>10. Travel by Ministers: Ministers must ensure that they always make efficient and cost-effective travel arrangements. Official transport should not normally be used for travel arrangements arising from Party or private business, except where this is justified on security grounds.</p>	<ul style="list-style-type: none"> - Cabinet Members and Ministers in charge of Departments have the right to authorise special non-scheduled flights in some circumstances. - Provisions on use of official cars. 	<ul style="list-style-type: none"> - Requirements for permission from Prime Minister and Queen for foreign travel.

Appendix 2: Correspondence between the Chairman and the Cabinet Secretary

Letter to Sir Gus O'Donnell from the Chairman, dated 19 March 2008

You will be aware that PASC has recently taken evidence from Sir Philip Mawer, the Prime Minister's newly appointed Independent Adviser on Ministerial Interests. I wanted to take up with you a point that was raised in the session.

Sir Philip suggested in his oral evidence that he did not believe his predecessor in the post, Sir John Bourn, had been asked to conduct any investigations into alleged breaches of the Ministerial Code. We also know that Sir John did not publish an annual report, or a list of ministers' interests, or any document detailing publicly his work as Independent Adviser. The Committee would find it very useful to have a summary of the work that was done by Sir John Bourn during his period as Independent Adviser on Ministerial Interests.

I would also be grateful if you could put this into context by also informing the Committee as to Sir John's remuneration in this role, and the amount of Cabinet Office expenditure on supporting him during his time in post.

Letter to the Chairman from Sir Gus O'Donnell, dated 21 April 2008

Thank you for your letter of 19 March about the role of Sir John Bourn, the former Independent Adviser on Ministers' interests.

Sir John was appointed as the Independent Adviser on Ministers' interests by the former Prime Minister in March 2006. The appointment was a personal appointment made by the then Prime Minister. The appointment was terminated on Tony Blair leaving office in June 2007.

Sir John's role was to provide advice to Ministers and Permanent Secretaries on the handling of Ministers' private interests. Copies of Ministers' declarations of interest were provided to Sir John to enable him to satisfy himself that the arrangements put in place were adequate to avoid any conflict of interest. The terms of Sir John's remit were that all such advice would be provided in confidence.

In terms of investigations, Sir John's remit provided for the former Prime Minister to be able to ask Sir John to establish the facts in certain cases, and to provide him with private advice. In the event, Sir John was not asked to undertake any such investigations. A copy of Sir John's terms of reference is enclosed for your ease of reference.³⁶

The agreed remuneration in the role was £30,000 per year. Sir John was supported in his role by the Propriety and Ethics team in the Cabinet Office. The level of support was minimal and it is not possible to disaggregate the costs of such support from the overall work of the propriety and Ethics team.

Formal Minutes

Tuesday 29 April 2008

Members present:

Dr Tony Wright, in the Chair

David Heyes
Paul Flynn
Kelvin Hopkins

Mr Gordon Prentice
Mr Charles Walker

Draft Report (*Investigating the conduct of ministers*), proposed by the Chairman, brought up and read.

Ordered, That the Chairman's draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 32 read and agreed to.

Summary agreed to.

Papers were appended to the Report as Appendices 1 and 2.

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 Thursday 8 May at 9.45 a.m.]

Witness

Thursday 28 February 2008

Page

Sir Philip Mawer, Prime Minister's adviser on Ministerial interests

Ev 1

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
Second Report	Propriety and Peerages	HC 153
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
Sixth Report	User involvement in public services	HC 410

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 (<i>HC 88</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</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 (<i>HC 1020</i>)
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 (<i>HC 91, Session 2007–08</i>)
Sixth Report	The Ombudsman in Question: the Ombudsman's report on pensions and its constitutional implications	HC 1081 (<i>Cm 6961</i>)
Seventh Report	The Ministerial Code: the case for Independent Investigation	HC 1457 (<i>HC 1088, Session 2006–07</i>)
First Special Report	The Attendance of the Prime Minister's Strategy Adviser before the Public Administration Select Committee	HC 690

Oral evidence

Taken before the Public Administration Committee

on Thursday 28 February 2008

Members present

Paul Flynn

David Heyes
Kelvin Hopkins
Julie Morgan

Mr Gordon Prentice
Paul Rowen

Witness: Sir Philip Mawer, Prime Minister's Adviser on Ministerial Interests, gave evidence.

Q1 Mr Prentice: Could I call the Committee to order? Our Chairman, Tony Wright, cannot be with us today and I have been asked to take the Chair. Welcome to Sir Philip Mawer, who is our witness today. We all know that Sir Philip was the Parliamentary Commissioner for Standards for some five years, I think.

Sir Philip Mawer: Almost six.

Q2 Mr Prentice: Almost six years in the salt mines, and has now moved to this job as the Prime Minister's Independent Adviser on Ministerial Interests. You are just getting your feet under the table, I think. You got the job last month.

Sir Philip Mawer: That is correct, yes.

Q3 Mr Prentice: I wonder if I could kick off by asking you, quite simply, what the primary purpose of your job is as the Prime Minister's Independent Adviser on Ministerial Interests?

Sir Philip Mawer: Chairman, thank you. Thank you for the opportunity to appear this morning and thank you to PASC for the intelligent interest it has taken in these issues. It is important that they are discussed in a forum like this, where you can have a more reflective debate about these critical issues for the governance of our public life. To answer your specific question, there are really two aspects to the role, as I understand it: one is to be available to ministers and to permanent secretaries to advise on avoiding conflicts between ministers' private interests on the one hand and their public responsibilities on the other, and the other aspect of the role is to investigate, when the Prime Minister, advised by the Cabinet Secretary, so decides, allegations against government ministers. Those are the two aspects. In that sense, because there are two aspects to the role, it is a wider role than, I think, my predecessor, Sir John Bourn, enjoyed.

Q4 Mr Prentice: We have had two codes, have we not? We had a ministerial code drawn up by the previous Prime Minister—we can call it the Blair code—and we have got a new one that was brought in under Gordon Brown when he became Prime Minister. What are the big differences between the Blair code and the Brown code?

