



Committee on Standards

Oral evidence: [The Code of Conduct and Guide to the Rules](#),
HC 817

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Members present: Tom Blenkinsop (Chair), Sir Paul Beresford, Mr Christopher Chope, Sharon Darcy (Lay Member), Mr Dominic Grieve, Peter Jinman (Lay Member) and Walter Rader (Lay member).

Questions [41-58]

Witnesses: **Harry Cayton**, Chief Executive, Professional Standards Authority, **Philippa Foster Back**, Director, Institute of Business Ethics, and **Andrew Walker QC**, Chair, Bar Council Ethics Committee, gave evidence.

Q41 Chair: Good morning. Thank you very much for coming in today and helping with our review into the code of conduct. Could we begin by allowing you to introduce yourselves, saying a few brief words about your remit and what you want to talk about, please?

Harry Cayton: I am the chief executive of the Professional Standards Authority for health and social care, which oversees the nine statutory health regulators and 20 accredited registers. I should also say that I am a member of the Press Recognition Panel, set up under royal charter.

Philippa Foster Back: Good morning. I am Philippa Foster Back. I am director of the Institute of Business Ethics, which is a charity founded 30 years ago. It was formed to help companies get their guidance to their staff right, but it is basically about raising awareness and spreading best practice in the field of business ethics.

Andrew Walker: I am Andrew Walker QC. I am chairman of the Bar Council's ethics committee. We, being on the non-regulatory side of the Bar Council, primarily advise members of the Bar on the application of the code of conduct and ethics more generally. Our regulation is done formally by the Bar Standards Board.

Mr Grieve: I should declare that I am a past member of the Bar Council ex officio, by virtue of having been Attorney General, and I was a practising member of the Bar.

Mr Chope: I am a non-practising member of the Bar.

Q42 Chair: What do you think is the purpose of your codes for your respective organisations?

Harry Cayton: In the health sector, there is a very clear purpose, which is the protection of patients and the quality of care provided to them by health professionals. It is important in the codes that we oversee that there is separation between competence and conduct. There is a very clear commitment to the technical competence of the health professional in doing their job and working within their competence. That is an important principle for a health professional—that you do not do anything that is outwith your competence. There is also, very interestingly, an important aspect to do with conduct and the sense of good character and being a person of good character.

When I look at the parliamentary standards, I can see some interesting parallels in relation to that aspect of conduct, but of course not in the aspect of competence, which does not fall within your standards, as I read it.

Philippa Foster Back: The institute advises many different types of organisations, commercial and in the public sector and private sector, not only in this country but overseas. The overarching reason why an organisation will put in some form of code is to give guidance to its staff on anticipated, expected behaviours, according to the values of the organisation. It is about pulling it together so that you can create not a single culture—because an organisation is made up of many cultures—but a single thread of DNA that people working in that organisation can resonate with and bring to life day to day. Then, it is all down to the wording of the code as to how you bring that to life.

Andrew Walker: This is certainly true of the Bar but, for lawyers generally, we are in a similar position to those regulated or indirectly regulated by Harry. The main concerns are with standards, the primary aim there being to look to protect client interests and the public interest. There are also duties of conduct and minimum standards—things that can be expected of you as a professional, given that, as a professional, you are given certain rights, particularly in relation to lawyers' rights, to practice law. There is a balancing exercise to be done for lawyers, between the public interest, particularly in the administration of justice, and the client's best interests, both of which you have to put before your own best interests where there is a conflict. Particularly for members of the bar, it is about putting that public interest above client interests. Ultimately, your duty to the court is the primary duty, if there is a conflict between that and your duty to your client. It sets the standards, the hierarchy and the minimum requirements—and also the ideals for the profession.

Q43 Mr Jinman: I would like to explore the building of a code. What do you consider are the most important things one should consider when building a code? I will add to that, perhaps to give a sense of direction: do you think that detailed rules or broader principles are the way in which you then put the scaffolding around it?

Andrew Walker: I am happy to start.

Chair: Do not fight over it.

Andrew Walker: The Bar recently rewrote its code of conduct. We have had a code of conduct since 1981, and we rewrote it two years ago now. The basic premises and the basic principles are very similar, but the structure has changed. In rewriting it, the great

benefit we have gained is by having both the principles and the rules. The principles are important because they give focus. They tell you what you are trying to achieve. They are also enforceable principles. If you breach the principles—what we call our core duties—you can be called to account for a breach of those duties, not just of the rules.

We have rules underneath those, which are designed primarily to express what those principles mean in particular situations. Those are mandatory, but they are not exhaustive. You can fall back on the principles. The benefits you get from the rules are clarity and certainty. If you are dealing particularly with inexperienced practitioners—the more junior practitioners, and I expect that new MPs might be in a very similar position—you are providing them with clarity as to what it is they need to be doing as a minimum. That helps them to understand what those principles require of them.

I would very much look at both as having different benefits, and you should look to have both.

Philippa Foster Back: I would certainly start off with principles. We have seen so many instances where people can run round rules, but it is very difficult to run round a principle. Any code must be rooted in principles with, I would say, some ethical value words included in that as well. That is sort of what you have in the Nolan principles themselves, in the descriptors. It is about trying to bring those alive.

In any code you will have an element of dos and don'ts, but it is the language in which it is written that is so crucial. Is it user-friendly for anybody to pick up and read and understand, particularly any new entrants? It is also about having some Q and As within the code, as it helps to bring it alive, and to have some examples, which you can then use to test some of the principles, rather than testing rules, because that is easier. It is about testing the principles. That will help to make it a much more lively, useable, readable document.

