

## Public Administration and Constitutional Affairs Committee

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

Tuesday 15 March 2022

Ordered by the House of Commons to be published on 15 March 2022.

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Members present: Mr William Wragg (Chair); Ronnie Cowan; Jackie Doyle-Price; Mr David Jones; John McDonnell; Karin Smyth.

Questions 258 - 306

### Witnesses

**I:** Sir Alex Allan, former Independent Adviser on Ministers' Interests; and Sir Philip Mawer, former Independent Adviser on Ministers' Interests and former Parliamentary Commissioner for Standards.

### Examination of witnesses

Witnesses: Sir Alex Allan and Sir Philip Mawer.

Q258 **Chair:** Good morning and welcome to a hybrid public meeting of the Public Administration and Constitutional Affairs Committee. Today's evidence session continues our inquiry into the propriety of governance and standards in public life, cast into the spotlight following the Greensill affair. In this session we will be looking at one of the key aspects of the so-called Nolan landscape governing behaviour in public life, namely the Ministerial Code. Our witnesses today have a wealth of experience, and we look forward to hearing their views on the subject. The Committee is very grateful to our two witnesses for giving their time. I will ask them to introduce themselves for the record, starting with Sir Alex Allan.

**Sir Alex Allan:** I am Alex Allan and I was the previous adviser on the Ministerial Code.

**Sir Philip Mawer:** My name is Philip Mawer. I was the independent adviser between 2008 and near the end of 2011.

Q259 **Chair:** Thank you. I will begin with a question to Sir Alex, please. The independent adviser is not a standards regulator. How would you characterise the role?



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**Sir Alex Allan:** As the title implies, it is that of an adviser and it is set up and described in the Ministerial Code as providing advice to the Prime Minister on issues surrounding the Ministerial Code.

Q260 **Chair:** Sir Philip Mawer, is there anything that you wish to add to that?

**Sir Philip Mawer:** In addition to the advice role, of course there is an important investigatory function, which is not the bread and butter of the job, but which one may be called on to undertake from time to time. We may get to the conditions under which one is called to do that in later questions.

Q261 **Chair:** We certainly shall. Again to Sir Alex, the previous First Civil Service Commissioner, Ian Watmore, told us that he felt the statutory underpinning of his post gave him the confidence to take a robust stance with Governments. Did the lack of a similar statutory underpinning hinder you in any way?

**Sir Alex Allan:** I am not sure that it did, really. One of the issues if there were a statutory underpinning is, of course, the involvement of the courts—the judiciary—in dealing with issues around the Ministerial Code. I did not feel that the lack of statutory backing caused me particular problems. I can see the case for it, but I do not think I felt it was a key issue.

Q262 **Chair:** Sir Philip, do you think that the lack of a statutory underpinning impeded you in any way?

**Sir Philip Mawer:** No, not at the time. Frankly, even if you had a statutory underpinning, it would not necessarily guarantee the independent adviser's involvement in regulating matters to the degree that you might want to see that happen. I think it could add something to the perceived status or authority of the role, but its absence was not crucial in the way in which I undertook the thing. At the end of the day, you come down to the fortitude and so on of the person doing the job in terms of demonstrating the independence of the role, and the informal aspects of the thing are as crucial as the formal structural context that a statute might provide.

**Chair:** Thank you both.

Q263 **Ronnie Cowan:** Morning, gentlemen. Lord Geidt told us that he was approached by the Cabinet Secretary about becoming the independent adviser. Can you remember how you were offered the job, who offered you the job, and did you lobby for it before you were offered the job?

**Sir Alex Allan:** No, I did not lobby for it. I was approached by the head of the propriety and ethics team and asked if I would be interested in doing the job. I said I would and that was it, really; I was appointed.

Q264 **Ronnie Cowan:** Were you surprised to be offered the job, Sir Alex?

**Sir Alex Allan:** Not particularly. I had not thought about it at all, but I had had quite a lot of involvement with Ministers and propriety and issues like that, from my time as a private secretary in No. 10 and my time in



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the Cabinet Office. So in some ways, I was not surprised, although I had not thought about taking on the role.

Q265 **Ronnie Cowan:** Who was the first Prime Minister that you served under?

**Sir Alex Allan:** I was principal private secretary in No. 10 under John Major and then for a relatively short time under Tony Blair.

Q266 **Ronnie Cowan:** And as the independent adviser?

**Sir Alex Allan:** I started under David Cameron, then I was under Theresa May and then under Prime Minister Boris Johnson.

Q267 **Ronnie Cowan:** I won't ask for any comment about that. And Sir Philip?

**Sir Philip Mawer:** I have to say that if you were to lobby for that job, you would need your head examining. It is not the sort of job that you take on because you want to do it. You do it out of a sense of service and duty.

Similarly, I was approached by the head of the propriety and ethics team and asked if I would contemplate the role. It was clear to me that the approach was made with the knowledge and indeed at the initiative of the then Prime Minister, Gordon Brown. The two Prime Ministers I served were Gordon Brown and then David Cameron, who confirmed the continuation of my appointment after he became Prime Minister.