Sir Philip Mawer: Partly as a result of recommendations that this Committee and the Committee on Standards in Public Life have made in the past, the Brown code is much more principles-based. The Blair code was the result of a steady accretion of provisions. As you know, each Prime Minister coming into office promulgates their code and there had been this steady accumulation of material over the years. The code which Gordon Brown approved in July of last year is much more principles-based and a lot of the detail has, therefore, been relegated to separate advice. I think, in that sense, I hope, it is sharper, more focused and, therefore, a more useful tool, both to ministers themselves and to those, like you, who exercise supervision over them.

Q5 Mr Prentice: Is the term "independent" a misnomer, because you cannot investigate an alleged breach without the Prime Minister's say so?

Sir Philip Mawer: I do not think it is a misnomer at all, Chairman, for this reason. First, I entirely bring my independent judgment to bear on the issues that are put before me. For example, in relation to the advice side of the job (which is an important aspect of the job because, frankly, the more we can do to prevent problems from arising in the first place the better), it is my independent view which is transmitted to ministers and their permanent secretaries, and I think there is no doubt of my independent status in that area, nor will there be in the investigation function in relation to my actual conduct of an investigation and the reports I make to the Prime Minister. You have touched on a very specific aspect of the investigation role, which is when I am brought into play, and that, clearly, is an issue which, I think, poses some difficulties for the Prime Minister in this sense. Obviously I am used, in the parliamentary context, to a situation in which complaints come into the Independent Commissioner; he or she decides whether or not they should be investigated, and so on. The Prime Minister's position is different to this extent, I think, that he remains ultimately responsible for the conduct of his administration and, because of that, the first question that is inevitably asked when a newspaper story breaks is: what is the Prime Minister going to do about it? My understanding,

therefore, is that the intention is that the Cabinet Secretary will do a preliminary recce, if you like, to establish the facts on the basis of which the Prime Minister can answer that question, and obviously one potential answer is (and I expect this will be the answer in serious cases) that the independent adviser should be brought in. I see this as a sort of preliminary look by the Cabinet Secretary at the facts in order to advise the Prime Minister on what to do and enable him to answer the inevitable media attention.

Q6 Mr Prentice: What if the Prime Minister decided to take no action and you thought that perhaps it was something worthy of investigation? Would you go and see the Prime Minister and would you put that to him?

Sir Philip Mawer: I can assure you that I am not going to sit there supine. If I believe that something, on the basis of the facts available to me, requires investigation, I shall make that view known to the Cabinet Secretary and the Prime Minister. I have not been brought into this job just to be somebody's foot stool or patsy.

Q7 Mr Prentice: Will you meet the Prime Minister regularly and ask that question: because the former Chairman of the Committee on Standards in Public Life, Sir Alistair Graham, astonished us all because he never actually met the Prime Minister, although he was constantly making statements which were highly critical of Tony Blair?

Sir Philip Mawer: I have had a number of meetings with the Prime Minister prior to my appointment, and I envisage that I will have more as my time in office unfolds. Of course, I hope that, through a combination of the preventative action I referred to and the good behaviour of ministers, there will not be cause for me to have many meetings. Of course I envisage having a relationship which is, through the Cabinet Secretary, direct and honest.

Q8 Mr Prentice: You have been patrolling the whole area of standards for many years, six years you told us. Have there been instances in the past involving ministers when you thought to yourself, "Goodness me, there is a case for an investigation there", but nothing has happened?

Sir Philip Mawer: I cannot point to one in which there was a case for investigation and nothing happened, but I can point to one which illustrated the need for some such arrangement, and that was the allegation against Mr Blunkett in relation to his alleged fast-tracking of a visa application by his mistress's nanny, if you remember the circumstances. I was able, in my Parliamentary capacity, to look into the alleged misuse of a parliamentary travel warrant by Mr Blunkett in that affair, but I was not able to look into the actions of Mr Blunkett as a minister. There was a separate inquiry, in fact, but it involved an ad hoc appointment and it was not possible to relate, as it were, easily the one part of the inquiry to the other. I hope that, with my parliamentary experience behind

me, I will be better placed to enable the thing to be seen in the round without stepping, of course, on my successor here's responsibility.

Q9 Mr Prentice: That is the only example. I ask the question because when we had Sir Alistair Graham in front of us about nine months ago, he said that he was astonished—that is my word, not his—that there was no investigation into John Prescott and his visit to the American ranch. I had no idea at the time that John Prescott was a great fan of cowboy films, and we know about the cowboy boots and all of that, but that was a specific example where Alistair Graham said there should have been an investigation but there was not. He also talked about the Tessa Jowell and the Berlusconi business. We forget these things, do we not? With the passage of time they fade. But he pointed to that as another example where there could have been, and perhaps should have been, an investigation but there was not. I come back to the point I made earlier: if you think there is a case for investigation and you hit a prime ministerial brick wall, you will insist on an investigation happening?

Sir Philip Mawer: Firstly, on the cases that you have mentioned, in fact there was an investigation into the John Prescott affair, because I conducted it, and I conducted it because the Ministerial Code says that hospitality received by a minister must be declared in the Register of Members' Interests; so that gave me a locus and I was able to investigate; and you may recall that there was a report which I made to Standards and Privileges accordingly.¹ In that case there was an investigation and, of course, there was a dividing line which I had to observe in terms of my locus as a parliamentary officer and not an executive official, as it were, but I was able to, in effect, look at the allegations against Mr Prescott in that case. On the other matter, the Tessa Jowell matter, in my parliamentary capacity I met Mrs Jowell, but I received no formal complaint about Mrs Jowell and there was no evidence of any breach of the parliamentary rules and, therefore, there was no locus for me to proceed. I mention that to illustrate that perhaps the field is not quite as virgin as you have previously gained the impression. On your final and critical point: am I going to insist on an investigation? I doubt that I am in a position to insist on an investigation.

Q10 Mr Prentice: You could resign, for example?