Harry Cayton: In the health sector, we construct things slightly differently. Most of the codes that the regulators have created start with outcomes and with what you are aiming to achieve in terms of the quality and delivery of care. There is a move to what I suppose you could call principles: for instance, the General Medical Council talks about “duties”. The preamble is a statement of the duties of a doctor, not the principles to which a doctor should adhere.

There is a slightly different model, which we developed. A few years ago, the Secretary of State for Health asked us to develop a set of standards for the boards and clinical commissioning groups in the NHS. They are not, by and large, clinical professionals and, when they are doing their board activity they are not acting as clinical professionals. We divided that into three sections, which were personal behaviours, technical competence and business practices—the kind of probity, integrity and interests issue. I found that quite a helpful way of constructing a set of standards. Each of those standards then has three or four objectives, and then a set of statements that you could call rules, but they are more like, “I will do this by acting in this particular way.”

There are quite a lot of different ways of presenting standards for different occupations, and you need to think about what is relevant to the occupation. In particular, you need to think about what is practicable. I have seen a lot of standards written by theoretical

standards setters, which are of absolutely no use to people in the real world. IT professionals are particularly good at writing us standards for our use of IT, which we then all get round, because they are not practicable. It is really important, if you want standards to be adhered to, that they are useful to people in the real world in doing their jobs.

Q44 Mr Jinman: Specific to here, when we are dealing with lawyers, medical professionals or whatever, there is a programme of training.

Harry Cayton: Yes.

Mr Jinman: You start out your life at the lowest level, but it is part of that training, and you do not even realise it is happening, but you are learning the principles and the rules. Here, the election occurs and, the following day, you are in. Does that have any difference? Are there any thoughts in your minds as to any different approach that is going to be required in that regard? Taking that further, how do you implement codes?

Philippa Foster Back: Picking up first on something that Harry was saying, I have brought along an example. It goes to your point. This is a fold-out that BP gives to every single one of its employees, with its values. This is its code. It will pick up on personal behaviours: for instance, under the value of courage: “As a BP employee I”—picking up Harry’s point—“always aim to do the right thing based on BP’s rules and standards” and so on. It is a very practical thing.

Going to your second point, it is about having something like that, which can be handed out. Induction is absolutely crucial. You need something to help people immediately to pick up what it means to be an MP—“How should I behave? What is expected of me?”

Q45 Chair: Could you describe the document you are holding? Obviously, it needs to come out in the transcript.

Philippa Foster Back: Sorry—yes. It is a small document that folds into a credit card-sized wallet. It describes BP’s “values and behaviours”: “What we do” and “What we stand for”. There are five values with a description of “What we value” and “What is expected of me...As a BP employee”. I can provide copies, or I can tell you where it is on the web.

Many organisations have those sorts of handouts, so that every employee has something to hand and can understand it immediately. That goes to the point about day 1. That is something that is a bit different to read, rather than perhaps getting an A4 document that might be four or five pages long, among everything else they get. It is about catching the imagination quickly and then having some form of induction programme to embed the values of the code.

Harry Cayton: Going to your question about education, that is a really important difference. Health professionals go through several years—many years in the case of doctors—of education, during which time the standards of conduct and the standards of competence are kind of embedded into their training. Of course, there is a moment when you enter the register—when you make a declaration of your commitment to the standards of your regulator.

I think it is a very different set of circumstances, but my argument would be that that does not mean that, in other circumstances, you cannot use similar but different approaches. With my point about standards for boards and for clinical commissioning groups and so on, very much like business standards, those can be articulated and signed up to, and there can be an annual declaration of commitment. In the case of our commitments, lots of NHS trust boards have formally signed their commitment to the standards. There are ways of making that explicit for people without necessarily requiring everyone to be trained and educated into an occupation. I think it is one of the great strengths of Parliament that being an MP is not that kind of occupation. It is a diversity of people bringing a whole set of different things to what they do. You can learn from these models, but they are not necessarily the right model for a parliamentary set of standards, in my view.

Andrew Walker: Coming back to your first question, you are absolutely right: the challenge is much greater for Parliament than it is for a profession and for a professional regulator, for the very reasons you have indicated. We are trained; we spend a lifetime, in many cases, talking to other people, being in positions where we have ethical dilemmas, seeking advice about them, having advice sought from us. There is a context, which is very different from that for MPs, but that does not mean that there is not a similarity of analysis you can do, just working on the bits that you can deal with, rather than the bits that you can't.

Just to put a little bit of background structure on it, there is quite a bit of literature now about legal ethics. One of the analyses that the academics supply to it is the three Cs, as they call it. They are three elements of ethics: character, capacity and context. There is a limit to what Parliament can do about character. You do not have entrance requirements. You do not have a training course you have to pass. You have to accept that as a difficult one. Capacities is to do with knowledge and reasoning. You can deal with knowledge, to some extent. That is where the training and induction programme, information and the availability of advice can all help. You may have limited time to work on reasoning. People come in with an ability to reason in a logical fashion in relation to ethical dilemmas, or they do not. There is only so much that you can do in a short period of time.

You can, however, work on context as strongly as any other body. There is what is called ethical infrastructure—the existence of a code, the ability to enforce that code and the availability of confidential advice mechanisms—whistleblowers. That sort of arrangement you can deal with. Culture is something that you can try to work on. That goes further, because it involves leadership and the commitment of individual members, but a code and the availability of advice and induction can all help to set that culture and put that culture on the right track. You are right that it is a big challenge, but that does not mean that there are not similar steps that can be taken to try and address that challenge.

On how you implement something in practice—your second question—again, we have the advantage that we have long-standing infrastructures, but the Parliament now has infrastructures for enforcing. The aim must be to secure the behaviours that you would like to have, rather than to punish people. The stick needs to be there for those who step out of line, deliberately or otherwise. The stick can be a gentle stick or a hard stick, depending on whether it is deliberate or not, but what you are hoping to achieve is that people will comply. We now have an increasing focus on supervision, rather than just waiting for after-the-event punishment.

