

## Public Administration and Constitutional Affairs Committee

### Oral evidence: Propriety of governance in light of Greensill, HC 59

Tuesday 11 January 2022

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Members present: Mr William Wragg (Chair); Ronnie Cowan; Jackie Doyle-Price; Mr David Jones; John McDonnell; David Mundell; Tom Randall; Lloyd Russell-Moyle; Karin Smyth; John Stevenson.

Questions 212-257

### Witness

I: Lord Evans of Weardale, Chair, Committee on Standards in Public Life.

### Examination of Witness

Witness: Lord Evans of Weardale.

Q212 **Chair:** Good morning and welcome to the first meeting of the Public Administration and Constitutional Affairs Committee of 2022. In this, our first session of the new year, we will be taking further evidence in our “Propriety of governance in light of Greensill” inquiry and other matters. We will be hearing from Lord Evans of Weardale, Chair of the Committee on Standards in Public Life, to hear his reflections on current Government ethics and standards frameworks, and to discuss his Committee’s recent report *Upholding Standards in Public Life*. Lord Evans, good morning. Could I ask you to introduce yourself for the record?

**Lord Evans:** Good morning. I am Jonathan Evans, Lord Evans of Weardale. I am Chair of the Committee on Standards in Public Life.

Q213 **Chair:** Nigel Boardman noted the relative lack of priority given to compliance issues in Government. How can attention to this area best be drawn and, indeed, sustained?

**Lord Evans:** Mr Boardman was absolutely right to draw attention to this, because it is one thing to have a set of standards and rules, but if there is not a proper system in place to make sure that people are complying with them, they can become a dead letter. His recommendation, which we



strongly back and also reflected in our recent report, *Upholding Standards in Public Life*, was that Government need to take the whole question of compliance much more seriously. At the moment, it is under-resourced. It is not given the priority that it should have across various Government Departments. This needs to be put on a much more professional and properly resourced basis.

Talking to and taking evidence from some leaders in the business world, we were struck that some of the regulated corporations are much more professional in the way that they seek to meet their compliance requirements. There may be things that Government can learn from them, but there needs to be a central compliance function that understands and can interpret and advise on the rules.

There needs to be a responsibility for those people running individual Departments to understand what they need to comply with and to do so. That needs to be properly assured and there needs to be an audit process, so that if there are areas where people are falling down, they are identified and can be put right. At the moment, the Government's system is very weak in comparison to where we believe it should be.

Q214 **Chair:** Just building on that, is it primarily the responsibility of Ministers or should the civil service be taking its own steps—or is that a false division?

**Lord Evans:** It is a responsibility of Ministers, as the political leaders of Departments, to satisfy themselves that there are procedures in place to ensure that the Departments and various parts of Government are living up to the standards that Ministers themselves endorse. It is not for Ministers to design and run the processes—that is a matter for, I would say, the civil service—but it is clear that Ministers should be setting a requirement and giving clear leadership to say, “We believe that these are the right standards. We need to have a proper compliance arrangement. I want to be satisfied that that is in place. What are you doing to ensure that that is achieved?”

Q215 **Chair:** For the record, do you not think that that is evident at the moment?

**Lord Evans:** If you look at, for instance, the very unsatisfactory way in which transparency reports are given in respect of lobbying, it is pretty clear that that is, at the moment, not a priority, and that the system itself appears to be under-resourced and not given the priority that it should have.

Q216 **Chair:** How concerned are you that recent events—whether the Greensill situation or, indeed, more topical matters—that have occurred since your last appearance before us a little over a year ago have impacted on public confidence in standards in public life?

**Lord Evans:** We have seen a whole series of issues over the last few months: the Owen Paterson affair, the attempt to change the rules on



standards investigations in the middle of the investigation into Mr Paterson's actions, the questions around the redecoration of Downing Street and particularly the very bad processes that were clearly in place for keeping Lord Geidt properly informed, the Greensill affair and now Partygate.

All of those have demonstrated that there is at least a carelessness among people in Government over standards issues, and possibly more than that. You only need to look at the media reporting, the front pages of the newspapers over the last few months and, to some extent, the polling to suggest that people are concerned about these issues, that this is an issue that has reached what they call cut-through, and that people care and feel that those people who are representing them in Parliament and being paid to undertake public roles should be living up to the standards that they profess to live up to.

**Q217 Chair:** I think that that is quite correct, for what it is worth. Mr Boardman told us that the rules do not appear to have been broken in the Greensill affair, if I can call it that. How would establishing a compliance function to enforce existing rules more consistently help avoid scandal where it is not clear whether or not the rules have been broken?

**Lord Evans:** That is a very good question. If you look at our report *Upholding Standards in Public Life*, we had three main messages. The first was that, in a number of areas, the rules have to be changed and improved, because they are not clear enough. Secondly, there needs to be greater independence in the regulation of the rules. Thirdly, there needs to be a much better system to ensure that those rules are being complied with. Changing one element of that on its own will not necessarily make the change that is needed. We believe that if all three of those—the rules, the independence and the compliance—are addressed, we will be in a better position and the public will have reason to be more confident.

**Q218 Chair:** Is there perhaps a case study that you would care to share, where one or, indeed, three of those issues had fallen short?

**Lord Evans:** The whole question of business appointments is an example of this, by which I mean business appointments for those people leaving Government or the senior civil service. At the moment, the rules are not particularly tough. The arrangements for their oversight are not fully independent of Government. They do not have an independent statutory basis. The compliance with those rules is not enforced. You have a system that goes some way towards at least providing some moral responsibility on those leaving Government to do the right thing, but it is not enforced and not very clear, and the regulatory body, if you can call it that, does not have the teeth that it needs to make sure that its recommendations are followed through.