Q268 **Ronnie Cowan:** We will go into more detail later on but very briefly now, in your role, under different Prime Ministers, were there changes in the relationship? How did you handle that? They must be looking for different things from their own personal adviser.

**Sir Alex Allan:** In my experience, it did not change very much. The Ministerial Code was adjusted slightly when the Prime Minister changed and to that extent there were differences in the role, but they were not hugely significant changes. I don't think the change in Prime Minister particularly affected the role.

**Sir Philip Mawer:** I agree with that, in my experience. In fact, the relationship with the two Prime Ministers that I served when I was in the role was relatively remote. Most dialogue, to the extent that it took place, was conducted via the propriety and ethics team and the then Cabinet Secretary. It was not a matter of frequent encounters with the Prime Minister or frequent interviews and conversations about these matters. That is not to say that if I had asked for an audience, I would not have got one, but I am trying to illustrate the nature of the relationship at that time. We will wait to see whether recent announcements suggest it will become more frequent.

**Ronnie Cowan:** I have run ahead of the questions; we will come back to that theme later on.

Q269 **Mr David Jones:** Sir Philip, the role of independent adviser is, of course, a personal appointment by the Prime Minister. What would you say are the advantages and disadvantages of that?



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**Sir Philip Mawer:** Essentially, if you are to relate to the Prime Minister as an adviser, the Prime Minister needs to have confidence in your ability to do the job and trust your judgment and so on. I believe that part of the background to my own appointment was that I had served for almost six years as the Parliamentary Commissioner for Standards when I was appointed so there was a track record that the then Prime Minister could judge on.

A second key point is that being appointed by the Prime Minister gives you the backing of the personal authority of the Prime Minister. In occupying the role, you have that status as somebody who has had his personal imprimatur and, therefore, you expect your requests and so on to carry some weight and authority.

The disadvantage is arguably that, because there has not been an open process—there certainly was not in the case of Alex or me—you could be seen as being the Prime Minister’s sort of stooge. Frankly, however, the response to that is that the clue is in the title of the role—“independent adviser”. It is your independence of judgment that you have to bring to bear on this.

My own view, in short, is that it is vital that the Prime Minister, at the end of the day, makes the decision about who is to be the adviser. That does not rule out the possibility of a broader process of advertisement and interview. It does not rule out the possibility—and indeed it occurred in the case of Alex and me—of a post-appointment appearance before an appropriate Select Committee, for example. But you need to know that you have the Prime Minister’s confidence if you are to be able to tackle the job.

**Sir Alex Allan:** I agree that it is crucial that the role has the confidence of the Prime Minister, but I think that having a more formal process for the appointment would add to the perception that the adviser is independent. I believe that should be the sort of process that is applied to a lot of other public appointments, but with the Prime Minister having the ultimate decision. There are other instances of where the Prime Minister or another Cabinet Minister, for example, has the decision on a public appointment but it goes through a process. I think that would add to the perception that the adviser is truly independent. That said, I didn’t, I don’t think, have particular problems that I was not seen as independent.

**Sir Philip Mawer:** I agree with what Alex has said. I hope that what I said did not undercut what he has just said. Some more formal process would not be amiss, provided the Prime Minister has the final say.

Q270 **Karin Smyth:** To follow on from that, because I think that people find the hand on the shoulder a slightly odd process in this day and age, what might that process look like? Sir Philip, I think you talked about a post-appointment hearing, but what about a pre-appointment screening process such as we have for other similar positions? Would that add to the authority—not just the independence but the authority—of the role?



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**Sir Alex Allan:** I think a process whereby there was an advertisement of some kind, applications, a sift, interviews—the sort of standard process for public appointments but with the preferred candidate being put to the Prime Minister and the Prime Minister having the say on whether or not the candidate was acceptable to him or her.

Q271 **Karin Smyth:** Thank you. Sir Philip, will you comment particularly on the point about a pre-appointment process rather than a post-appointment interview?

**Sir Philip Mawer:** I am no expert on the current arrangements for the appointment to senior positions of this sort. I guess the argument against pre-appointment scrutiny has been that you risk blurring the line between the Executive and Parliament. However, frankly, I do think that some parliamentary involvement in the appointment would be sensible. I am happy to leave to the experts whether that is pre or post.

Q272 **John McDonnell:** Can we talk about the remit of the role itself? Just as an aside, on the appointment, when we spoke to Lord Geidt, the expression that he used about his own appointment was that his name was “alighted upon”, which smacked of a conversation in a gentlemen’s club in the 19th century. That is what I think caused some concern.

On the remit itself, you have both played this dual role of advising the Prime Minister on the Ministerial Code—standards, effectively—but at the same investigating breaches, or investigating issues, but the investigations are based upon a reference from the Prime Minister himself, the process of investigation is controlled by the Prime Minister, and actions subsequent to any investigation again are at the determination of the Prime Minister. How comfortably did those two roles of advice and investigation sit with you both? We will do this chronologically, so could I start with you, Sir Philip?

**Sir Philip Mawer:** First, I can assure you that there were no conversations in a gentlemen’s club in my case. Secondly, on your main point, one phrase you used I would question, which was that the conduct of an investigation is in the Prime Minister’s hands or determined by the Prime Minister—some words to that effect. I did not find that in the one case that I investigated formally when I was the independent adviser. Of course, you are absolutely right that the decision whether to call in the adviser is for the Prime Minister, advised by the Cabinet Secretary. That is a matter we may discuss in more detail later.