Sir Philip Mawer: I think any regulator, if I may say so, who occupies the kind of position that I have occupied for the last six plus years now, knows that that is the ultimate sanction and, at the end of the day, you only go into these jobs because you have a very strong belief in the importance of public service, of ethical values as the dominant requirement in the way that service is conducted and a strong feeling that you are not going to flinch when you see those values being jeopardised in some way. So, at the end of the day, yes, if I judge that the conditions which

¹ Committee on Standards and Privileges, Thirteenth Report of Session 2005–06, *Conduct of Mr John Prescott*, HC 1553, Appendix 1

28 February 2008 Sir Philip Mawer

are being placed around me mean that I am not able to do the job properly, then I will have no hesitation in saying so. I want to add this point, and I think the parliamentary experience demonstrates this: it takes time for these kind of arrangements to bed in, it takes time for people to become, not comfortable with, but accustomed to, their existence and it takes time to ensure that the way in which they are conducted carries confidence with the public on the one hand and with those who are being regulated on the other. The reason I have taken on this job, frankly, is because I perceived a gap, which this Committee had identified, among others, in the arrangements in this area, and I see Gordon Brown's appointment—the role that he has sketched out, I should say, not the individual appointment—as a move forward, and it is because I regard it as that and want to build on the opportunity that he has afforded that I have agreed to take on the job.

Q11 Mr Prentice: When are we going to get your annual report? I know it is very early days, but you are going to publish an annual report?

Sir Philip Mawer: Indeed. I am intending to produce it before the summer, and I do not mean in the week before the summer recess. I shall try and make sure that it comes out in good time for you and others to be able to see it before the recess starts. I think it is a very important part of the job that the public, you, should know what is going on. Obviously there are limitations in relation to individuals. I am convinced, not least as a result of my former job, that you have got to deal with individual cases in a confidential manner, but the general principles that are being followed, the procedures and processes that I am putting in place, I want to be able to report on, and the Prime Minister has endorsed that and so there will be an annual report before the summer recess.

Mr Prentice: Excellent. Let me bring my colleagues in. Paul.

Q12 Paul Flynn: Who approached you and asked you to consider this role?

Sir Philip Mawer: The Prime Minister.

Q13 Paul Flynn: Were there other candidates?

Sir Philip Mawer: I do not know. You would have to ask the Prime Minister himself. It was not advertised, if that is the point you are getting at.

Q14 Paul Flynn: We are talking of going into more pre-appointment hearings. Do you think your job will be one in which there should be a pre-appointment hearing?

Sir Philip Mawer: In a way we are having almost a pre-appointment hearing, in the sense that you find me relatively new in post, and, frankly, I am regarding this as an occasion when you can advise me, in part, on how I approach the job. The kind of job I am doing is a personal job at the end of the day, personal both in terms of the kind of relationship that you have got to have with the Prime Minister and those with whom you deal and personal in the sense that you are taking a personal responsibility at

the end of the day. Whether, therefore, it is suitable for the full panoply of the public appointment process, I am not sure. In terms of pre-appointment scrutiny, I think that is something we are all feeling our way into, is it not, including this Committee?

Q15 Paul Flynn: You say you are not a patsy or a foot stool?

Sir Philip Mawer: No.

Q16 Paul Flynn: But there was speculation, when you followed Elizabeth Filkin, that that was precisely your role, because there was a history before then of Elizabeth Filkin instigating inquiries into people in very high offices that were thought to be troublesome, and they merited discussion, there was debate in the House, and she has been removed because she was doing the job, inquiring into possible bad behaviour by ministers. Was that fair and were you put in as an alternative to someone who was doing their job perfectly well?

Sir Philip Mawer: I do not think it is for me to comment on my predecessor as Parliamentary Commissioner. I think it would be inappropriate for me to do so. Whether I proved to be a patsy or not, you just have to look at the record, I think. I stand on my record.

Q17 Paul Flynn: The investigations that Elizabeth Filkin was carrying out when you took over the job: did you continue with those?

Sir Philip Mawer: I took over the investigations that she left me uncompleted at the point at which she left office. I have looked into a number of prominent politicians, as you know, in my time as Parliamentary Commissioner. We have mentioned some already: John Prescott was one, Mr Blunkett was another. I need only mention Derek Conway, perhaps, as the last report I submitted, to indicate that I was not in any sense in the pocket of Parliament in the way I did the job. I do have this strong view about the proper role of a regulator. There are strategic regulators, like the Chairman of the Committee on Standards in Public Life, who have an overview of the scene as a whole, and it is much more easy for them to make general pronouncements about these matters than it is for those of us who are specific regulators with a specific brief and who have quasi-judicial jobs, in a way, and who have to be very careful always to behave in a way which does not compromise our ability to judge cases fairly and impartially. It is sometimes, frankly, a constraint when I would like to speak out on some of these matters, but that perhaps explains the somewhat lower profile approach which I took to my previous job.

Q18 Paul Flynn: There are two views on this: one is that we are not tough enough with ministers in policing their conduct, and there is another view that we are perhaps too puritanical, which is a view that many members of Parliament and others in European countries would take. If you take the instances of the two Peter Mandelson resignations, do you think, with hindsight, they were the

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appropriate action, given what we know now about the circumstances of the Hinduja brothers and the passport application?

Sir Philip Mawer: At the end of the day, the question of whether a minister resigns or not is one which is for the Prime Minister and for the minister concerned. My view, frankly, is that my job is to investigate allegations and expose where there has been wrongdoing. It is then for the Prime Minister—I am speaking in my current role—to decide whether a minister can continue in office or not. Clearly, in the specific cases you mentioned, there was a history and it was two strikes and you are out.

Q19 Paul Flynn: Do you think it is appropriate that Peter Mandelson should have resigned after the Hinduja brother passport incident?

Sir Philip Mawer: He did.

Q20 Paul Flynn: I know he did.

Sir Philip Mawer: I do not think it is particularly important for me to express a view on whether he should or not. The fact is he did.

Q21 Paul Flynn: But, subsequently, he was found to have no connection with the incident, if you recall.

Sir Philip Mawer: There is an important issue which lies behind your question, which I do think it is important for the Committee to reflect upon, and, indeed, I think it is one that has concerned you in the past, which is whether there can be for ministers something of the equivalent of the yellow card, as opposed to the red card. I think a particular problem in terms of penalties for ministers for alleged wrongdoing is that, whenever an allegation is made, the immediate cry from the press and, inevitably, from their political opponents is that ministers resign. If your question is implying that it would be in the real interests of politicians of all parties to find something short of the red card, short of resignation as a penalty in appropriate cases, then I support that notion. I think it is a matter which will have to be addressed as my role unfolds.