**Q219 John Stevenson:** Politicians of successive Administrations—Back-Benchers would probably also agree with this—have complained that



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there is excessive bureaucracy, and that Government is unwieldy. You want good government. To what extent do you think that if you had robust compliance mechanisms in place you could exacerbate this problem of unwieldiness within Government?

**Lord Evans:** There is no doubt that if you are running an organisation with hundreds of thousands of people and many billions of pounds being spent, it can be cumbersome and it can be bureaucratic. The question is the extent to which this particular issue requires proper resourcing and priority. It is a judgment. My view is that it is under-resourced at present.

If it is clear who is responsible for which part of the process, that does not necessarily mean that it should be too cumbersome. If you look at what has happened over the last few months, it is very hard not to suggest that it would be a good idea if we had better compliance arrangements for standards in public life, because if you look at the amount of political and official time that is being absorbed in trying to catch up with a story that has run away, it would have been very prudent proactively to have ensured that people were being careful about these things in advance.

Q220 **John Stevenson:** Following on from that, you have recommended that the Commissioner for Public Appointments, the Advisory Committee on Business Appointments—ACOBA—and the Independent Adviser on Ministers' Interests should be put on a statutory footing. How do you go about doing that? Would it be individual Acts or a consolidated Act? You have said that there should be a central compliance function, so how would you go about achieving that, if that is the desired outcome?

**Lord Evans:** I would put aside the question of a central compliance function; we don't think that that is a statutory matter. That is a matter of proper governance within the public service, and particularly within the civil service, so we think that is not a statutory matter. We have left open the question whether this should be done through one Bill or several Bills. That is not a matter on which our Committee has particular expertise.

The independence of the regulators is very important. It gives a much better platform for a regulator if they feel that they have the authority that comes from being based in statute. From my personal experience, when I was the head of MI5, that role had a statutory basis and it meant that one could be confident, if there was ever any question as to whether Ministers wanted to go one way and the statutory responsibilities were another, that you had a very clear platform on which to stand. That model of independence, particularly where there are issues to do with standards, is valuable.

We were influenced, for instance, by the evidence from Sir Peter Riddell, who was the Commissioner for Public Appointments, who felt that the lack of a statutory basis did put him in a slightly weaker position to stand his ground than would have been the case, for instance, with the First



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Civil Service Commissioner, who has got a statute backing the role that they fulfil.

**Mr Jones:** Lord Evans, your report does not support the creation of a single ethics regulator. Could you explain why that is the case, given that one might have thought that a single regulator would provide a more coherent and consistent approach to regulation?

**Lord Evans:** We did give thought to this, and some of the people we talked to were in favour of this. We have not seen any detail as to how a single regulator would operate, so it is not quite clear to me exactly what the arrangement would be from those people who do advocate this.

We also reached out to some overseas equivalent bodies and found that they weren't quite as comprehensive and wide-ranging as their titles suggested. The evidence that we took suggested that actually they had quite a narrow focus. Indeed, in Washington there is an Office of Government Ethics. I am not sure whether events over the last few years in Washington suggest that that has necessarily proved to be the strongest of models.

So there are a number of factors here. One is that if you are talking about a single ethics regulator, it would presumably be regulating the standards applied not just to MPs but also to Ministers, civil servants and maybe beyond that. I don't know whether this would cover the health service or the military. The requirements in respect of those organisations, in terms of both the day-to-day issues that are likely to be relevant in standards terms and the constitutional position of those individuals, are very diverse. So, if you had a single regulator, it would need to be highly sensitive and have different sets of requirements for different parts of the area that it was regulating, so I am not quite sure how unified an organisation it could be.

There were also some reservations on the Committee, which I share, as to the extraordinary power that such an organisation would have. Whoever was the head of this regulatory body would be calling to account the Prime Minister, Parliament, MPs, Ministers, the Cabinet Secretary and possibly beyond that. You would be placing a huge responsibility in the hands of an unelected official, so there would be some interesting accountability issues in terms of that individual. If they are overseeing the work of the Prime Minister, for instance, in his oversight of the Ministerial Code, to whom is that individual going to be responsible? Is he going to be responsible to Parliament? If so, is he going to have oversight also of the behaviour of parliamentarians?

It is not impossible that you could wire this in a way that worked, but it presents some really big challenges and you would have to be extremely confident in whoever it was who was this hugely powerful and saintly figure who could oversee everything without any question of his or her own integrity being in play.



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Q221 **Mr Jones:** Was that issue of accountability your principal concern, would you say?

**Lord Evans:** I would say that there were two things. One was that issue of accountability—this hugely powerful body. The second was the fact that, in reality, you would have to have separate regimes for different groups. Where is the real benefit if you have separate regimes for different groups, because they have different responsibilities and constitutional positions? Then what are you getting by putting all those together, apart from the superstructure above?

Q222 **Ronnie Cowan:** We are talking about a single ethics regulator. Should we not be talking about a single ethics regulatory body? We could circumnavigate that by having elected and unelected members. We would just have that one place where we go to that has oversight. Right now, a lot of things seem to have fallen through the cracks.

**Lord Evans:** I accept that the current system is complex and I don't think that, in some ways, it is very easy to understand, which is a weakness. The question is what you put in its place. It may be that there is a model that would achieve greater authority and coherence, and avoid undue complexity in itself and accountability issues. I have not—and we have not, as a Committee—seen any proposals around anything of this sort, beyond the headline term of a single regulatory body or organisation. So I don't know what it is that it is being proposed in any detail.

Q223 **Ronnie Cowan:** Surely, we have it within ourselves to design what is required.