The key point you ended with was on the question of being both an adviser and an investigator. I don’t think that is a disadvantage at all. The one function helps to inform the other. A lot of the time of the independent adviser is spent on giving advice via the propriety and ethics team, often to Government Ministers and Departments, about the handling of conflicts of interest and so on. The detail of that casework informs your approach to advising, for example, on whether the Ministerial Code needs amendment. It also informs the way that you approach individual investigations, and vice versa.



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The same is true in the context of parliamentary arrangements, with the Parliamentary Commissioner for Standards both advising the Standards Committee and being an investigator. I do not see a necessary conflict in the dual role that you have described. What is crucial is the conditions or terms under which you are able to carry out those two functions.

Q273 **John McDonnell:** Before Sir Alex comes in, let's be clear: the Prime Minister retains control of the process itself; as you say, decides whether an alleged breach of the Ministerial Code should be passed to the independent adviser and what actions should be taken as a result; and, as we saw in Lord Geidt's activities, even has access to some of the information for the investigation.

**Sir Alex Allan:** I think that the first stage of the process you describe is not really satisfactory, where the Prime Minister is the one who simply decides whether or not there should be an investigation. I think that giving the independent adviser the ability to initiate an investigation would add to the credibility of the process. At the moment, there must always be suspicions that on issues where an investigation is not carried out the Prime Minister has simply decided not to refer it to the independent adviser. If the independent adviser had the ability to initiate an investigation, that would add to the credibility of the process.

On the second stage, as Philip said, once the independent adviser is asked to investigate, that is done under the authority of the independent adviser and supported by a team from the propriety and ethics team in the Cabinet Office, normally. At the end of that, the adviser gives his advice to the Prime Minister on whether or not there has been a breach of the code.

Ultimately, I think that the Prime Minister has to be the one who decides who he wants as Ministers, whether he believes that their conduct does or does not justify their remaining in office or whether some other approach or step should be taken in the light of the advice. I don't think it would be for the independent adviser to determine what happened as a result. The independent adviser provides advice on whether or not something is a breach of the code.

Q274 **Mr David Jones:** Sir Alex, if we could talk about the Ministerial Code itself, it combines guidance on process issues such as travel, communications and the functioning of the Cabinet with questions of standards. Would you say that the standards-related aspects of the code are sufficiently clearly stated, or are they to a certain extent obscured by the other aspects of the code?

**Sir Alex Allan:** The code deals in some ways with two issues. Of course, it grew out of a document called "Questions of Procedure for Ministers", which was much more about the conduct of Cabinet meetings, Cabinet Committees and so on, and that has been slimmed down over the years.

I think it is important that the code sets out the general principles, which it does, and that the Ministers are expected to uphold the seven principles of standards in public life, but it is also helpful to Ministers that



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issues are set out clearly—what arrangements for travel and so on are accepted, what are the links between ministerial business and constituency business, and so on. There are then issues on whether actions taken by a Minister are consistent with that. I think that it is right that the code covers both, but I think it is important that it has the overarching principle that Ministers must abide by the seven principles of standards in public life.

**Q275 Mr David Jones:** The Committee on Standards in Public Life suggested separating the two elements, leaving the code as a clear statement of standards of conduct. Do you not agree with that recommendation by the committee?

**Sir Alex Allan:** It would be possible to have two documents but equally, there would need to be advice to the Prime Minister on whether actions by a Minister in a particular instance had breached the Ministerial Code. For example, the first investigation I was asked to undertake was to do with issues around Baroness Warsi and whether it was appropriate that she had taken her special adviser on an overseas trip. That was an issue that linked to other bits of the Ministerial Code than the overarching principles. It is certainly possible to have one document that sets out the general principles but we would need another document that set out the rules about what Ministers are and are not entitled to do and how they should do it.

**Q276 Mr David Jones:** Sir Philip, would you like to add anything to that?

**Sir Philip Mawer:** Essentially, I agree with what Alex has said. It might be possible to edit the current document in a way that brought the principles out even more clearly and put them even more up front than they are now, but at the end of the day you are looking at a seamless collection of behaviours that do not neatly divide into ethical and non-ethical, or subject to ethical rules on the one hand and not subject to them on the other. I do believe, on the pragmatic point, that having one document that sets out everything for Ministers clearly is probably a good thing.

**Q277 Karin Smyth:** Sir Alex, in your time, did you encounter areas where you thought there were omissions in the code? If so, were you asked to do something about that?

**Sir Alex Allan:** No, I wasn't asked about whether I thought there were omissions. I was consulted when changes were made to the Ministerial Code. I was not conscious that there were any significant omissions in the code. As we have just been discussing, the code is pretty comprehensive. If anything, and as the Committee on Standards in Public Life has said, there are issues that could be separated out. I did not find there were any omissions, no.