Q22 Paul Flynn: The Prime Minister is likely to be more sensitive than to react with a fire storm of attacks in the press against a minister than you would be. What role would you have in that situation, given what we have seen recently? In the last week or so we have seen attacks on certain politicians, whether they are based on truth or reason, or whether they are hysterical. As I say, the Prime Minister is more likely to act in a political way to ensure---. There was a rule laid down by Peter Mandelson himself that said, if you were the subject of the news for more than five days, you would have to go. That does not seem to be either fair or appropriate.

Sir Philip Mawer: I think, frankly, both ministers, or politicians, if I may say so, and the press have some responsibility in this area. The press do not get into these matters without some cause for doing so. Politicians have to look at their own behaviour and not give, as it were, a reason for the press to become interested in the first place. But the press can, in their

treatment of these matters, be disproportionate and, frankly, dishonest on occasion. If I could take a parliamentary example: I strongly deprecate the way in which the press will wrap up all of a Member's expenses, which are paying for staff and all the rest of it, into a Member's alleged take-home pay. It is a bit of dishonest journalism, frankly, when that kind of thing happens. However, that does not avoid the fact that there are problems in the area of MPs' allowances and they need resolving.

Q23 Paul Flynn: Dishonest journalism—that is a shocking idea. We will try to digest that. The revolving doors, which is something ministers and civil servants are very concerned about. We have many examples of ministers who serve in a department and then, within months of leaving that department, we find them working for companies to whom they have awarded large contracts when they were ministers and receiving very large salaries. Do you have any responsibility for looking after former ministers or making judgments on the conduct of former ministers and, if you do not, should you have it?

Sir Philip Mawer: My understanding is that my remit will extend to serving ministers. There is the separate Advisory Board, as you will know—you interviewed witnesses from it last week—and there is, clearly, a separate inquiry which you are pursuing in that context. My understanding is that my remit will relate to serving ministers not former ministers, that is, in my independent adviser role.

Q24 Paul Flynn: In the last few months there has been a collapse of confidence in politicians, in the political system, a more serious one, I think, than possibly many MPs would like to acknowledge. Do you think the existence of your post and what you do will do something to restore that trust?

Sir Philip Mawer: I hope so. I would not be doing it if I thought otherwise. I think, though, the question of trust in politicians is a deep-seated one. It has far more aspects than just whether effective regulation is in place. We touched on a couple earlier. One is the behaviour of politicians themselves; one is the behaviour of the press in their treatment of these matters. Another, frankly, is that you are swimming against centuries, if not millennia, of suspicion of politicians. I think it was Aesop who said, "We hang the petty thieves and appoint the great ones to public office." This is a recurrent theme and perhaps one that is particularly strong in a society which is cynical about institutions, from the monarchy downwards.

Q25 Paul Flynn: You are not at all cynical after the years in your job?

Sir Philip Mawer: No, my view is that most people go into politics because they want to make the world a better place; they do so out of a sense of public service. Of course, a very few, a very small minority, bend the rules or attempt to take advantage of them, but, frankly, they are no different in that from those I have come across in any other walk of life. And this is what the public needs to recognise too, because

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trust at the end of the day is a quality of a two-way relationship, a relationship between governors and governed, as it were, between representative governors and governed, and just as politicians need to demonstrate that they deserve trust, so the public, at end of the day, have to be willing to give trust; they have to be willing to grant it and recognise that politicians deserve to be given some freedom to make decisions and, just occasionally, indeed, to make mistakes. Even politicians, I would like to suggest, are not beyond redemption.

Paul Flynn: That is very reassuring. Thank you very much. I am grateful to you.

Q26 Mr Prentice: You told Paul a few moments ago that you have been thinking, although it is very early days now, about penalties, that if there is a ministerial transgression, the cry goes up for that person to resign, and you mentioned, I think, perhaps there should be a yellow card. Do you have any early views on that? What form would the yellow card take? Would it be a suspension: you cannot attend the Cabinet for a month, or something? What do you have in mind?

Sir Philip Mawer: Clearly sending the man off the field or the woman off the field for a short while, I think, is not an option.

Q27 Mr Prentice: Fining them?

Sir Philip Mawer: It is more difficult in the case of ministers, clearly, to work out a kind of tariff of penalties equivalent to the kind of tariff that exists in the House, but, clearly, one possible approach for very minor breaches of the code is for the minister concerned to come to the House and make a personal statement, a personal apology, and be answerable to the House, not just as in constitutional theory but in practice, for what they have done in that respect. But, clearly, if an offence is such as to cast doubt on the credibility of a minister in the role, then that makes such an approach difficult. I have not got the answers in this area.

Q28 Mr Prentice: But you are working on it?

Sir Philip Mawer: It is not for me, it is for the Prime Minister to work out what the tariff should be, but I do think that it is in everybody's interests to try to work out something falling short of the red card on every occasion: because the trouble with that is that it simply feeds the public view that all these people are guilty and need to be turfed out at the earliest opportunity.

Q29 Mr Prentice: I think an apology to the House of Commons would keep them all on their toes, would it not?

Sir Philip Mawer: I am always in favour of not just observing the constitution in theory but in practice.

Q30 Julie Morgan: To go back to you in this role, you talked earlier, saying you were attracted by ethical values. Is it your ethical values that attracted you to the job?

Sir Philip Mawer: I have a background, as you may know, in public service and also in the service of the church, and those two strands in my life—serving politicians, ministers, of both main parties, governments of both main parties, and an interest in ethical issues—came together in my last role, and I see them as informing the role as I go forward, the new role. I see, looking back, a thread of continuity. I hope I am not mistaken in that.

Q31 Julie Morgan: In answer to Paul's question, you said that the Prime Minister approached you to do this job.

Sir Philip Mawer: Yes.

Q32 Julie Morgan: What is your personal relationship with the Prime Minister?

Sir Philip Mawer: I knew Gordon Brown when I was a student at Edinburgh University because we overlapped there as students. He was editor of the Student Newspaper when I was Senior President of the Student Representative Council. As editor, I think he saw his job as being to make my life as President as difficult as possible. That was certainly how I viewed it—nothing new there in the relationship between journalists and politicians—and so we knew each other but we were not friends, it will follow from that.

Q33 Mr Prentice: Are you friends now?

Sir Philip Mawer: I would not describe us as friends. Since university days I have met him only a couple of times in the street; so acquaintances, yes, with a past shared history, but social friends, no.

Q34 Julie Morgan: Do you feel sufficiently independent from him to operate?