**Lord Evans:** We have looked at the question, from our perspective, as to whether we believe that this would be the most fruitful way of going from where we are today to where we need to be, and we did not conclude that that was the direction. We are an organisation that depends very heavily on the evidence that is presented to us. We have a very small staff and a very limited budget. Therefore, we look to other experts and take seriously the evidence that they give. We have not had any significant evidence on this question at all from any individuals or organisations that we have spoken to.

Q224 **Lloyd Russell-Moyle:** Just carrying on from what you have been saying there, there seems to be a need, which you have mentioned before, for statutory underpinning for some of these. Is there a case to have one statutory underpinning framework that you might have different bodies coming out of, which then gives a duty to those bodies to co-operate, so that you do not have people falling through the gaps?

**Lord Evans:** That is an interesting idea—the idea that there should be a statutory duty upon the regulators to co-ordinate their activities. I have not given it a great deal of thought because we have not had it proposed to us. On the face of it, I think that is an attractive idea. There is informal dialogue between the various regulatory bodies. There are various fora,



for instance, on election issues. Organisations that have some degree of responsibility for the integrity of the electoral system do meet regularly. It would be quite sensible to consider a degree of statutory duty, if statute was brought forward on this issue.

**Q225 Lloyd Russell-Moyle:** Ministers, for example, are, in the main, if not always, Members of Parliament or Members of the Lords—one of the Chambers of Parliament—and so you have two bodies regulating it. But in your report, it says that it is essential that the Prime Minister oversees the Ministerial Code and that it is not necessarily underpinned via statute. Why would a statutory code for the Prime Minister and the Ministerial Code, which the Prime Minister is legally required to abide by, lack authority?

**Lord Evans:** If you think about this from the perspective of the seven principles of public life, there is a responsibility on all of us who are in public roles, whether those in Parliament or those who are officials, to live up to the seven principles. That is widely accepted.

The Prime Minister's role as leader of the Government is to set the tone that should be in place for his or her Government. They are the leader of the Government and I think it is right that they should own the code of behaviour which they are standing behind. So, from that point of view, I think there are attractions in having the ownership of the code set living with the Prime Minister as the Head of the Government. Of course, the Prime Minister is then responsible to the Queen for the recommendations as to ministerial roles, so there is a sort of constitutional side issue.

The key thing is that I don't feel that, ideally, we should have a situation where the ethical code for Government is set by somebody else outside. I think it should be the Prime Minister who takes that lead, and who is then accountable for ensuring that that is upheld.

**Q226 Lloyd Russell-Moyle:** Is there not a difficulty if you have Members of the House of Lords and Members of the House of Commons who are following one set of regulatory codes on the one hand and another set of regulatory codes on the other? Yes, it is clear where there is clear delineation in their work, but very often there is a blurring of those lines, and that is very often where the problems are. Is there not a problem there?

**Lord Evans:** I agree; I think there is a problem there. I don't think that there is an easy solution to this, but I absolutely accept that, as an MP and a Minister, you have slightly different reporting rules, for instance on hospitality and so on, which could easily lead you into difficulties, even without any wish to cheat the system. So I agree that there are complications and difficulties with the current system. The question is whether any alternative is significantly better, or whether it leads to other questions arising.



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There are some basic things that I think would be more sensible to co-ordinate. I cannot see why, on issues to do with hospitality, for instance, Ministers should have one set of rules and MPs another. I would have thought it would be entirely sensible to co-ordinate those and to say that, if a gift is worth £150, you report it, whether that is a Minister or an MP. At the moment, those little things vary, and I don't think they vary for any very rational reason. It is that point of co-ordination that you were talking about.

**Q227 Lloyd Russell-Moyle:** Some of that needs co-ordination and it needs a framework to require that co-ordination to happen, which goes beyond the Prime Minister.

**Lord Evans:** I cannot see any reason why the parliamentary Committees responsible for this should not co-ordinate with Government and ask what a sensible threshold is for the Ministerial Code. That would seem to me to be, self-evidently, a good idea.

**Q228 Tom Randall:** Following up on that, Lord Evans, you have argued for the introduction of a statutory obligation on Government to produce and publish a Ministerial Code. If the enforcement of it remains with the Prime Minister, would that make the effectiveness of the Ministerial Code any greater if it had a statutory underpinning?

**Lord Evans:** We have recommended that a number of the ethics regulators be put on a statutory basis. If you say that they are on a statutory basis, there clearly needs to be a code against which they can then regulate, and therefore there needs to be a Ministerial Code. For the reasons that I have just stated, the view of the Committee was that that Ministerial Code should remain the responsibility of the Prime Minister. We also made recommendations, for instance, that the independent adviser have the right to initiate their own investigations into apparent breaches of the code, and that the outcome of those be published. It is then a matter for the Prime Minister to respond to the facts.

In terms of public accountability, that is a model that does not take away from the responsibility of the Prime Minister to be the leader of their own Government, but it does mean that if there are apparent breaches, they are investigated. That is very important because having things hanging in the air is corrosive.

As I have mentioned before, for instance, in the Robert Jenrick case a year or so ago, there were allegations that there was impropriety in regard to planning matters. I don't know whether that was true, and it has never been investigated, because it was announced that there was nothing to investigate. That leaves both Mr Jenrick and the public in a difficult position. I think these issues should be investigated and then the facts can be put down. It is then a political leadership decision for the Prime Minister as to how they respond to that. They would need to account for their decision to Parliament and, ultimately, to the electorate.



Q229 **Tom Randall:** You had an exchange of correspondence last year with the Prime Minister on the role of the independent adviser and changes to his remit. Some of those changes that you called for were implemented and some were not. How effective have the changes that were made been in practice?

**Lord Evans:** It has been very sensible that the change, for instance, in the expectation as to whether Ministers should resign, even if there is a small breach, has been accepted. We have seen that implemented through one of the reports that Lord Geidt issued, so there have been changes. I think there is closer co-ordination between No. 10 and the adviser, as far as I can see, but it is very clear from the exchange of correspondence that took place last week that the situation is not where it needs to be.