You can only go so far with supervision. There are only so many things that you can look into. What that involves, fundamentally, is support—helping people to understand what it is that they should be doing, how they should be doing it and why it is good for them.

What are the benefits of doing it? The benefits are, of course, that you will not necessarily step out of line, but you may also see that people will react to you in a better way. You will get better results in one-to-one interviews with your constituents if you follow a few helpful, handy tips. There must be some good practice in a number of those areas in Parliament that Parliament can draw on, that Parliament can look to draw together and that it can look to promulgate as helpful ideas on how to deal with things.

Q46 Mr Grieve: One of the interesting issues is that public servants are governed by the Nolan seven principles of public life. I have to say that I have sometimes found their attempts to apply that to Members of Parliament a little bit fanciful. Objectivity does not necessarily seem to be a prerequisite for being an MP.

I just wondered how you as organisations have looked at the Nolan seven principles—whether they are something that you have taken into account in your own codes or the ones that you have been formulating, or whether you have found them not to be very useful for your purposes. It lurks behind the parliamentary code, and I think that an interesting question for us is going to be whether this is helpful to us or not.

Harry Cayton: That is a very interesting question. I should say that I am, in my role, obviously expected to abide by the code. When I was first appointed, I received a letter, saying, “The Nolan Principles are enclosed.” They were not. I wrote back and said, “Could I have them, please?” I got them, but I noticed there were only six, instead of seven, because they had been photocopied without the second page. So, I could argue that I have been missing the seventh principle for the last few years—which is leadership.

I find them tricky. We gave evidence to the Committee on Standards in Public Life 18 months ago, when it reviewed them. The reason I find them tricky is that some of the things do not seem to me to be personal qualities, but they are attributions that third parties make. Leadership is a good example. You cannot be leadership. You have leadership if other people attribute leadership to you. Even on integrity, which is clearly incredibly important, it is very difficult for an individual to say, “I have integrity.” You can say, “I aim to act with integrity,” and other people can say whether they think you have integrity. I have struggled with them.

The third one I will mention—although I do not want to go on about this for too long—is the word “accountability”. In the paper that we wrote, called “Fit and Proper?” which was about governance in the public good, we took some argument with accountability. We said that accountability has become an abstract term. People on boards now say, “I am accountable, but I am not responsible.” We think that has separated the real moral issue, which is taking responsibility for what you do and the consequences of what you do. Accountability has become a kind of public term of abstraction, rather than a reality. We suggested to the committee that it might change accountability. They kindly said that it would not—which is quite understandable—but I struggle with it.

I have looked at the link between the standards and the rules in your code, and I cannot really see them. They seem to be two separate sets of issues. One does not flow from the other. In standards, any rules, principles or practices that you expect should flow from the overall objective of the standards.

Philippa Foster Back: I would agree with quite a bit of that. We have moved on so much since these were first done that all organisations would now tend to want to differentiate themselves in a sense. While they might still use some words like “integrity” and so forth, they want them to have meaning with their own staff. Our population of employees is so different from what it was when these were put in place. It is a very important aspect for an organisation to try and get this holistic view and understanding of “This is how we work round here.”

Where I have seen it mostly, dealing with public service, is with the police. The police now have their own code. They sort of make reference to the Nolan principles, but they have their own. When you get to a local police force, they are putting in their own code with their own words for their own circumstances themselves, and they are getting their descriptors right for them. We are getting this sort of hierarchy of codes, and I always feel it is very important, particularly for professional bodies, where you have your livelihood and for whom you work, but you have your profession to be able to do your work. You have this hierarchy of codes—how do you mould them all together? Organisations are quite bad at that, and that is where you need some sort of map to help people through that.

Essentially, it all boils down to the same thing: it is about how you do your job or how you behave in public life—how you do your role. Giving people pointers and guidelines about what is expected of them is very important.

Andrew Walker: To answer your question directly, I do not think it has had any real bearing. In the legal profession, we have professional principles set out in the Legal Services Act. If you look internationally at what we call our core duties, there will be an equivalent in almost every established legal profession across the world. They are well-known, established, basic fundamentals to what is involved in the practice of law.

To pick up on something that Harry said earlier in answer to what the role of these is, the impression that I have had from the code is that there has been a lack of questioning of what it is to be a parliamentarian. What is the essence of the role? What is the essence of what is expected for a parliamentarian? It comes back to what Harry said earlier. He said that you have to look at each profession separately. Indeed, something that has just been said is: what is the role you are all focusing on, and what are the requirements for that role and the principles you need or the principles you should be honouring? Then, what are the rules that you may need underneath that to support it?

The underlying question is, “Is this really helpful?” The answer is probably, “Only so far.” It should not, from what I can see, be the focus for identifying what those principles are, from which you should start. It may be in the background, but you need something a bit more specific to the role that you do as a starting point.

Harry Cayton: The first principle of “Right-touch Regulation”, which we wrote a few years ago, is to describe the problem before you describe the solution. In a way, the question is, “What problem are you trying to solve with your code?” Until you are clear

about that, you do not know what the content of the code should be. There may be, in Parliament's case, unfortunately, a mismatch between actual behaviours and public perception. One of the things you might be trying to solve is public perception, but that may not be based on an absolute understanding of the reality. You are in a curious position. Until you have described the problem really clearly, you will not know what exact form the code should take to create a solution.