Sir Philip Mawer: Absolutely. I would not have taken the job on if I had had any reservation about that at all.

Q35 Julie Morgan: Do you do any other job?

Sir Philip Mawer: I am a non-executive director of a small insurance company, which I have rejoined following my departure from the House. It is called the Ecclesiastical Insurance Group, and it principally insures churches, schools, and the like, and it does not have independent shareholders; it is owned by a trust.

Q36 Julie Morgan: Did you consider continuing with your previous job with this new job at all?

Sir Philip Mawer: That was not for me to decide. I think there is an issue for the House and, indeed, for the Government as to whether the same person could be both Parliamentary Commissioner and Independent Adviser to the Prime Minister. It would certainly require two reporting lines and I am not sure whether the House authorities, for example, would regard it as proper for someone who was essentially an officer of the House, as the Parliamentary Commissioner, also to be an appointee of the Prime Minister in a different capacity. I do not know what their view on that would be, but it is a question which someone would

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have to address if they thought they were going to bring these two roles together. I do hope, as I said, that the one I did here will inform the one I am now doing. I think in the initial stages, and I regard it as the initial stages, not just in terms of my own tenure but that of Sir John Bourn too—we are still getting our way into forming and shaping this role—it is rather important that one can focus on it pretty fully. Indeed, one of my aims is to try to get systems and processes in place which will allow it then to become an accepted part of our overall regulatory framework and enable it to continue, not necessarily with the same person in place but to continue as a piece of machinery into the future, whatever the political colour of the particular government.

Q37 Julie Morgan: How many staff have you got or will you have?

Sir Philip Mawer: I do not have a dedicated staff of my own. I am working with the Propriety and Ethics Team in the Cabinet Office, and that makes sense, because they are the people who are in daily touch with permanent secretaries about these issues, and so I am being supported and serviced from there. In its advice capacity, it is not a full-time job, not by any means. Of course, if and when inquiries are called for, I expect the time demand to increase very significantly indeed, and one thing I am trying to do in my personal life is to keep enough capacity to cope with that if and when it happens. As far as staffing an inquiry is concerned, I will look to be supported by staff from the Cabinet Office, bringing in such other expertise from within or outside government as is necessary.

Q38 Julie Morgan: So the staff in the Cabinet Office do not work for you; they have got other jobs and come to you at specific times?

Sir Philip Mawer: They come to me with problems; they come to me with issues. For example, since my arrival in the job I have gone through all the returns from ministers of their personal interests. As you know, ministers are required to make returns which are more wide-ranging than those which are made by Members of Parliament, because they carry executive as well as parliamentary responsibilities, and so I have been through all those, looked at them alongside the particular responsibilities of each minister, raised questions where I thought that they needed raising in terms of clarifying facts, raised questions where I thought there was the potential for a problem or possible conflict and transmitted that. That advice has been sent back by the Propriety and Ethics Team to the permanent secretary of the department concerned. So, one of my tasks, as I see it, is both to challenge and support. It is to challenge, in the sense of probing and asking sensible questions as the reasonable outsider, if you like, about these issues; it is also to support the civil servants in the dialogue that they have with ministers about these issues. It may be on occasion—it has not happened yet—it will be necessary for me to go and see a minister and talk to them and talk them through an issue. It is that kind of walking alongside role, as I see it, but not walking in the pocket of, walking as a

critical friend, if you like, that is the advice function; and in the investigative function, of course, one is an investigator. One has to be clear about the distinction between the two roles.

Q39 Julie Morgan: Are you a civil servant?

Sir Philip Mawer: I was many years ago.

Q40 Julie Morgan: So what is your status now?

Sir Philip Mawer: You mean now?

Q41 Julie Morgan: Yes.

Sir Philip Mawer: I think I am strictly a consultant. I am not an employee of the Cabinet Office. I am employed by them as a consultant on a consultancy basis. I think that is the technical employment basis, Chairman. Frankly, maybe I should have been more concerned about this, but I was more concerned about doing the job and doing it in a way that demonstrated its independence than fussing about the contract, but maybe I ought to have looked at this more carefully.

Q42 Julie Morgan: So you are employed as a consultant?

Sir Philip Mawer: I am employed, but as a consultant. I am not an official, I am not a civil servant. I have not gone through the Civil Service Commission and all that sort of stuff in terms of my appointment.

Q43 Mr Prentice: It is strange, is it not, for an independent regulator to be based in the Cabinet Office and not alongside all the other ethical regulators? We had Lord Mayhew in front of us, the Advisory Committee on Business Appointments, and they lived together happily, all the regulators together, but it seems strange that you have got to draw on support from the very propriety and ethics people who are advising the Cabinet Secretary and permanent secretaries, and so on.

Sir Philip Mawer: It is not that different, in a way, from the situation that operates in the House. I had my team as Parliamentary Commissioner, but they are the same people who are advising members day to day on what to register, what not to register, what to declare, what not to declare.

Q44 Mr Prentice: So there would be nothing wrong with taking all the other ethical regulators and having them supported by the Cabinet Office?

Sir Philip Mawer: You are touching on, I realise, an issue which the Committee has addressed before. There is a question about how the field of regulators as a whole is organised, and you made proposals last year, I think it was, for perhaps beginning to bring them into a more coherently shaped sort of arrangement, and I think when the Cabinet Secretary appeared before you in November he acknowledged that that question was very much still up for debate: how the ethical regulators are best supported and serviced, and so it is a moving scene, it is a shifting scene, and I think exactly how we end up in the future has yet to be worked out.

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Q45 David Heyes: I want to press you a bit further on this consultant status. I am a bit surprised by that. I had assumed you were a civil servant.

Sir Philip Mawer: No.

Q46 David Heyes: Had you not been a civil servant, then the other logical status would be for you to have continued as a parliamentary officer. There would have been logic in that. Ministers are, by definition, members of one House or other of Parliament, but you are neither. You have told us about what seems to be your idea about security of tenure, that you have got the ability to be quite challenging to the Prime Minister if the circumstances warranted it; that does not seem to sit well with the idea of consultant status. Presumably your consultancy can be terminated just like that.