I very much hope that the ongoing dialogue that was clearly under way between the independent adviser and the Prime Minister on the role of the independent adviser will lead to, in our view, further improvements in the arrangements. We continue to be of the view that the independent adviser should be able to initiate their own investigation.

Q230 **Tom Randall:** That pre-empted my final question to you. That exchange of correspondence was in April 2021. Do you think that events since then have highlighted that there are shortfalls in the independent adviser's power?

**Lord Evans:** I think it is absolutely transparent and crystal clear from the exchange of letters last week that the independent adviser did not feel that he had been well served by those people who were providing him with information. Whether that was deliberate or whether it was careless, people can make their own judgment, and no doubt do; but it is absolutely clear that the independent adviser feels that the role has not been taken as seriously as it needs to be. In the light of that exchange of letters, I suspect that it will be taken more seriously in future, and I think is a positive step.

Q231 **Chair:** Just to develop that point further on the independent adviser's power of self-initiation, as it were, is not the ability for the independent adviser to ask to commence an investigation sufficient? Would there not be consequences of a Prime Minister denying the independent adviser the ability to do so?

**Lord Evans:** It partly depends, of course, on whether that is a public process. If it is a public process, that would be politically difficult for the Prime Minister, although if we are saying that the net effect is that the independent adviser can initiate, I would say, "Let us just say that they can," rather than going through a rather more contorted process.

One of the aspects of accountability here is visibility, which is why we also recommended that the outcome of the investigations of the independent adviser be published within a set timeframe. One of the issues that arose in respect of the investigation into the bullying



accusations against Priti Patel was that there was a very, very long delay between the conclusion of the investigation and the publication of it, which undermines trust.

Q232 **Chair:** Is there a confusion of semantics or a concern for constitutional principle of the office of the Prime Minister and, indeed, of Ministers?

**Lord Evans:** If I understand your question rightly, I don't think that there is a constitutional problem with an investigation taking place. The constitutional issues are to do with the decisions that the Prime Minister takes in respect of the facts as revealed. We did not recommend that the independent adviser should have the right to sack Ministers or something; I think that would be inappropriate, but I don't think it is wrong for an independent investigation to establish the facts and then for the Prime Minister to be in a position to act on the basis of clear facts. That would also provide public confidence.

Q233 **Karin Smyth:** Just to follow up on that, Lord Evans, you alluded to the previous investigation by the independent adviser with regard to Priti Patel. This Committee interviewed Lord Geidt after his appointment. The challenge he faced, given the resignation of his predecessor, and the Prime Minister's, shall I say, pretty well known view about rules, was made to him very forcefully by many of my colleagues. So he knew which nest he was entering. You said earlier that the processes meant that perhaps he was not able to do the job as thoroughly as he might do. What do you mean by that?

**Lord Evans:** I think it is very clear from the letters that were exchanged last week that the right information was not provided to him when he was undertaking his inquiry, and he makes it very clear that he did not believe that the role that he fulfils was being afforded the appropriate respect by some of the officials and advisers who should have been supporting it. In that sense, he has indicated that he doesn't think that the passage of events over that inquiry was handled in the right way.

Q234 **Karin Smyth:** Given the situation he entered and the resignation of his predecessor, would you not expect someone of his experience and expertise to be more mindful that perhaps they would not be furnished with all the evidence, and to dig a bit further?

**Lord Evans:** Well, I don't know the extent to which he dug, and I see no more than is published on these issues, but I think it is reasonable to expect that if you ask for particular tranches of information from public servants, they should with integrity provide those. I don't know whether there was a deliberate attempt to cover up or whether this was a chapter of unfortunate accidents, but either way, it should not have happened.

Q235 **Karin Smyth:** Can you regulate poor culture?

**Lord Evans:** As a general proposition—and I don't want to comment on whether at the moment cultures are right in one organisation or another—if you try to regulate cultures where individuals want to fight



back, it is very difficult. As a Committee, our current report that we are just embarking on is around those more behavioural and cultural issues, and how they impact on standards, as well as compliance functions, and rules and regulations.

I think most public servants, elected or appointed, want to do the right thing, and I think it is a really good idea if we provide the appropriate induction, and if we encourage people and give them the permission to talk about these things. Being a good civil servant is not just about having excellent programme management skills; it is also about having a strong ethical compass, as it were. I think that is something that we should be giving more thought to, and we should be encouraging thought in that area.

One of the bodies that has been looking at this whole question is the Westminster Abbey Institute, of which I am a fan. I declare an interest because I am on their council of reference. They are encouraging those in public service, whether they are politicians or officials or whatever, to think about these issues and to reflect on the moral purpose of what they are doing, rather than just the mechanics of what they are doing.

**Q236 Karin Smyth:** The Prime Minister has suggested that giving the independent adviser the ability to initiate his own investigations would encroach on the Prime Minister's responsibility for the organisation of the Executive, and you alluded in a previous example to the fact that you perhaps did not agree with that, so I would like you to expand on that. Should a Prime Minister be subject to ethical constraints on appointing their Ministers?

**Lord Evans:** Ultimately, I do believe that it should be the responsibility of the Prime Minister to decide who he wants in his Government and who he should recommend to the Queen. But there is also the question of the public trust in Government and the requirement and responsibility that all people in public life have to live up to the seven principles, which include accountability and integrity. I don't think that there is any conflict between allowing the Prime Minister to lead the Government and the facts of particular allegations being properly investigated. We are not recommending that the adviser should then decide who should be in Government, but I think it is reasonable that the facts should be investigated and placed in the public domain, and then the Prime Minister can respond to those as they think fit.