**Karin Smyth:** Sir Philip?

**Sir Philip Mawer:** No. I was similarly consulted about changes to the code and indeed reviewed it. Each section now opens with a principle and



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so on, and those were changes designed to try to make the document more principles-based. The trouble with trying to lay everything down in black and white is that you end up with a plethora of rules and nobody follows them. What really matters is the principles that underpin the rules, which may need to be illustrated in particular instances from time to time.

I am aware that there have been suggestions that there are some gaps in the code as it now exists but the principles that it sets out, the bedrock of which being the Nolan principles, are the things to which one returns if there is not a specific rule or statement absolutely applying directly to the point that is at issue. It is important that the principles, not the detail, are recognised as being the key thing in the document. You can never cover all the complexities of a Minister's life.

**Q278 Karin Smyth:** That is a really interesting point. I appreciate that we are talking about a bit of a different time, even though it was not that long ago. The Institute for Government has suggested that an overhaul is required on things such as the use of personal phones to conduct business. We have heard discussions about the use of WhatsApp by Ministers and outsiders, and the general use of social media. The accountability of special advisers is an issue that we continually return to, and indeed guidance on personal relationships within Government, with non-executive directors and so on now having much more influence in Government. These are areas—perhaps the use of WhatsApp and so on—that were not as prevalent previously as they might be now but that is the reality of what we are dealing with.

Picking up on your point, Sir Philip, about those issues and the issue of principles and a plethora of rules, do you still think that there are no areas to be strengthened in the code or that we should not take that sort of advice to look more broadly?

**Sir Philip Mawer:** Please do not misunderstand me; I am not saying that there may not be gaps now in the rules. I have read the Institute for Government's report and have seen the recommendations to which you refer. I am not in a position to say, without knowing more of the detail that lies behind them, whether these are critical things that need to be included in the code. Some of them are certainly topical issues—accountability for special advisers and so on. I am sure that from time to time gaps in the code will be identified. They emerge as a result of particular cases, and that is why the code needs to be kept under regular review and looked at at reasonable intervals—not less than a couple of years between revisions, for example. Frankly, sometimes, it may need to be amended immediately in response to particular events.

All I was trying to say was that you will never cover everything. That is not to say that you should not try to make the code useful for those who have to abide by it and make it as relevant to current conditions as you can and look at it regularly, but never think that you can cover everything. If you attempt to cover everything and then lose sight of the principles that underline the code, you are on a potentially slippery slope.



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I have experience as a regulator in professions as well as in Government and Parliament, and there is always a tension between how much you are trying to define specific rules all the time and trying to announce general principles that you can then apply to different sets of circumstances. At the end of the day, I believe that the principles are more important than trying to cover everything, because you can lead to such a plethora of bureaucracy that people say, "Hang this." What you want is for people to have in their heads the principles that they are to follow.

**Q279 Karin Smyth:** We have seen that where people do not have that, we have got ourselves into difficulties, and that is why we may have to do something different. Sir Alex, do you want to add to that? The question is around whether we need to strengthen the code, particularly with reference to some of the issues that we have seen recently of where perhaps the principles have not been followed, particularly around use of phones and social media and so on for Government business.

**Sir Alex Allan:** Yes, I think those are good points. Most of the general principles about that are in the code but there is nothing very specific about, say, the use of WhatsApp. Yes, it probably would be an improvement if the code were to make it clearer what is and is not acceptable in the way of using private communications and so on.

**Q280 John McDonnell:** Should Parliament have a formal role in the publication of the code, Sir Philip?

**Sir Philip Mawer:** At the end of the day it has to be the Prime Minister's document. I say that because the Prime Minister is Head of Government. He has to be the person who, as Alex said in response to an earlier question, decides and indicates the behaviour that he expects from his Ministers. He has to be the one who decides whether they have exhibited the behaviours, if called into question, that allow them to continue as a Minister. That does not rule out the possibility of your Select Committee looking at the Ministerial Code from time to time and talking to the Prime Minister's independent adviser, for example, about whether it is adequate or might be reshaped in various ways. Ultimately, Parliament is the body to which the Prime Minister must answer on his shaping of the code and his decisions in the light of the advice he has received as to what should happen in individual cases.

I emphasise the role of the Prime Minister because in any organisation the lead has to be set from the top. That is vital in setting the right culture in the organisation, which is then observed and seen through by everybody below. If they are uncertain about behaviour that treads a fine line between ethical and non-ethical—if they do not know that any breach of the rules or any breach of the principles will be jumped on—it is not surprising that people take chances. The lead from the top is crucial.

**Q281 John McDonnell:** Do you have any concerns about the fact that the Prime Minister is responsible for both the rules and their application?



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**Sir Philip Mawer:** In my view there is an issue around how the Prime Minister's behaviour and/or lead in these matters is appropriately investigated. The recent partygate affair has brought that question to the fore, and there is an issue there that we may get on to in later questions. I should probably let Alex say what he wants to on this immediate point.

**Sir Alex Allan:** I think it would be welcome if, when a new Prime Minister assumed office and was about to produce his or her version of the Ministerial Code, or when there were, during a Prime Minister's term in office, a proposal to make a significant change to the Ministerial Code, proposals were put to probably your Committee before they were finalised so that your Committee had an opportunity to make points about where there were omissions or where some of the issues were not phrased in the right way. That would be a useful development. Ultimately the Prime Minister has to be the one who determines the Ministerial Code because he or she is responsible for the behaviour of Ministers, but providing advice from your Committee on the code would be a useful step.