Andrew Walker: I absolutely endorse that. One of the key impressions I had from reading it is that there is a complete lack of focus as to what you are trying to achieve. Even if you look at the preamble and the purposes of the code, it does not really sit very comfortably. On the idea that what you are trying to do is “ensuring public confidence in the standards expected”, I would rather hope that the aim is public confidence in the standards you are achieving. Even if you look at the codes for the Welsh Assembly, the Northern Ireland Assembly and the Scottish Parliament, the ambition of this code, as framed, to the extent that you can identify it, is very much more constrained and unfocused. I absolutely agree that the key focus, the starting point, has to be, “What is it that we are trying to achieve? What is the problem?” If it is a perception problem, you may need to focus not so much on the content but more on the way it is presented, and perhaps on the openness element of those seven principles.

Q47 Mr Rader: Perhaps leading on from those very points, how much emphasis do you believe should be placed on the financial interests of individuals, rather than on those broader points that you have talked about, of professionalism and ethics?

Andrew Walker: I can answer that in a number of ways. The first question is: what is the problem you are trying to solve? Does this actually address the problem you are trying to solve? If one of those problems that you are trying to solve is that there are difficulties with perceptions, behaviours and the realities of dealing with those interests, that needs to be a focus for the code, but that is no reason why that should be the sole focus for the code. As I look at the way it has been structured, if you were to follow the basic idea of principles and rules, it may be that there are some areas where rules are going to be more important, and more rules will be more important, and that there are other areas where it will be the principles on which you are trying to focus.

You need a checklist, first of all. What are the things we are trying to do with this code? If one of the things you are trying to do is to set down more general behaviours, the code needs to do that. If one of the issues—I suspect it is inevitable in a parliamentary code that this will be one of the issues—is dealing with interests, then the aim of the code must be, first, to set out the principle or principles involved, perhaps to set the boundary, in principle, between what is to be registered and what is not, so that people understand what they are trying to achieve, and then to put some rules in place to enable you to try to convert that into reality.

There is an important element about that, which is that it should not just be the rules that are enforceable if you want that to work properly. As I said earlier, our core duties are enforceable, separately from the rules. If the rule does not apply, you still have that duty. That avoids the technicality argument, that the rule does not quite apply so I do not have to worry about it.

Philippa Foster Back: It goes back to the higher principle level, which was always in existence. When there were the MP scandals and people said, “But it wasn’t in the rules,” there was already a principle, which some people were choosing to ignore. It comes back to conflicts of interest and, as Andrew was articulating so well, making sure that there is a clarity of understanding. Typically, that is done with some examples—some stories—so that people can see and can put themselves into that situation. If they are not used to dealing with those sorts of things, that gives them a clear indicator of what is expected.

Harry Cayton: Conflicts of interest, particularly financial conflicts of interest, are incredibly important if you are in public life. It is absolutely one of the expectations that the public have of me and of those of us who are working in the public service that we do not have financial interests that are undeclared or undisclosed or influencing our decisions.

It is important to remember that declaring an interest does not remove the interest. People often seem to think, “Well, I said that I owned that company, which I have just commissioned through a proper commissioning process to provide services to my organisation, so it must be all right.” No, it is not. When we have been asked by individuals on the boards we oversee to advise on this, we have often said clearly that it is not even the existence of a conflict—it is the perception of a conflict that has an important impact on public confidence. If public confidence is one of the values that we need to maintain in public service, and if public confidence is one of the things that you have a problem with as a body, then clarity about what interests should be declared and how they should be declared is really important.

My observation from outside, to be honest, is that the parliamentary register is very comprehensive, and it goes to a very high level of detail—but I guess there is always that problem of how to operationalise it, and how on earth you remember to do it in terms of the variety of interests people have.

We have been quite concerned about the way in which clinical commissioning groups have developed in the NHS because, inevitably, they have all kinds of business conflicts, because the GPs involved are commissioning themselves or their colleagues to provide services. There is quite a challenge there, which is a real issue and cannot be avoided.

Q48 Mr Rader: You have been kind enough already to indicate some elements of your respective codes that you thought there might be some parallels with in what we are considering. If you had to leave us one suggestion of something in your respective codes that we should take cognisance of, what would that be?

Harry Cayton: From my perspective, if I can claim this as one perspective, it would be the division into three of personal behaviour—how I act and behave to other people—my competence to fulfil my role, and my probity and ethics in terms of business and finance. I would say those three things have to be at the centre of any code.

Philippa Foster Back: I think I would go for this amalgam. I would go for the language that is used and the way it is presented, so that it is user-friendly for everybody coming into the new role and for those of us already established in the role, as it were, as an MP, so that they have a very clear understanding as to what these words mean. If they are written in user-friendly ways, people will take more notice of them, because they are readily understandable, with Q and As.

Andrew Walker: I would agree with all of that. The great advantage of going last is that I can pick the one thing that has perhaps not been picked up. I come back to your point about structure. We have already talked about principles and rules. “The Bar Standards Board Handbook” has those core duties. It has rules. There is also guidance, and there are outcomes. That may be a little overcomplicated for what you are after, but the importance of guidance—Philippa mentioned this previously—is that it enables you to keep the principles straightforward. The rules are clear where they need to be clear, but they can be more general if necessary. The guidance is what helps people to understand. You can pitch that in different ways to different audiences. The guidance is not binding; it is there to help and to be illustrative. You are not tying yourself down by giving an example; you are aiding understanding. I would look, within the tripartite structure that has been suggested by Harry, to build a vertical structure within it.

Q49 Ms Darcy: You have all given us some really good ideas about different codes and how we could perhaps strengthen our code. I would like to move on and talk about how we assess the impacts of codes. I would really welcome your views, first, about how important you think it is to go through that process of assessing impact. Then, could you share some of your own experiences of how you and your respective organisations go about assessing impact?