**Q237 Ronnie Cowan:** I love the idea that we are relying on strong ethical compasses and the Nolan principles. If you are in a situation where you do not have any principles and you do not have any ethics, who is going to keep you true in carrying out your duties? Given the dominance of the Prime Minister in the appointment of the independent adviser and the application of the Ministerial Code, how well equipped is the system to regulate the behaviour of the Prime Minister?



**Lord Evans:** I absolutely do not think that one can rely solely on moral exhortation and then hope for the best. I do think that there is a cultural and a behavioural aspect. The huge majority of people who are expected to adhere to good standards are not the most senior politicians in the country. They are ordinary civil servants—nurses, doctors or soldiers—who are going about their business. As a Committee, we aim to consider not just the political aspects of this but also the wider public service aspects.

But at the end of the day, you do need processes and compliance mechanisms as well as a moral compass, but they are both important. The question of the accountability of the Prime Minister is of course complex because he or she is head of the Government and is appointed at the invitation of the monarch. Their accountability is, fundamentally, to Parliament. It is quite difficult to envisage how you would have an official who is appointed and who oversees the behaviour of the Prime Minister. That is quite a tricky thing, but it is certainly something where the Prime Minister can be provided with the appropriate advice. In our view, there should be greater transparency on the application of the Ministerial Code, but this is part of an overall system and the fundamental accountability of those in political life is to Parliament and, ultimately, to the voter.

Q238 **Ronnie Cowan:** That is interesting because, ultimately, the behaviour that we see damages that relationship between all elected Members and the voters. You have mentioned Owen Paterson's situation, the redecoration of No. 10, the poor communication with Lord Geidt, and Partygate, which is rumbling on, the latest one being a "bring your own booze" party during lockdown. I think you said that those things cut through to the public. Eventually, they stop cutting through and it just becomes white noise, because they are seeing it week in, week out.

When that happens, the trust of the electorate in their Members breaks down. That is coming from the very Head of the Government. We have to find a situation where, if Parliament cannot hold him to account, there has to be a statutory code that we can apply. If the Prime Minister knows that that is hanging over his head, maybe that would adjust his behaviour. Is that what we should be looking towards?

**Lord Evans:** We did not take evidence on the question of whether there should be a statutory code specifically to regulate the actions of the Prime Minister. Therefore, I hesitate to come forward with a proposal as to what it should be, because that is not something that we considered specifically.

From our perspective, we look at standards across public life in a variety of ways. We look at local government and at all sorts of other things. The most difficult area is the one where individuals are not appointed as employees but are elected, because their authority, as it were, comes from that mandate. I do not need to say this to you, because you are all in that situation.



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It is difficult then, because if you are the chief executive of a bank or something, and somebody does something that you think is ethically inappropriate, you say, "You are fired" or "Your bonus is stopped." It is not the same, of course, if you are talking about a politician, because there is nobody who can say, "You are not going to be the MP for X any more, because we disagree with you." It goes back to the electorate. We work in a parliamentary democracy and the ultimate accountability is to the elector. I am not an elected person, so I am teaching people to suck eggs.

It makes it much harder than it is if you are in a corporate, where you can say, "Well, that's the rules and if you don't like it, you can get out." If there is a way around it, we have not yet found something. Our Committee comprises independent members, politicians and elected members, so we benefit greatly from having those who have experience in standards in public life as officials and from active and working politicians on the Committee. The view of the Committee has not been, so far, that they can see a sensible way of having an appointed oversight body that can strike down Ministers, because of that constitutional issue.

**Q239 Ronnie Cowan:** I understand your Committee looks at the broader aspects of public life. What you seem to be saying is that, if an officer in the army, somebody within the health service or a senior manager had behaved in the manner of the Prime Minister, they would have been sacked.

**Lord Evans:** I don't want to comment on the individual cases, but it is much more straightforward if you have an employee in an organisation than it is if you have a person who is elected, because their mandate, as you know, comes from their electors. That is a decision that they make.

**Q240 Ronnie Cowan:** A senior member in an organisation would be accountable to a board of directors, who would, at one point, say, "You are no longer fit to run this company. We are getting rid of you." We do not have that situation within Parliament.

**Jackie Doyle-Price:** We do.

**Lord Evans:** Ultimately, constituents can vote against.

**Ronnie Cowan:** If we do have that situation in Parliament, why is it not working?

**Chair:** Direct questions to the witness, Mr Cowan.

**Q241 Ronnie Cowan:** I do not want to split the Committee, so I will push on. Given the independent adviser's lack of operational independence, how concerned are you that the investigations made into the Prime Minister will, inevitably, be perceived to lack credibility?

**Lord Evans:** I think the position of the independent adviser should be placed on a statutory basis. We believe that they should have the right to initiate their own investigations, so that the facts can be put in front not



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only of the Prime Minister but also of the public. Then the Prime Minister can make their judgment, and the public can also make their judgment, on the basis of facts revealed.

**Q242 Ronnie Cowan:** After initially leading it, the Cabinet Secretary has recused himself from the investigation into parties in Downing Street and across Whitehall. This investigation is now being led by a former head of propriety and ethics, a serving civil servant of permanent secretary grade, whose line manager is the Cabinet Secretary. In your view, how damaging has that been to the investigation and to standards regulation more generally?

**Lord Evans:** I can see the wiring point that you refer to. However, given the personality and experience of Sue Gray, I have no doubt that she will follow the facts and come forward with her recommendations without fear or favour.

**Q243 Ronnie Cowan:** Is the Cabinet Secretary the most appropriate person to conduct investigations such as this, or is Sue Gray?