Q282 **Ronnie Cowan:** The authority to regulate ministerial behaviour lies solely with the Prime Minister. The independent adviser can only provide advice and only when asked to do so. How much contact did you have with the Prime Ministers under whom you served?

**Sir Alex Allan:** I had relatively little. Most of the time, as I think Sir Philip said, I operated through the propriety and ethics team in the Cabinet Office. As I understand it, Lord Geidt's terms of reference provide more explicitly for contact with the Prime Minister.

Q283 **Ronnie Cowan:** Could you expand on "relatively little"? Is this a weekly sit-down, a monthly sit-down?

**Sir Alex Allan:** Oh, absolutely not, no. It was completely ad hoc.

Q284 **Ronnie Cowan:** And always at the behest of the Prime Minister? You could not pick up the phone yourself and say, "I'm observing this; we should talk about this"?

**Sir Alex Allan:** I could, I suppose, have done. I did not, as it happened. In some ways one of the unsatisfactory points about the process that it is the Prime Minister who decides whether or not there should be an investigation is that there were instances—I do not want to go into specifics, but—

**Ronnie Cowan:** Please do.

**Sir Alex Allan:** There were instances where I thought that there was probably a case for an investigation, based on press reports normally, but where, before there was any question of that, there was a statement from the Prime Minister or from No. 10 saying that the issue was completely acceptable, closed, no case for an investigation, in which case there was no role for me at all.



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As I said earlier, I think that there is an appropriate case for an independent ability to investigate. I actually think that would help in some ways to establish the position. At the moment, where there are calls for an investigation and the Prime Minister or No. 10 spokesman rules it out, there is always an unsatisfactory sense that this has been swept under the carpet, whereas if there had been an investigation and the independent adviser concluded that there was no breach of the code, that would provide greater authority to the position and more credibility for the position that had been taken.

**Q285 Ronnie Cowan:** Sir Philip, what is your experience?

**Sir Philip Mawer:** Like Alex, I had virtually no contact with the two Prime Ministers I served on these matters. The communication with them was undertaken via, as I said earlier, the propriety and ethics team and the Cabinet Secretary. Whether Lord Geidt's slightly amended terms of reference, which appear to give him the right, for example, to advise on whether an investigation should be initiated or not, effect any real change is a moot point at this stage.

**Q286 Ronnie Cowan:** How do you advise somebody if you do not have any regular contact with them?

**Sir Philip Mawer:** You simply put your views on issues in writing, you convey them through the Cabinet Secretary and of course you report formally. Given the arrangements in my time and Alex's, under which we did not have the authority to initiate an investigation, you convey a report through the Cabinet Secretary, which goes to the Prime Minister along with any advice that the Cabinet Secretary then wants to offer on how to respond to it.

**Q287 Ronnie Cowan:** Are the topics or the issues that you are providing advice on purely your choice?

**Sir Philip Mawer:** You could be asked by the Prime Minister to advise on a particular matter. I need to say that, on a day-to-day basis, the dialogue between the independent adviser and officials in the propriety and ethics team is continuous. That relates to individual Ministers' interests and so on. That is, as I said earlier, an important part of the role.

Let me make it clear that I felt significantly constrained in the role, certainly compared with the ability that I had had previously as parliamentary commissioner to initiate an investigation, to say whether or not I thought there was a matter that required further investigation, having taken a preliminary view, and then to report, in the knowledge that my eventual report would be published for the world to see. Like Alex, I strongly believe that the independent adviser should have independence of action.

I had one case in which it was not a question of the matter not being investigated; it was rather that the matter, which involved allegations against a Cabinet Minister, was investigated but was investigated by the



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then Cabinet Secretary. This was the case of Dr Fox and Adam Werritty, which you may need to look back on the record of.

**Ronnie Cowan:** I remember it.

**Sir Philip Mawer:** That was investigated by the then Cabinet Secretary, and it arose very close to the end of my time as independent adviser, when I was on the point of stepping down from the role. It was my clear view that I should have been asked to investigate that. I made that view clear to the then Cabinet Secretary because that was the prescribed channel of communication. I made that view very clear in a letter I wrote at the time.

I believe that if there was authority to initiate an investigation, that would help the Prime Minister, it would help the Minister being investigated and it would help public confidence in the role of the adviser in the way in which ethics in Government are handled. I do not think that is the only change that is necessary, but all those would be helped by such a development.

Q288 **Ronnie Cowan:** Before, during and since the covid crisis, we have seen some questionable behaviour and questionable decisions made by the Prime Minister and his Ministers. It was you, Sir Philip, who used the phrase about having principles in his head that he has to follow. That is to govern himself, but it is to govern the Ministers as well. If any Prime Minister does not have those principles in their head, how do they govern themselves and their Ministers?

**Sir Philip Mawer:** I do not want to get into the business of pillorying any politician of any political party. I will simply say that there has been a succession of events recently that have called into question public confidence in the conduct of politicians and must be of concern to politicians of all parties because they bring what I regard as the honourable profession of politics into disrepute. One of the key things that has emerged from this succession of events is a sense that there is no clear moral compass by which an ethical direction is set.