Harry Cayton: It is very difficult assessing impact. One of the things I always say is that, when things go wrong, the regulator is never in the room. In other words, there is a huge line of consequence and event between the perfect platonic ideal of the code in the regulator’s head and the daily decisions in a mucky world that people make.

We commissioned Bristol University to do a research review for us on the impact of codes on health professionals. First, it found that there was a dearth of good-quality research to show that they had any impact. Secondly, it found 40 different things that health professionals said affected their behaviours. You will not be surprised if I tell you that regulation came in at 38. What was first, you could also guess: the quality of the leadership and the people they worked with on a daily basis.

What you can say is that, in a mature, regulated profession—that is to say, one that has been regulated for many years—codes are internalised. They are like the conscience sitting on your shoulder. People know what they are. They do not need to be told over and over again. They are not acting according to rules; they are acting according to professional values. They just instinctively know that, and they pick it up from the people around them. The measurement that we have tried to do of the impact, both of our regulatory effect on the regulators we oversee and of their effect on the patients and the public, suggests to us that there is a complex of human behaviours, and that people’s actual behaviour in the real world is affected by many, many things.

The code is a check and a balance, however. It is a way of challenging behaviours. You have an objective set of values. Challenging the behaviours of others is one of the ways in which codes are implemented by people.

Philippa Foster Back: That assessment of the impact of codes is the issue that most organisations that we have talked to are struggling with. We have a little framework, which I am now holding up. It is a picture, which starts with the ethical values that are in the boardroom and the leadership of the organisation. You then have a code, which is

necessary but not sufficient because, if you do not have communication awareness training, with all the support mechanisms, like the speak-up line, which Andrew mentioned earlier, and the cultural support and so forth—without doing all of that, which ends up with monitoring and accountability—you are not going to be able to embed your values in the organisation and create that DNA.

Typically, 100% of companies have a code. Communication awareness? Probably about 60% or 65% of companies do that. For training and reinforcement, it is about the same—65% or 70%. For supporting, most companies now have some form of speak-up mechanism. You could probably say that is in the high 90s percent. For other mechanisms of support, the figure is not quite so high. By the time you get to monitoring and accountability, you are down at about 20% or 25%, because everybody thinks that there are no metrics for this sort of subject. There are a lot of metrics, but that is within a corporate or organisational structure, where it is easy to do that. That is through employee surveys, exit interviews and things like that, to test the impact.

In an environment like this, it is more difficult, because you are talking about individual behaviours. If you have an openness of culture within the organisation itself and a mechanism for people to be able to raise their concerns with somebody, not party political but somebody independent, you can get closer to what Harry was talking about, which is individual accountability—because that is really all that you have.

It is looking at and following the cases that get raised through that speak-up mechanism that can then help you to feed back into other ways of supporting MPs directly in the work that they are doing. If they are struggling or if they see things that are not right, they do not know what to do. They need support, and that is where the infrastructure would come in.

Andrew Walker: I think the answer that you have just been given perhaps points to the question being the wrong question—too narrow a question. To ask what is the impact of a code ignores the fact that what you are really talking about is the impact of your efforts to secure the behaviours you are after. The code is one part of that. It provides a starting point, and it may provide an end point, but it is only one part of that.

I would agree with everything that Harry said about the difficulties of this, probably even more so in Parliament, which is a very individualist organisation. MPs are on their own, in positive and negative ways, but they are their own individuals, and there is a lack of corporate behaviour or corporate structure in that sense. It also depends for what purpose you are trying to identify success. If you are trying to identify it so that you are being reassured that the efforts are paying dividends, that is one thing. If you are looking for an independent measure that you can publish on a website, that is going to be a much harder task. If you are looking at the former, though, there are one or two things you can think about. How often are people taking advantage of any advice service that is available? The more they are taking advantage of it, I suggest, the more they are aware of the issues and the more you can see that they are trying to get them right.

We run an ethical advice service for members of the Bar. It gets a lot of calls and emails every year, and they are always from people who have identified there being an issue. They want to try and get it right. The more questions you are getting, the better you can see that the culture is improving.

You could look to provide more interventional support. That may be more controversial, but, as I mentioned earlier, the BSB is now more interested in supervision and trying to help people to get things right beforehand. You could put in place a support system that enables someone to come round to MPs' offices and help them to deal with a day's worth of receipts—"What should I be declaring? How should I be dealing with this?" What you are doing there is enabling them to know how best to do something. They can raise questions, and they can be answered. The original concern with supervision at the Bar was that people would think it was just people coming in, sticking their nose in where it is not wanted. I suspect you might get some of that from MPs.

To answer your point about experience, the experience, I think, from having talked to the BSB about it, has generally been a very positive one. Most sets of chambers are very pleased, and they see the benefits of having someone come in, tell them where they are perhaps not doing things right, where there is some good practice that they could be adopting, and they really do see the benefits of all of that. Those benefits then pay dividends for their business model and the way they work. If you can persuade people to subscribe to that sort of thing, you may see, as a result of going forward with that, an improving situation of compliance, if you can use that word, and you can therefore see that it is having a benefit—and, indeed, that all your other measures are having a benefit.

Philippa Foster Back: Could I add one more thing to that? It goes back to your question about what you would see in the code. What you could put in is some form of very simple decision model. Again, I have an example here taken from a company, which starts with a little character saying, "What should I do?" It takes you through: "Describe the situation," "Consider what facts do I know," and so on. It would be tailored. It would just be some sort of little reflective point to help people within the structure if they do not know what to do or if they do not know where to turn. At the end, if you have a speak-up facility, it would say, "This is who you can talk to," and so on, with the structures that go with that.

Q50 Ms Darcy: Thank you very much. That is really helpful.