Sir Philip Mawer: Indeed, it is an appointment of the Prime Minister and it can be terminated by the Prime Minister, but, frankly, in my independence the guarantee of my effectiveness in the role does not rest at the end of the day on the particular terms of my contract; what it rests on is my own willingness, if I thought I was being crossed in the job or prevented from doing it properly, to walk away from it. Frankly, I would do that. Moreover, I know I would do it with, first, the support of this Committee, or at least you would rapidly ask me to appear before you and say why I had done it. Whether you then supported me or not would be another matter; but I would be doing it. In short, it would be a very public act and it would be done in a very public context, and the ladies and gentlemen of the press would be very interested in it. It is not something that one threatens to do at the drop of a hat, but it is the ultimate sanction and it is the ultimate sanction one has in any of these roles and, frankly, that is more important at the end of the day than precisely what the terms of your contract are.

Q47 David Heyes: I will not press this any further, except with this one question. Do you know of any other people in comparable jobs to yours, a regulatory ministerial advisory role, who occupy their positions on the basis of consultancy?

Sir Philip Mawer: I do not, but then, I am afraid, that reflects my ignorance of the terms of their particular appointments rather than my knowledge. I am not saying I am the only one. I do want to emphasise that, at the end of the day, as I understand it, the consultancy arrangement is simply a matter of employment convenience; it does not, in my view, describe adequately the status or the degree of security that one has in the job.

Q48 David Heyes: Let me take you back to the annual report. It is very early days and I am not expecting that you have got firm ideas about the shape of the annual report, but have you given some thought to what it might cover? Will it, for instance, include reports of any investigations that you might carry out?

Sir Philip Mawer: The annual report will certainly make reference to any investigations that I have carried out. Whether it will include detailed reports

or not, I doubt, because I see it more as an opportunity to explain the nature of the job, the approach that I am taking to it, including the advice side of the role; and I am envisaging that the report will appear alongside the new list of ministers' interests which the Prime Minister is committed to produce, and I want to take the opportunity to explain, not in specific terms but in general terms, how I approach advising ministers about the avoidance of conflict of interests and so on. I think that will give some reassurance to members of the public and I hope will be helpful.

Q49 David Heyes: Is that an annual report?

Sir Philip Mawer: I am sorry?

Q50 David Heyes: Would that be an annual report? Once you have done that, where do you go next year, other than to repeat what you said this year? One expects an annual report to contain at least a section that says: "These are the things that we did during last year."

Sir Philip Mawer: Yes.

Q51 David Heyes: And you are not going to do that.

Sir Philip Mawer: No, it will do. I am going to do that. It will certainly say what I have done in the past year.

Q52 David Heyes: What would that be? If that is not going to be reports of your investigations, what can it be?

Sir Philip Mawer: It will be, for example, at the end of my first few months in office, a clear description of the nature of the role and how I have gone about doing it. What I regard as the key objectives to be achieved in the role and how I think I am going to achieve them, and, yes, it will give an account of what I have done in the six months or so before it appears, including any investigations that I have conducted. All I was quibbling over is it is not going to be a full account, a detailed blow-by-blow account of every inquiry. I did not do that in the parliamentary context and I would not do it here. I do not see any point in repeating myself.

Q53 David Heyes: Who will your annual report go to?

Sir Philip Mawer: It will be publicly available. It will go through the Cabinet Secretary to the Prime Minister and then be published and, therefore, be available to this Committee and anybody else who is interested.

Q54 David Heyes: I guess one purpose of the job and the purpose of your annual report would be about raising public trust in what ministers do so that we can have confidence in them. Have you got any other thoughts, other than your annual report, for promoting your role, your existence, as part of the process of enhancing public trust in political life?

Sir Philip Mawer: I will seek to do it in any way I can, but drawing on my past experience, what makes for public awareness of your role is when there is a crisis and the newspapers carry your name and then the

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allegations, and all the rest of it, flood in. Yes, of course I will take every opportunity I can to make the existence of my role, the basis on which I operate, and so on, known generally, but in terms of media coverage and what the public are aware of, you know yourself, the media are the key.

Q55 David Heyes: We can expect, perhaps, to see a website about your role?

Sir Philip Mawer: I have not discussed that specifically with the Cabinet Office, but I do not see why there should not be some link to the Cabinet Office site, a page on the Cabinet Office site which indicates the nature of my job, et cetera.

Q56 David Heyes: Do you ever envisage carrying out any investigations that do not find their way into the public domain that are not included in your annual report: any concealed investigation? Is that a situation you can envisage?

Sir Philip Mawer: I have assumed that the whole point of my appointment to the role, and the creation of the role by the Prime Minister in its current form, is to provide public reassurance, and, therefore, I think it unlikely that I am going to be asked to conduct inquiries the result of which will not become, in one way or another, public knowledge. It will be for the Prime Minister to decide, at the end of the day, whether or not my reports are published. I will make my report to the Prime Minister; he will decide whether or not to publish it. I think he has already made clear that he will make public the facts on the basis of which he reaches decisions about what to do in any particular case. I think, in the light of that, it is highly likely that my findings will be made public, the findings of any investigation that I produce.

Q57 David Heyes: I am pretty sure your predecessor did not publish an annual report. It is one of the ways in which I think you are going to be more distinctive in your role—

Sir Philip Mawer: Correct.

Q58 David Heyes: ---and more public about what you do. Do you know whether Sir John Bourn ever conducted any concealed investigations, any investigation that we never found out about, which never got into the public domain?

Sir Philip Mawer: No, I am not aware that he conducted any such investigations.

Q59 Mr Prentice: He did not do any investigations at all.

Sir Philip Mawer: No, I do not believe he did.

Mr Prentice: Indeed, he did not do anything!

Q60 David Heyes: That was the purpose of the question.

Sir Philip Mawer: May I just make the point that investigations are not the whole story. There is the advice side, which actually, as I said earlier, I think is as important if you are to avoid trouble.

Q61 Mr Prentice: You mentioned to David this new list of ministers' interests. In what way would this new list of ministers' interests differ from the Register of Members' Interests that is already publicly available?

Sir Philip Mawer: Ministers are asked to make a more complete disclosure of their personal interests and those of close family relatives than Members of Parliament are, and that is, as I explained earlier, because they carry executive, that is decision-making, responsibilities. They are deciding, for example, on the award of contracts, and so on and so forth. The list is intended, just like the register is, to provide reassurance to the public that there is no conflict and to do that through transparency. The kind of areas in which ministers have to make a wider disclosure, for example—I have mentioned one already—one concerns close family members, another concerns charities and so on with which they have links. Therefore, there are interests which ministers need to make known in their ministerial capacity which go beyond those in the House's Register.