I believe that the Ministerial Code, suitably updated and with additional powers to the independent adviser of the sort that we have already alluded to, could help to restore public confidence in a way where it has been seriously damaged recently. I think I have probably said enough.

**Ronnie Cowan:** Sir Alex?

**Sir Alex Allan:** I do not want to add anything to that.

Q289 **Ronnie Cowan:** Do you believe that it is inevitable that there are changes that have to be made to improve the confidence in the code's application to the Prime Minister?

**Sir Alex Allan:** There are issues around how allegations against the Prime Minister are dealt with under the process. It is very awkward that it is the Prime Minister who has to decide whether or not there should be an



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investigation into himself or herself, so the position would be strengthened if the independent adviser was the one who decided whether or not there should be an investigation.

**Q290 Jackie Doyle-Price:** I have been listening to your very frank evidence with considerable interest. I want to probe a bit further on the issue of principles versus rules and how that can affect the extent to which a Prime Minister will ask the independent adviser to undertake an investigation. I was struck, Sir Philip, by what you said that essentially principles are about moral behaviours and attitudes—basically, they pass a sniff test. We have seen in the past that if we overlay too many rules on that, compliance with rules can be used to excuse behaviour that is perhaps less than ethical. Equally, without a clear rule breach, there is essentially a “get out of jail free” card for a Prime Minister when questions of behaviour are brought to attention. You mentioned the Liam Fox/Adam Werritty case—obviously, that was given to the Cabinet Secretary, as you mentioned—but were there any other cases where there were discussions about ministerial behaviour that may have been in breach of ethics, but Prime Ministers were not inclined to encourage an investigation?

**Sir Philip Mawer:** Not during my time. I can honestly say that during my time there were no instances in which I felt—with one exception that I have indicated, where there was an investigation, but I was not asked to conduct it. I did not feel that there were any other cases in which allegations had been made against Ministers that I ought to have been invited to investigate but was not invited to, or where there were indications that rules had been broken or principles had been broken but behaviour had simply been brushed off and allowed to pass without serious comment. It may be that Alex’s experience has been different; I do not know. He must speak for himself on it.

**Sir Alex Allan:** It is very hard to imagine an investigation without a specific allegation of a particular action. It is quite hard to imagine how somebody could, in the abstract, breach one of the Nolan principles without there being an actual instance where this was done. In some ways, while I do understand your point about the technicality in some cases of the rules, it is perfectly possible to say that a standard of behaviour was not consistent with the rules based on some particular actions or inactions by the Minister.

**Q291 Jackie Doyle-Price:** Obviously, the Prime Minister is ultimately the arbiter of the code and disciplinary investigations sit with them, but Prime Ministers are not beyond challenge for their conduct either. Is the independent adviser in a position to be able to advise the Prime Minister to refer themselves for investigation?

**Sir Alex Allan:** That is at the heart of one of the points that I made earlier. It is very unsatisfactory that under the present arrangements it is the Prime Minister who decides whether to refer him or herself to the independent adviser for investigation, so I do think this would enforce the case for the independent adviser to have a right to initiate inquiries.



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Ultimately, it is for the adviser to advise the Prime Minister. If the adviser advised that the Prime Minister himself or herself had breached the Ministerial Code, it would be up to the Prime Minister to defend themselves to Parliament based on whatever action they have decided to take in the light of that advice.

Q292 **Jackie Doyle-Price:** Is it worth revisiting the issues of governance around the code? Ultimately, the Prime Minister is first among equals, yet responsibility for compliance with these significant ethical principles, which underpin the integrity and confidence in our democracy—should we have a broader-based governance for overseeing these inquiries so that people could be confident that a Prime Minister could be investigated?

**Sir Philip Mawer:** May I try to answer that? I think that people can have confidence at the moment that the code applies to the Prime Minister, because the code applies to all Ministers of the Crown, of whom the Prime Minister is, in this context, simply one. The issue is about how the behaviour alleged against the Prime Minister is brought under scrutiny other than through normal parliamentary mechanisms of Prime Minister's questions and so on, and whether the independent adviser has the power to initiate an investigation into the Prime Minister. I believe that if the view that Alex and I both hold that the independent adviser should be given the power to initiate an investigation were to become the case, it would be possible for the adviser to investigate the Prime Minister.

The other key thing is that if the adviser did so and submitted a report to the Prime Minister, it would be crucial that that report is published, whatever decision the Prime Minister takes about what to do about it. Ultimately, as Alex has said, the Prime Minister is responsible to Parliament, but for Parliament to fulfil its function it would need access to the full report of the independent adviser to be able to form a judgment as to whether the Prime Minister was behaving appropriately in the action he had taken or not. It is just like the parliamentary arrangement where the Parliamentary Standards Commissioner produces a report that, at the end of the day, is placed before the whole House.

Q293 **Jackie Doyle-Price:** In essence, Sir Philip, all we are talking about is a more transparent way and a more genuinely independent way for the adviser to behave that will give the whole system more teeth without adding greatly to the burden of how we organise ourselves. Is that an over-simplistic way of putting it?