Taking on board Andrew's point, getting a broader question and going beyond the code, what impact would you say your respective initiatives—not just codes—to encourage greater ethical behaviour have had on public perceptions of your professions and the organisations you work with?

Harry Cayton: I would make a strong distinction, again, between professions, which are regulated, and the tools that a regulator has, and occupations, like mine. As a manager, I always say to people that I am not a professional; I am a manager. It is an honest trade—and there is nothing wrong with an honest trade. I am not, like Andrew, a professional in that sense, although I hope that my behaviours and my conduct would be described as professional.

The regulators have a set of tools, which include very powerful tools of enforcement. Parliament has some of those, but not in any way to the same extent—nor, indeed, would I think it desirable if you did. Complaints about the clinical competence or the conduct of a nurse, a paramedic or a physiotherapist are investigated, and they go through a tribunal system. Sanctions are imposed. People are removed from practising—that is one of the huge tools that regulators have. It is a very tiny number, but it is a very large part of the regulator's work. Most of the regulators spend more than 50% of their expenditure on the

2% or 3% of professionals who get into serious trouble. That is a very different model, I think.

The real tool in an occupation like mine, which is unregulated, but which aspires to high standards, is about communication and the kind of cultural issues that Philippa was talking about. It is about setting standards of behaviour with each other. It is a much subtler thing than the fairly rigid framework that a regulated profession is in.

Philippa Foster Back: From my perspective, there have been corporate scandals forever. I dare say that, sadly, we will continue to see some. You are talking about individual behaviours and individual greed. There is always, sadly, a proportion of those who want to defraud an organisation for their own purposes.

A spotlight is now held on organisations of all types, shapes and forms. There is nowhere to hide, 24/7. For a large corporate, they could have an incident somewhere else in the world and it is already out there and around the world before the CEO has even woken up and knows about it. It is a very different environment from what we used to be in.

While we have seen some major issues happen, like with Volkswagen, Tesco and everything else most recently, a lot of poor behaviour within companies is being called out in a way it never used to be, and it is being reported on. Many companies are now reporting on the number of calls to their speak-up lines, what the trend might have been, and the number of people who have been sacked because of unethical behaviour or non-compliance with their code of ethics.

There is much more openness now—not so much willingness, but openness—on the part of some companies to report on these things. The more that gets called out, particularly where it gets known about within the organisation, the quicker you stamp out poor behaviour, because people realise they are going to be held to account.

It goes back to the same point that Harry was making, when you are in a professional body and you have disciplinary action that you can take. You still have that within an organisation but, because of a certain element of human nature, we are not very good at calling that out and dealing with it. Organisations are improving their tools for their managers to deal with difficult conversations: “That is poor behaviour. You do not do that. We will not condone that. Actually, it is so poor, you are going into a disciplinary situation.” The more that that can happen, the more poor behaviour will be stamped out.

Q51 Ms Darcy: In a political environment, calling things out if people have not broken the letter of the law but perhaps the spirit of the law is tremendously difficult. You will be aware how the press can jump in on any chinks or signs of weakness. In answering the question, have you got any specific advice about what that could look like in the parliamentary context that we have to work in?

Philippa Foster Back: There are two ways. I presume the Whips are there, in part, to do that role, but there must also be a part for the institution itself. It must have some recourse.

Andrew Walker: I will take a slightly different tack in answering both your questions. I agree absolutely with what Harry said about it being extremely difficult. There will always be a difference between public perceptions and reality. The aim has to be to reduce that to

the minimum. The most effective way of doing that is just the long, hard slog of communication. As part of communication, the critical thing is the understanding by the public—perhaps coming right back to where we started—of what the role is of their Member of Parliament. What is the role of MPs as a body? What are the expectations that they can have and, indeed, the expectations that they cannot have, of their MPs? Expectation management is an important part of, in one sense, code setting, but certainly in communicating that.

If you look at the BSB website, there are a number of pages you can look at that have been drafted with outside help, I think from Law for Life, which is a charity that tries to help lawyers, even being as clear as they think they are being, to communicate. There are simple ways of communicating to people what they can and cannot expect. If you are communicating the expectations, people's understanding of the expectations will help them, you hope, to understand the reaction of Parliament to particular situations.

There will be examples in relation to constituents saying, "My MP has not done X and Y." There could be a couple of straightforward examples on the parliamentary website, which MPs could have up in their constituency offices to explain the role—to explain why you sometimes cannot help or why you might be able to help. If people understand why, they are much more willing to be forgiving or to see the reality. What you have achieved is that the informed and fair-minded, at least, have been given an opportunity to understand. The ill-informed and those who are not going to be fair minded are a much harder nut to crack, but that is not going to be the target. The target has to be those who genuinely just want to know what the position is and to understand why you are doing it.

There is a second element, which is the holding to account. I agree with Harry. I know that there are going to be difficulties with that. MPs inevitably need, at times, to be held to account.

One thing I noted about the code that you have that is different from the Bar code is the complete division between public and private behaviour. Members of the Bar are required to be honest in their private lives, not just in their public life. There will be certain impressions created, rightly or wrongly, from artificial divisions that do not match people's expectations. One element that you might say is missing from the code is the idea of legitimacy across all of the audiences that you are speaking to. There has to be legitimacy within Parliament. There has to be a public interest—a sort of constitutional element to all of that. There is also what members of the public can and cannot expect of their MPs. If you have a code that is not dealing with that, members of the public will inevitably feel that it is not going far enough. They also want to know that it is not toothless.

Those are simple ideas. They can clearly go too far, but they are there in the common currency, and they need to be met in some way—the way in which you are meeting them and explaining to people so that they can understand why you have drawn the line where it is.