Q62 Mr Prentice: Is it going to go into very fine detail: because I can imagine ministers might find that oppressive if it is very detailed?

Sir Philip Mawer: There is a balance to be struck between the public interest in transparency on the one hand and ministers' right to some privacy in their personal life on the other—and not just ministers' actually. I mentioned close family relatives. I know that that is a particularly sensitive and difficult area, obviously. I do not envisage the list of ministers' interests repeating what is in the parliamentary register. I do not want there to be any confusion about the nature of the two lists. What I do envisage is that it will contain a reference to those, and they will be relatively few, cases in which a minister continues to have an interest which is in some way relevant to their ministerial duties. Therefore, the list, you can expect to be relatively short, because, obviously, one of my tasks in the advice role is to try to avoid, and in many instances my advice is you must get rid of that interest; but there will be a few cases and they may particularly relate, for example, to interests which are held jointly with another family member or, for example, the employment of a close family member—a spouse, or partner, or a child—where you cannot reasonably expect that close family member to leave their employment but the employment is in some way relevant to the responsibilities of the minister and, therefore, particular arrangements have to be made to ensure that there is no possibility of the minister making decisions in cases which would butt into or butt across the particular role of the close family relative.

Mr Prentice: That is helpful.

Q63 Kelvin Hopkins: It is quite obvious, to me anyway, that you are the man for the job, you measure up very well to the seven principles of public service in everything and what you have said

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is very impressive, but should your post be dependent upon having someone of your quality in that post or should the post itself be sufficiently independent and strong for someone perhaps of lesser qualities to do a good job?

Sir Philip Mawer: I am flattered that you should think I am the right man for the job. I believe whether or not that is true will be proved in the doing. In terms of the strength of the post, as I said to you earlier, I think it is an evolving scene and I think this Committee can take some credit for having pointed out the existence of a gap and for the way in which the Prime Minister has responded to that, perhaps not to the full extent you might wish—I do not know what your views will be—but he has certainly responded. Therefore, I regard my role in this as, if you like, that of initiator and trail-blazer, and I think as experience of the role goes on, it will become a more settled part of the arrangements. What that means in terms of appointment, and so on, remains to be seen.

Q64 Kelvin Hopkins: Could I describe a scenario to you? Imagine a wilful Prime Minister, with strong links to the private sector, who has a group of ministers around him to whom he is very personally loyal—some might describe them as cronies, perhaps, but that picture—and then someone in your position, who really thinks there are problems of links with business, for example, which perhaps cut across the public interest. The fact that you are serviced by the Cabinet Office, civil servants who might be intimidated by this wilful Prime Minister could be a problem. You can imagine a situation where your life might be very difficult, or somebody in your post might have great difficulty, which would not occur if they were a parliamentary officer?

Sir Philip Mawer: I have got more faith in the Civil Service, I think, than was implied by your question. Of course civil servants have to work closely with ministers, but I have been impressed in my experience so far by the seriousness with which permanent secretaries take these issues of potential conflict of interest and I think a part of my job is to back them up if they face difficult relationships with ministers in which they have got to say, “Look, frankly I do not think that is on. What you are doing in this area is not appropriate.” Part of my role is to be there as a support, to stiffen the backbone, if I can put it bluntly, of the permanent officials. Would the fact that I work closely with the Cabinet Office be a problem in relation to that? I do not think so, not least because the Cabinet Secretary, if you like, embodies this dual relationship, both befriending a minister, of whatever party or political persuasion they are, befriending in the sense of being there to support, service, encourage and make sure that policies are delivered, and, on the other hand, being the guardian of the Civil Service ethic and approach, which in this country is something we, I believe, still can be proud of, although I know this Committee has ideas for how it can be better enshrined in a contemporary context.

Q65 Kelvin Hopkins: Another area of concern I have is the Ministerial Code and what ministers do after they leave office and, indeed, after they leave Parliament. A delay of two years is required before they take up business appointments, or whatever. I have asked this question of others we have had before us. This could be simply a two-year holiday before they take up a multi-million pound position. Indeed, our former Prime Minister has not even had his two-year holiday; he has taken up some very lucrative positions with banks, or whatever. Is that not a great weakness in the Code, that ministers, with a bit of delay, know that in time they will be of interest to the private sector and can earn considerable sums of money and, with a less principled minister, might influence what they do when in office?

Sir Philip Mawer: Firstly, of course, if there was any suggestion that a minister had been influenced in office by the kind of enticements of the private sector that you were referring to, then that would be a case which I could investigate. Frankly, it would be very serious if there was such an allegation against a minister in office, that they were trimming what they were doing because they were hoping to get a job with some defence, pharmaceutical or other company of some size. There are some really quite difficult questions about what ministers may or may not do when they leave office. I think you need to be very clear about whether you are going to put a permanent ban on ministers; indeed, not just ministers; it would potentially affect others who have not held ministerial office necessarily but have been prominent in public life in one way or another. If you were going to put a complete ban on them ever being involved in the private sector after they have stepped down from a public role, you would have to be very clear that you were going to be even-handed in the way you applied that ban; you would have to be very clear also about what you were going to do in terms of providing them with the retraining, reskilling, or whatever would be necessary, to ensure that they were capable of being employed somewhere after they left this place. I remember there was a report produced not so long ago by the Association of Former Members of Parliament—I may have misread or mispronounced their title—which highlighted the difficulty that Members of Parliament often have in finding some other job when they lose office. That is less of a problem for ministers, for the reason that you have described, but if you were to say, “No, minister, you cannot be employed in the private sector in some capacity or another”—and some ministers may have been in eight departments or something, they may have been in a number of departments—then you have got to have some sensible arrangements in place which would allow you to retrain and re-equip these people—“Fresh Start for Ministers” perhaps!