**Sir Philip Mawer:** There is another big question that has been revealed by the partygate affair, which is where the conduct of civil servants and special advisers is equally under scrutiny to the conduct of Ministers, and in this instance the Prime Minister. My own belief is that Sue Gray—Alex Allan and I have both worked with her and, based on my experience, I have a high regard for her personal integrity—was put in a very difficult position in being asked to investigate this matter, given that the Prime Minister's own conduct then came under scrutiny. I believe that in those sorts of circumstances the independent adviser would be the right person



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to conduct such an inquiry. I am talking about remit to a degree, as well as right of independent initiation of an investigation.

Q294 **Jackie Doyle-Price:** What is worrying me about what you said just now and what you said earlier, Sir Philip, is that we appear to have a system whereby things that ought to fall within the remit of the independent adviser seem to be given elsewhere because of potential outcomes that might come from the way the independent adviser approaches an investigation. Would you like to comment on that?

**Sir Philip Mawer:** To be frank, all Governments want to control the news. The difficulty that they foresee—I am talking about Governments of any persuasion—would lie in allowing an independent actor, the independent adviser, freedom of manoeuvre within the area that we are talking about. There is a tendency always to want to shut down the stories rather than providing an opportunity for them to be perpetuated.

I believe that that is a false view of life. The Prime Minister would be assisted if there was a genuinely independent adviser who could investigate of their own volition, who was in a position to take things out of the party political arena for a while and ensure that the true facts were established—and objectively established to everybody's satisfaction—on which then a judgment could be made about what consequences were to follow. I also believe that it would help the Minister under scrutiny to have a fair process conducted by an independent person rather than somebody else—who knows whom?—where decisions about whether guilty or not might be taken for other reasons. I hope I have indicated how I think that the situation could be much improved to everybody's benefit.

Q295 **Jackie Doyle-Price:** Sir Alex, could you reflect on that, particularly in the context of partygate? From your perspective, should that have been investigated by Lord Geidt or within the Cabinet Office?

**Sir Alex Allan:** As I understand it, the original allegations were all about parties in No. 10 and the Cabinet Office attended by civil servants and special advisers and the remit was given to the Cabinet Secretary, who then recused himself because there was an allegation about a party in his office. It was then passed to Sue Gray, who had huge experience as the head of propriety and ethics. It was only subsequently, as I understand it, that issues around the attendance at some parties by the Prime Minister and the Chancellor were raised. I do not know subsequently, once the police investigation is concluded and Sue Gray's report has been published, how any issues under the Ministerial Code that have arisen subsequent to the setting up of the inquiry will be dealt with. I do not know; I imagine that it is still to be determined.

Q296 **Jackie Doyle-Price:** We have seen lots of press comment recently about appointments to the House of Lords and relationships with the Russian oligarchy, which in the current context is quite difficult. It is a moot point whether this just a feature of our reporting becoming more tabloid, as opposed to any other behaviour. You both alluded to the fact that the



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independent adviser ought to have the independence to initiate inquiries, not least to restore confidence and to give Ministers a clean bill of health. Is that an area that you think would merit an inquiry?

**Sir Alex Allan:** As I have already made clear, I think that the adviser should have the right to initiate inquiries. It would then be up to the adviser where to initiate inquiries. Sir Philip has experience of this as the Parliamentary Commissioner. My understanding is that the Parliamentary Commissioner receives an enormous number of allegations about breaches of the parliamentary code and decides to investigate relatively few of the most significant.

**Sir Philip Mawer:** I will simply say that I do think that. I had better say a word on behalf of the reputation of Members of Parliament. An “enormous” number of complaints is perhaps an overstatement, but certainly a significant number of complaints and not all of those get taken to a full inquiry. I believe that if the independent adviser had the power of initiation and safeguards that we have discussed in the course of this hearing so far, it would allow a more proportionate treatment of these matters as well in recognising the relative seriousness or otherwise of complaints and the development of a tariff of sanctions. Not every peccadillo needs to end in a ministerial resignation. The Opposition might like it, because that is the nature of politics, but that is not justice, at the end of the day. What we want is a more proportionate judgment—an independent judgment applied in how these things are treated. I just add that to what Alex has said.

Q297 **John McDonnell:** Sir Alex, let me come to the situation that occurred with your own resignation. There have been different views expressed subsequently on this about its implications for the system itself. Lord Geidt told the Committee that he considered your resignation to be a sign of the integrity of the system and that public confidence will have flowed from your behaviour. Others have disagreed with that and questioned the system itself, certainly when an adviser gives advice but that advice is then ignored.

I should say before I put the question that I strongly disagree with Lord Geidt in that your resignation certainly demonstrated your own integrity but not necessarily the effectiveness of the system itself. What is your view about Lord Geidt’s assessment that the threat of an independent adviser’s resignation is sufficient to ensure the integrity of the system itself?

**Sir Alex Allan:** Thank you for what you said about the reflection on my integrity. In some ways it is very hard to know what the implication of a threat to resign is. I had made it clear that were the Prime Minister to find that he did not accept my advice that there had been a breach of the Ministerial Code then I would resign, and I did. I do not think I have very much more to add to that. I feel that in quite a lot of areas, if an adviser’s advice is rejected, the most appropriate action may be for them to resign. The impact of that will depend on the circumstances.