Harry Cayton: I will add to that point. We have sort of touched on this, but we have not been very explicit: the issue of transparency. I think that transparency is a great antiseptic. That question that you ask yourselves, "If other people knew I was doing this, how would they think?" is a really strong test of what is acceptable and not acceptable. We have seen

greater and greater transparency coming into the health system, and it has undoubtedly ratcheted up people's self-awareness of what appropriate behaviours are.

You are touching on a problem that flows from that. A few years ago, you will remember, the Care Quality Commission got itself into quite a lot of trouble and became a pretty unpopular organisation. I remember talking at the time to the chair and saying, "Your problem is that you are endlessly producing reports saying how bad the NHS is and how awful this hospital is. You have become the bearer of bad news." The sense of things going wrong then falls on the regulator. How you handle the issue of transparency in a way that goes to Andrew's point, so that transparency builds confidence, rather than building cynicism, because of the errors that you are reporting, is an important balance to think about. When I look and occasionally see that a Member of Parliament has referred themselves to the Standards Committee, saying, "I'm not sure I've done anything wrong, but I have referred myself to the Committee," that is the kind of thing that builds confidence, because it shows people who are trying, as Andrew said, to understand what they need to do to meet the code.

Q52 Mr Chope: To what extent, in your particular organisations, do you think the principle and rules that we have been talking about are now embedded in the culture of those organisations?

Andrew Walker: Perhaps I can deal with that first of all, pretty straightforwardly. We have had an ethical culture and rules of practice and principle long before we even had a code of conduct. When it is inherent within the profession, you just live and breathe it from the moment you start. Of course, people come in with different levels of understanding and appreciation but, from the very start, that level is being built up throughout. I have no doubt that our code of conduct is truly embedded in everything we do. That is clear if you ever work in a set of chambers or in any environment involving lawyers. They are always being asked questions and are asking others, "What do you think about this situation?" To answer your question, absolutely, but we are perhaps not the best example for you to be looking to in that regard, because of the long history that we have that has enabled us to get to that point.

Harry Cayton: Doctors were first regulated in 1858, so they have been doing it for a while. We talk about mature professions. There are clearly some mature professions. On that whole thing they have about "I am a doctor," it is very interesting how many doctors refuse, as it were, to stop being a doctor after they have retired. They want to go on being on the medical register, even though they are not working, because it is their identity.

We have modern occupations—chiropractors or whatever—who have only been regulated for a relatively short time, where I would say we do not see that depth of understanding of what it means to be a regulated professional. It varies to some extent, but because we have statutory regulation in most of our field—our accredited registers are not statutory—I would say we have a pretty strong regulatory framework, but it is supported by law and by a lot of expenditure and cost. You have to be quite careful not to regulate people who do not need to be regulated.

Philippa Foster Back: Speaking for the organisations that we work with, they struggle a bit. They will typically have somebody who is responsible, every single day, for the code: the ethics practitioner—it might be an ethics compliance practitioner—who has two

functions or two roles. If they are a multinational, they probably have ethics ambassadors or champions around all the parts of the organisation. This is something that you have to do every day in their world because, with the variety of situations that they are working in, it is too easy for somebody to do the wrong thing. They look at all of this—having a code, doing the training, doing the embedding and everything else I talked about earlier—as all being part of prevention. As an organisation, you cannot insure your reputation through the financial markets, because nobody will give you a premium for it—it is too expensive—so you have to self-insure. If you are self-insuring, you want to make sure that everybody is going to be doing the right thing, even though nobody is watching, to quote a famous phrase, so you put in all this architecture, support mechanisms and training mechanisms, starting from the interview process. I know that does not necessarily read across here but, picking it up through the interview process, are you hiring the right people, who are going to be aligned with your values to work properly in your organisation?

It is a continuous process, but it is helped by what I would say are a few key tools. One is the decision making, which picks up on, “How would you feel if this was on the front page of the newspaper tomorrow?” There is also the speak-up mechanism, so that people know who they can talk to if they have a question or query—who to ask.

Q53 Mr Chope: It seems that, of the three, you have the most difficult problem. In your area, how do you ensure that people know and understand the rules?

Philippa Foster Back: That is really down to the organisations themselves. We can help them. We do not do it for them. We are a small charity of 10 people working multinationally, so we get quite stretched, but we help organisations, as we were saying earlier, to get their guidance right by virtue of our experience, knowing, across all the organisations we work with, what works and what doesn’t. These are the key elements that we have identified that all organisations, working at them continuously, can use to get to a better place. However, you are dealing with human nature, so you have to continue at it all the time.

Q54 Mr Chope: When there are problems, as there always are, is it because people do not know or understand the rules, or is it because they have deliberately chosen to ignore them?

Philippa Foster Back: It can be a variety. They can choose to ignore it for their own personal gain, but we have a very strict UK Bribery Act now, which is a magnificent deterrent. We have things like people thinking that the pressure is on them to cut a corner because, if they do not, the company—if it is a small company—might lose an order and, as a consequence, people in the organisation might lose their jobs; so they might cut a corner for that. They might know exactly what the rules are, but they still choose to do something differently, not for their personal gain but for the greater good—they think—of the organisation.

There are many drivers as to why people will not necessarily do the right thing. On having a code and guidance—let me put it this way: the bulk of people will want to do the right thing in the right way all the time. That is great. However, there is going to be a small element, leaving aside those who want to go out and defraud you, who might find

themselves in a situation where they are not quite sure—it is going to be easy for them, and it might be for their own personal reasons or for the reasons that I mentioned, about the company—whether they might do the wrong thing. Those are the focus of all the guidance and toolkits that organisations are putting in, to make sure that you capture those people and that they do the right thing, or they know to ask and whom to ask.