Q66 Kelvin Hopkins: The problem has arisen since the drive to privatisation has occurred. There clearly are closer links now between government and the private sector. There is an instance I have raised in the Committee more than once of a senior

representative of Amey, a company which has PFI² contracts, and a man who worked for that company at a senior level on PFI contracts who was taken into the Department of Health as Commercial Director to drive PFI contracts out from the inside rather than seducing them from the outside, so to speak. I have raised this as a concern, and a minister berated me for impugning the integrity of this wonderful man. Subsequently, he went off to become, I think, Managing Director of UBS Bank. Is someone who is that close to money, and big money, going to be so dedicated to the public service as he should be, and would ministers who are closely involved with their appointment not stand perhaps to be rewarded at a later stage? I think these relationships are uncomfortable—I find them uncomfortable—and it does not help what we were talking about earlier, the public's trust in politicians, and that they should not be so close to mammon as they are?

Sir Philip Mawer: I agree with you that there are some important issues in this area. I think all I could say is that they are not issues which, as I understand it, are immediately going to be within my new role. They are issues, clearly, for the Advisory Committee, members of which you spoke to last week, and it may well be that there is a need to strengthen arrangements in this area. What I do want to get across is that when you come to strengthen the arrangements you need to be careful about exactly where you draw the line, because if you go for a complete ban, then you have got to reckon with the consequences of that. That is all I was trying to bring out. These issues of ethics are easy to write about in banner headline terms and sometimes things happen which clearly are entirely wrong, and I hope my record as Parliamentary Commissioner demonstrates that I know when they are entirely wrong and am not afraid to say as much. But difficult judgments are also required in establishing the right regulatory framework within which people in public life can function in a way which is not so intrusive, not so onerous, and so on, that the object of effective government is defeated. Getting the balance right in regulation is always a key issue for the regulators and for those who advise on the framework of regulation, as this Committee does.

Q67 Kelvin Hopkins: Is there not a case for you advising ministers not to have close personal relationships with specific companies and businesses when they are framing policy, for example? I will give an example. Before the previous Prime Minister pressed some liberalising gambling legislation through the House for super casinos he met with leaders of American gambling corporations in Downing Street and, allegedly, was with them in wanting to push forward for a large number of super casinos. The fact that he did not get his way in the end, because of resistance in Parliament, meant that the corporate gambling people walked away from Downing Street and were disappointed that the Prime Minister could not get through this gambling

legislation and, therefore, they lost interest in him. Again, it was reported, not in the big newspapers, Private Eye I think it was covered in. Are these not matters of concern, and could you or a successor not advise ministers not to have those kind of close relationships when it is so obvious what it is all about?

Sir Philip Mawer: I would want to assure you that if in my new role I become aware of a relationship between a government minister and some section of business which is improper or inappropriate in some way, then clearly I will advise accordingly. I hope that any permanent secretary worth his or her salt would be alive to just that kind of relationship or difficulty, potential problem, potential impropriety. But there is another important part always of the regulatory arrangement and that, frankly, is this House and it is the press. At the end of the day regulators—work as part of a team may be putting it too highly—but they are among a range of enforcement agencies of which this House is part, and this House's role in ensuring that in fact ministers are held to account for the manner in which they conduct themselves is absolutely critical and, frankly, it is the key issue, in my experience, in Parliament. How effectively that is done is the key issue rather than any of the other issues that so frequently occupy the headlines. It is the effectiveness of Parliament in holding the Executive to account which is the key issue for this House and which is the issue which requires most attention by this House, and I say that perhaps wearing my former hat more than my current one.

Q68 Kelvin Hopkins: I agree with you very strongly. A final trivial example. When I was a councillor some 35 years ago—I was vice-chair of a housing committee on a local authority—I was approached by a friend from a major house-building company who wanted to put a suggestion to me about a scheme he had for our town. I said, "You do not approach me. You approach the Chief Executive of the Council and if you have a proposal, it will come forward before us as a committee and we will look at it, but you do not approach me." This was to a friend. I made that absolutely clear, and he never wrote to the council. It is interesting, but I thought that was a wholly inappropriate approach, and that is the way I responded. Should not ministers respond in the same way?

Sir Philip Mawer: Any politician, anybody in public life in a decision-making role, should respond in that way to an improper approach of that sort. Of course, it requires a culture in which members know instinctively that that is the right thing to do. My job in my new role, as it was in the old role, is to help develop such a culture and ensure that such a culture is in place in Whitehall as in Westminster, and that means a combination of clear rules, confidence in where people can go for advice, effective enforcement and the tone being set from the top. I think the Prime Minister has indicated, through the appointment that he has made and the changes he has made in this area, that he wants his ministers to observe a high standard and, frankly, that is the

² Private Finance Initiative

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basis on which I am proceeding in the job, with that objective—as I said, subject to the caveat that I gave earlier that if I am unhappy that that is not being achieved, that I am not being helped in relation to that, then I will make my views known.

Q69 Mr Prentice: Thank you. We are really on the home straight now. I have just a couple of points to wind up. You mentioned the role of Parliament. Should Parliament approve the Ministerial Code, because this Committee recommended that course of action, but it was turned down by the Government. What is your own view?

Sir Philip Mawer: The Ministerial Code is essentially the Prime Minister's instructions to his ministers on how he expects members of his administration to conduct themselves.

Q70 Mr Prentice: He would write it, but it would come before the House for endorsement, I suppose?

Sir Philip Mawer: I think this is an issue that would be better put to the Cabinet Secretary, or someone of that nature, than to me. My belief is that this Committee has never flinched from an opportunity to make its views known on matters, whether or not they were formally within its remit. I leave it to your fertile—

Q71 Mr Prentice: Fair enough. Finally, the terms of your contract: is it renewable? How long is the contract for?

Sir Philip Mawer: It is an appointment by the Prime Minister and by the Prime Minister of the day. It, therefore, follows that if this Prime Minister loses office, for whatever reason, stands down, resigns, retires, what have you, the new Prime Minister would have to make a new appointment.

Q72 Mr Prentice: So it is *suttee* then: you go when the Prime Minister goes?

Sir Philip Mawer: I go when the Prime Minister goes. It is a personal appointment of the Prime Minister. The fact that that is the case does not mean that I am on the coat-tails of the Prime Minister, for all the reasons I gave earlier.

Q73 Mr Prentice: Are there any questions that you expected us to ask you which we did not?

Sir Philip Mawer: Chairman, no.

Q74 Mr Prentice: We have covered the ground?

Sir Philip Mawer: You have covered the ground and you have also put some questions to me which I was not expecting, and that is always a good thing.

Mr Prentice: Thank you very much. That was a fascinating hour of evidence.