**Lord Evans:** In certain circumstances, it might well be appropriate for a Cabinet Secretary to be asked to do this, because normally the Cabinet Secretary is also head of the civil service, and if this is a civil service disciplinary matter, it is reasonable that the head of the civil service should oversee an investigation, although it would seem to me to be prudent that there should be an independent element in that. I know that best practice in the corporate sector would be that if an issue of this sort arises, you would get in a law firm and say, "You investigate this and tell us what happened, and then we can make our best decisions." I would suggest that independent legal advice and involvement might well be helpful in this, to make sure that this is being followed professionally and that there is an independent element to it.

These particular incidents and questions around parties at No. 10 are obviously more complicated, because this comes very close to home for those people who work in No. 10 or immediately adjacently. From that point of view, I can understand why it was more prudent to have transferred the responsibility for the investigation to somebody who was not around No. 10 at the time.

**Q244 Lloyd Russell-Moyle:** On that particular point that you mention, you say that, in the corporate sector, you would get a law firm in—an external body—or maybe you would get another organisation that knows the field to investigate. Is it maybe time that the UK civil service considered utilising its other branches of the civil service across the UK? You get in the Northern Ireland civil service or use some of your local government civil service heads. You maybe even use people who work directly for the devolved Administrations, even though they are part of the UK civil service, rather than people who then directly have to report to the people they are investigating.



**Lord Evans:** It is an idea that I had not previously given thought to. I guess that if you are using civil servants from a devolved Administration, whose responsibility is obviously to the devolved Ministers in that Administration, you would have to ensure that that link was cut for the time that they were working on the investigation, so that there could not be a suggestion that there was a political influence in the investigation. There is an argument for saying that perhaps we ought to be readier to go outside to lawyers and to say, "You are good at investigating stuff. Without making the judgment, you gather the information."

**Lloyd Russell-Moyle:** That is an interesting idea.

**Lord Evans:** I ought to say that that is my view, not something that the Committee has considered. Having also worked in the corporate sector, it works quite well, because the magic circle law firms do not have an axe to grind. They just send in a team, do the interviews, gather the information, present it back and say, "This is what we found—over to you."

Q245 **Lloyd Russell-Moyle:** What I hear you saying is that there needs to be some level of independence. Whether that is a law firm or someone else, clearly you recognise that that wiring does provide some difficulties.

**Lord Evans:** Yes, I think that is right. Particularly where issues come very close to some of the individuals at the top of the system, it becomes more complex. I guess that that is one of the reasons why the decision was made to invite—or to ask, or tell—Sue Gray to undertake this, because of the fact that she would not have been around in central Government at the relevant time. That element of independence is important, is it not?

Q246 **Lloyd Russell-Moyle:** If a standards report for MPs finds that MPs have broken the code and provides a certain level of punishment, they can be recalled. If these reports find that Ministers have broken the code, there is no ability for the public to then have the judgment—something that you said should be the final arbiter. Is there a case for these reports to also be able to trigger certain processes of going back to the people?

**Lord Evans:** I think that is a matter for Parliament to give consideration to. The issue that we are addressing with the Ministerial Code and the independent adviser is to ensure that the Ministerial Code is applied, which is then a responsibility of the Prime Minister. I have little doubt that if it became clear that any individual MP who was a Minister had behaved wholly inappropriately, that would have an impact on their campaign at the next election. Our Committee has not considered whether there should be recall in those circumstances, but it feels to me as though they are slightly different issues.

**Chair:** We are now going to change topic slightly, to look at business appointment rules.

Q247 **David Mundell:** Nigel Boardman found that no significant breaches of



the business appointment rules had occurred in his investigation into Greensill's relationship with Government. Did you receive evidence of widespread non-compliance? If not, why is change needed if it just a matter of public perception?

**Lord Evans:** First of all, I would say that public perception actually does matter, because this is about trust. People should feel confident that those people who are serving them as senior officials or Ministers or whatever are doing so with the interests of the public at the front of their minds, and not their own personal interests. In that sense, we should not dismiss public confidence as an issue, because it actually matters in terms of the integrity of our constitution and our democracy.

We did not see evidence of widespread disregard for the business appointment rules. On the other hand, given that there is no mechanism for investigation anyway, it is hard to work out where that evidence would come from. That raises a question, because if it were abused—and I have no reason to think that it is widely abused—I am not sure that that would come to light anyway.

If you look at the recommendations that we did make, we believe that there needs to be a more robust regulator for these issues. Traditionally, the view has been that it is a constraint of trade to stop people going on to other jobs, and that therefore you cannot stop it but you can provide a bit of guidance, tell people what the right thing to do is and hope that they do it. I am not confident that that is necessarily the most that can be done. Nigel Boardman came forward with some very sensible suggestions—that actually you can think about the way in which contracts are made, you can think of civil mechanisms for having some proper tools for compliance. I think those are seriously worth considering, because there is this question of public confidence.

This is not the fault of those people who have chaired and who worked for ACOBA, but they are a signally weak organisation in terms of the tools that they've got. The current chair is working very hard to use those tools as effectively as possible and has his own views on how things might be reformed and taken forward, and I absolutely welcome that, but having gone through the ACOBA process myself some years ago, you send in a letter saying X, they send you back a letter saying more or less the same, and that is the end of that—and 99% of the time, that probably works.

There is media criticism of this on a regular basis and I think that it would be prudent for us to have a more robust system. Apart from anything else, for the great majority of people who want to do the right thing, it will provide them with a stronger basis to say, "There is a proper regulatory system. I am compliant with it. There isn't any impropriety here."

Q248 **Jackie Doyle-Price:** It has been a matter of Government policy now for a number of decades to encourage more cross-fertilisation, as it were, between the private and public sector—civil servants as well as Ministers.



To what extent is it just inevitable that there will be some perception of conflicts of interest with that emerging culture?