Chair: Before I bring in Peter—

Andrew Walker: I will just add something briefly in relation to that. In one sense, that is true of the professions as well. The guidance is there for those who are looking for it and are not sure. The aim is to make sure that people look for it and know that there is an issue.

There is one area in relation to the legal profession or the law generally where there is perhaps something of a parallel: in relation to alternative business structures, where you get non-lawyers coming into legal services organisations. There is some research, although I have not seen the detail of it, which suggests that there is a cultural clash between the lawyers and those coming in, which is primarily to do with a lack of understanding and appreciation of the difference between being part of a regulated profession—or part of a profession even without the regulation—and working from the outside. The impression is very much of a lack of appreciation of what it really means to be a professional and to be in that services sector, rather than deliberate attempts to mislead. I rather go along with Philippa on that. That is the cohort that is likely to be the most accessible, but it is the largest of the problem areas.

Chair: Before I bring in Peter, Chris and Dominic, I ask for quick questions and quick answers. I am aware of the time that we have before the House sits.

Q55 Mr Jinman: Not a problem, Chair.

I will touch very briefly on a couple of points that you have just made. “Do not regulate people who don’t need to be regulated” is a comment that you have just made. I am particularly interested in your last comment, as a barrister, in the sense of, “Who else?” Do you regulate other staff? Do you see the need to do so? One of the questions that we are looking at, given what the report from Northern Ireland said, is that perhaps there should be a code for the staff. How far do you take these things?

Andrew Walker: We do not regulate staff directly. Essentially, members of the Bar are responsible for their own staff. I anticipate that that is likely to be the approach that you would take in Parliament. When you have entities or organisations, you then have to regulate those who are managing them, who may not be lawyers, but they are effectively in the same sort of position as the lawyer would be in. The focus is on the lawyer or the organisation, if it is a company. That is the focus. Whether you should regulate members of staff is a slightly different issue, because the role is different. If you are going to do that, I would come back to the point of, “Identify the role.”

Q56 Mr Jinman: In effect, groupings are getting together, certainly in my own profession. We are constantly being asked, “Would you be able to regulate us? Can we join

your group and become regulated?” It seems a constant plea. I am conscious that you have both touched on that.

Harry Cayton: Regulation is a fantastically blunt instrument, so you should not use it unless you have to. At the moment, we are fighting to keep all these occupations who want to be regulated because of some kind of professional status out of regulation, because it is a waste of public money, frankly, and a waste of their money, too.

Chair: I am going to regulate right now, so that you can get two last questions in, Chris, if you please.

Q57 Mr Chope: I am going to give you a slightly different question. One of our related professions is the Government. A lot of people muddle up the House of Commons and the Government. Do you think it is sensible to have a separate ministerial code, as against the code that governs the conduct of Members of Parliament?

Philippa Foster Back: Again, it goes back to the role. Quite often, in the corporate sense, they will have a general code that will cover all staff. It does not matter what you are doing—it will cover all staff. Then, it will highlight specific extra responsibilities if you are a manager. So, I would say there could be something there.

Andrew Walker: The role is different, but you will also need an extra element of how to manage the conflict between the two roles. When ethical issues arise, there is usually a question of conflict of one principle against another. If you have a ministerial code and a code for MPs, you will have to deal specifically with how you address conflicts between the two roles when they arise.

Q58 Mr Grieve: I go back to this public/private split, which was particularly highlighted in the comments about the Bar and people’s private lives. We have a very strange catch-all provision of bringing the House “into disrepute”. It is not very clear what that means. I just wondered how your organisations had separated professional and private.

Andrew Walker: Our code of conduct is explicit on those duties that apply in private life as well as in public life.

In response to your specific point about that part of the code, I would be very wary of that. It is rather old-fashioned. It is not just old-fashioned language; it is an old-fashioned approach.

Under our old code, before we brought in the new one, we used to look at ethical issues within the ethics committee, which is where we debate the more difficult problems. If we were having to fall back on the point about bringing something into disrepute, it was usually because we knew it was wrong, but there could perfectly well be another rule that should cover it. The great advantage of the new code, with the core duties, is that you can now look to those core duties. There is usually another one, and you do not have to rely on bringing into disrepute. It is right that it should be a high standard.

Harry Cayton: There are some very key elements of conduct that I think do matter. They are serious matters. They are dishonesty, sexual misconduct and racism—particularly racist abuse. There are certain things, even if they take place entirely in someone’s private

life, that make you an unfit person to be caring for someone in the health service. Those are pretty clear.

We did some research recently on public attitudes to dishonesty. We have had some interesting cases recently. It is quite clear that public attitudes to dishonesty have shifted slightly, just as they have to sexual mores. I used to say that if you were a GP 50 years ago and you had an affair with the vicar's wife that would be shocking, but pinching all the nurses' bottoms would be fine. Now, pinching all the nurses' bottoms gets you into trouble, but if you are having an affair with the vicar's wife it is fine. Our social values have changed significantly. What we found on dishonesty in our recent study of attitudes surprised us. In an example of a dentist who had swindled or defrauded the NHS out of £140,000 and had been prosecuted but paid the money back, our public panel said that was fine; it did not affect his technical competence as a dentist. However, for a social worker who had lied about her child-minding business, they absolutely agreed she should be struck off.

Philippa Foster Back: In the corporate world, you sign an employment contract and that typically has language that you will not bring the firm into disrepute. You get covered that way. Also nowadays, for companies where there are particular grey areas, like the use of social media and things like that, there is much clearer guidance in their codes about what is expected and the behaviours around that. I do not think, in today's environment, you can actually split them. The public comes to see that they are people. They will expect some things to be of a private nature, but you are in the public domain.

Chair: Thank you very much for coming in today. We really appreciate your taking the time to answer our questions and to have a dialogue with us.