**Lord Evans:** First of all, I would say that I think it is a really, really positive thing. I think there should be movement between the sectors. It is beneficial for both the public and the private sector to have that cross-fertilisation, and it should be encouraged. But there are risks in it, and those risks need to be properly managed. It needs to be made absolutely clear to those people coming into the public sector what the rules are and how they need to manage any conflicts of interest. Those need to be monitored and when they move out again, if they choose to do that, that also needs to be properly managed.

One of the apparent lessons from the Greensill inquiry is that those conflicts were not proactively managed in the way that they should have been, so there is a risk there. Risks need to be managed and there needs to be a proper process for doing that. What appears to have been discovered by Nigel Boardman suggests that it does not work as well as it should all the time.

Q249 **Jackie Doyle-Price:** I have reflected on a lot of what you have said. You have referred throughout your evidence today to tools of compliance. Within the public sector, we tend to rely on rules and processes, which you have highlighted are perhaps less than adequate. The tendency is to just impose more rules whenever anything goes wrong, which is actually just more rules on the compliant. Ultimately, we ought to be able to rely on good public servants to apply a sniff test as to what is and is not appropriate.

If we then apply a rule that says that you cannot do any kind of commercial work that is tangential to your role for two years, that could be a big restraint on the ability to trade if they are nervous of wrongdoing. To what extent should we be looking at a more outcome-focused approach to regulating behaviour? I would like to tease out of you what some potential tools of compliance might be, as opposed to rules.

**Lord Evans:** I agree with you that anybody in public service should be trying to develop their sniff test abilities by reflecting on it, by talking about these issues and by ensuring that if there are issues of ethics or standards that come up, they are actively encouraged to identify them and talk about them. That, in itself, is a really good thing. As some of the earlier questioning demonstrated, those need to be backed up by some harder rules because, at the end of the day, you can't investigate whether somebody felt that they were doing the right thing; you have to investigate what happened.

Therefore, the harder rules in terms of compliance and so on are, to some extent, also a signal to indicate where your ethical boundaries should lie. So I don't think they are necessarily in tension, but you should not rely on just one of them. Hopefully, we will tease out some of these



issues in our next report. For most people, you can lay down a fairly clear set of criteria. We did not recommend that anybody who had any tangential involvement in something should be barred. What we said particularly for those people who had direct oversight of, for instance, the regulatory regime for a particular industry was that even if they had not dealt with a particular company in that industry on a bilateral basis, it probably would not pass the sniff test if you have created a complete regulatory regime because you are a senior Minister who has responsibility for that and then you move straight into a job in that sector, because it could be seen that you were influenced by your future prospects about how you set the regulatory framework for an industry.

It is not just a question of whether you had had previous contact with that company. There would also be some cases where you have had such direct involvement in the setting of the regulatory rules that it would be inappropriate just to flip over and start working on the other side immediately you leave Government.

**Q250 Jackie Doyle-Price:** It is easy to perceive that, and so, again, it comes back to the integrity of the process. When somebody has left office, your tools of compliance are non-existent, are they not? If someone decides to seek the advice of ACOBA, and ACOBA says, "Actually, perhaps not" and they go ahead anyway, there is no clout to influence any compliance, is there?

**Lord Evans:** Not as things stand at the moment, but as Nigel Boardman suggested—and we agree with this—there are tools that you could implement. For instance, going back to my MI5 days, at one stage, if you left MI5 and then went and wrote your memoirs and made lots of money, you could take the money. But then clauses were inserted into people's contracts that said, "If you publish information that is in breach of your duty of secrecy, there is a civil measure for getting that money back off you."

There may be a criminal offence, but at the civil level you have a contractual arrangement that, even if you have left Government, can still be used to claw back the money. If you go and publish your memoirs unauthorised, the money will come back, because you can go to the courts. So you can have mechanisms built into people's contracts that continue to have teeth after they have left. This is not unique to Government; companies do this all the time.

**Q251 Jackie Doyle-Price:** That is an interesting suggestion. What is clear to me—it is depressing to admit it—is that we cannot rely on gentlemanly conduct any more, but there is a world of difference between that and going to a statutory form of regulation. I would just like your observation on this: things that affect people's reputations are actually quite powerful. If we look at that in the context of Greensill, it is. Are there any other measures that perhaps your Committee or other bodies could make use of, which would make possible a public rebuke, which could also be a good disincentive?



**Lord Evans:** I strongly believe that the media are an important part of effective standards. The fact that they uncover areas of public concern is a benefit to us, because sometimes they are better at identifying these things than official processes, so there is a constraint there. The way in which Lord Pickles is using the letters that he sends to have a stronger element to them also, in itself, adds a certain amount of moral pressure on people, which I think is a very good thing.

It is worth looking at this question of contractual clauses and so on, because if people are doing this because they want to make lots of money, potentially there is some clawback if they breach undertakings that they gave when they took the previous role as a Minister or whatever. We have not had employment lawyers working on this, but that is a very good idea to explore—whether there are ways, short of some draconian criminal legislation, to say, “This is the deal. If you want to be a Minister, you sign this contract, which does have effect after you have left Government.”

Q252 **Chair:** On that point, at the moment, I do not believe that Ministers do have contracts, so you would have to find a creative way, which Nigel Boardman alluded to.

**Lord Evans:** Nigel Boardman has the great advantage of being a very distinguished corporate lawyer, and I am not, so I suspect he is in a better position to make recommendations on this than I am.

**Chair:** Nor am I, and on that note we hand over to Karin Smyth.

Q253 **Karin Smyth:** Me neither. I just want to move to lobbying for a moment. Your report particularly focused on the disclosure of Ministers’ and officials’ meetings with lobbyists, rather than the more extensive issue of the regulation of lobbying activity. Does that mean that you were satisfied that the lobbying Act is effective, currently?

**Lord Evans:** The first thing to say is that most lobbying is good. We want Ministers to hear how their decisions will impact on the lives of people in the country beforehand. Lobbying, in itself, is a good thing, but it can be misused. The critical area here is that people should see what is happening. Lots of charities and non-governmental organisations are lobbying; that is what they do and that is good, so we need to be careful about what it is that we are trying to regulate here.

On the face of it, the lobbying Act is a strange beast in the sense that the only people who are registered are the consultant lobbyists who lobby for a variety of clients. They then have to register, and the reason for that is that if you report that Minister X has seen consultant lobbyist Y, it doesn’t tell you what the issue was that was being lobbied. They might be lobbying on a whole variety of things. That is why the register is created for that purpose, but most lobbying isn’t captured through the register.

The rest of the lobbying, therefore, should be made visible through transparency reports from Government, and I do think that the principal



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responsibility in regard to lobbying is for those who are being lobbied, because they are the people who are in public office and who have responsibility for ensuring best practice.

If we could have confidence that incidents of lobbying were properly reported in a timely fashion, irrespective of the mechanism—whether this is a meeting, a telephone call, a Zoom call or a WhatsApp message—and those details were published properly, with enough detail, that is a reasonable model. The problem that we have is that that does not appear to be happening.

First, the transparency records are not being published on time. It is part of the compliance problem. There is an undertaking that they will be published quarterly, but they are not, which is not acceptable, in my view. Secondly, some of them are so superficial that they don't tell you really what is happening, so you cannot really understand who is lobbying what for whom, because you are not given enough information. Thirdly, quite a lot of lobbying that is not happening through meetings is not being captured, because it is going without being properly reported.

There is a problem. I am personally not sure that the answer to that problem is to require everybody who lobbies to be registered on the central register, because that would mean loads of businessmen and charities having to register themselves, which I am not sure is particularly proportionate to the issue. At the moment, the Government side are failing in their responsibilities to provide the information that enables us to know what is going on, and therefore for lobbying to be seen for what it is.

**Q254 Karin Smyth:** The Act itself and the requirements of the Act are very clear, but the compliance with it is not happening.

**Lord Evans:** Correct, in my view.

**Q255 Lloyd Russell-Moyle:** You said there that the person being lobbied should be the person reporting it. Broadly, I see that rationale. Is there a difficulty of sometimes them recognising that they are being lobbied? I remember, when I was a lobbyist at the UN, I would deliberately hang out at restaurants and bars where you would eventually, over the months, get friendly with different people. I remember having to get the Russians and the Sri Lankans to vote for something that we wanted at one time, and spending days in bars, just trying to woo them, before they voted the way that the European Union wanted. That was how things were done. They would not necessarily recognise that as lobbying. That was us being friendly to them and eventually taking them to—

**Chair:** It is called diplomacy, is it not?

**Lloyd Russell-Moyle:** It is, but diplomacy is the same to some extent.

**Lord Evans:** It sounds like intelligence work.

**Lloyd Russell-Moyle:** What I am trying to say is that there is a very fine



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line between some of that. As the lobbyist there, I knew what I was doing. I was not doing it because I particularly liked the Russian second secretary, but because we needed an outcome. The second secretary may or may not have known that that was the relationship that was being formed in a more lobbying way. Is there a balance that needs to be struck? Maybe there needs to be a bit of a deal on both sides, with both parties having a responsibility.

**Lord Evans:** It would be quite interesting to know what the Russian second secretary also thought about the relationship with you. You might have been going both ways.

**Lloyd Russell-Moyle:** I am not sure I had anything that he usefully could use at that point.

**Lord Evans:** I can see that. We have said before that one of the issues is that there needs to be proper briefing, induction and training on these issues. If you are a Minister, somebody ought to say to you, "Remember that you will be being lobbied, and think about it." The lobbying corporate bodies, etc. do have codes of conduct, but lots of people may be lobbying who are not part of those regulated professional bodies, so I do not think that you can rely on the lobbyists to report their behaviour, particularly those who might be slightly less careful about their activities than, no doubt, you were.

Q256 **David Mundell:** You recommend that WhatsApp exchanges be covered by disclosure requirements. How confident are you that that would be enforceable?

**Lord Evans:** I am not all that confident, to be quite honest, but there is a responsibility on anybody who is conducting public business to be able to give account of that. In principle, it does not seem to me to be a very good idea for substantive public business to be being transacted on WhatsApp, but you have to live in the real world and it probably is. This is not just an issue for Government but also a problem for banks and all the rest of it as to how much those in a regulated environment are circumventing the rules. There need to be very clear rules on it. I personally would have felt that there are maybe other technical solutions that are better than WhatsApp for this purpose, but that is beyond my remit, as it were.

It is absolutely clear that the responsibility is that if you are conducting public business, there needs to be public accountability for that, irrespective of the channel you happen to choose. There may be compliance challenges, and people need to look at that and think about saying, "You are not to use WhatsApp. You are to use something else that can be more regulated." The principle that it doesn't matter what channel you are using but you need to be keeping a due record of public decisions is very important.

Q257 **David Mundell:** It has been reported that the Government have instructed Ministers to delete WhatsApp exchanges. Is that compatible



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with what you have just said?

**Lord Evans:** I don't know the facts of that. If it is to do with the transaction of public business, then it should not be deleted in that sort of way, because I would have thought that that was falling short of the responsibility that anybody in public service has to be accountable.

**Chair:** That concludes the questions from the Committee in what was a timely and well-focused session, so thank you very much indeed for your attendance, Lord Evans. If there is anything else you wish to furnish us with, please write and that will be gratefully received. In the meantime, thank you very much for your time this morning.