Q298 **Chair:** Sir Philip, when it emerged that Lord Geidt had not had access to



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an exchange of messages relevant to his investigation into the refurbishment of the Prime Minister's Downing Street residence, the Prime Minister promised him greater resource to support his investigations. What support did you have in conducting your investigations and did you find it adequate?

**Sir Philip Mawer:** The support, as Alex alluded to earlier in the hearing, came from staff within the propriety and ethics team at the Cabinet Office. The Prime Minister's recent exchange of letters with Lord Geidt has indicated that he will be given a more dedicated resource of his own. I did not find the then arrangement a difficulty in terms of restricting me. I was given the resources that I needed to conduct the one inquiry that I had to conduct. I did not find, therefore, a lack of resource a problem.

The issue that you have touched on about the failure to produce relevant documents or information goes to the question of whether there is a clearer obligation on Ministers and officials and special advisers to furnish the independent adviser with all the information that he or she may need to complete their inquiries. That is not just an issue of resource. It was not the case that if Lord Geidt had had another person in his office he might have become privy to the missing information; it was rather that that information was not handed on. I suggest that that is a separate question from the one of resource.

Q299 **Chair:** In that case—you are right to note that distinction—in your time did you feel that in your investigations you had sufficient disclosure, if I can describe it in that way?

**Sir Philip Mawer:** In the one investigation that I conducted, yes. In the day-to-day, bread and butter work of assessing interests of Ministers and so on, yes, I felt that I got the information that I needed. But the events that you referred to do raise a question about whether that can always be relied upon to be the case, particularly if there is no stated obligation on Ministers and officials to co-operate with the adviser.

Q300 **Chair:** How dependent—I use the word dependent as neutrally as possible—were you on the Cabinet Secretary and the head of the propriety and ethics team in conducting your investigations? How would you describe that relationship?

**Sir Philip Mawer:** The relationship that I had with the propriety and ethics team was one of colleagues but not one that therefore meant that I was in hock to them. My job was to provide my own judgment and exercise my own judgment, for example in saying who we were going to speak to, what evidence we were going to get and deciding how the inquiry that I conducted should be undertaken. Some of the spadework was undertaken by colleagues in the propriety and ethics team but I took responsibility for everything that was done, checked everything that was done that I had not done myself, and reached my own judgment on the issues. Alex conducted more inquiries.

Q301 **Chair:** Indeed. If I could pose one more question to you, Sir Philip, before coming to Sir Alex: in summary, did you feel that you received all



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the information that you needed and full co-operation of Ministers and officials when conducting your inquiries?

**Sir Philip Mawer:** Yes, I did.

Q302 **Chair:** Thank you very much indeed. Sir Alex, I will ask you the same series of questions. The first is about the adequacy of resource and any reflections on that, and also the sufficiency of disclosure in the instances of your investigation.

**Sir Alex Allan:** I was never conscious that I was not getting full disclosure. Almost by definition, if things aren't disclosed, you don't know, but as far as I was aware I did have full disclosure. There was never an instance where I subsequently discovered that there had been issues that had not been disclosed to me.

It is very important that the adviser has all the resources that he or she needs. I felt that in my time I did, but I note that the Prime Minister, in his reply to Lord Geidt's subsequent report on the issues around the No. 10 flat when the WhatsApp messages were discovered, said that he believed that the independent adviser should be provided with more dedicated support and that it should include access to all the information considered necessary. He said that the Cabinet Office would provide specific proposals to Lord Geidt, I think in January, and that he wanted the new arrangements to be put in place to Lord Geidt's satisfaction by the end of March. We will obviously wait to see what emerges from that in a couple of weeks' time.

Q303 **Chair:** A last question from me on the information and the co-operation you required. Was that always forthcoming from Ministers and officials when you were conducting your inquiries, Sir Alex?

**Sir Alex Allan:** Yes. By and large, the spadework of the inquiries was carried out by officials in the propriety and ethics team who I kept in very close contact with during that. We discussed all the issues with them and discussed whether there were particular points that needed to be put to Ministers and so on. We never had any problems where Ministers did not co-operate with that process.

**Chair:** Thank you very much. I will go to Karin Smyth for a final series of questions.

Q304 **Karin Smyth:** I would like to return to the issue of stand-alone regulators and something more co-ordinated. The official Opposition has outlined a proposal for a statutory ethics and integrity commission, which would consolidate the various regulation of standards in public life into a single body. What are your reflections on that? Did you feel that you were part of a broader set of bodies? Did you co-operate or co-ordinate? Is there a need for greater co-ordination?

**Sir Philip Mawer:** There was certainly informal contact between all regulators. We met informally from time to time with those, for example, involved in the Electoral Commission, the permanent official leading the Electoral Commission, and other people in similar positions. There was an



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informal network of contacts, which of course, if there had been evidence of an overlap of jurisdiction in a particular case, would have been useful because you would pick up the phone to the person concerned. For example, if there were issues arising under the parliamentary code in relation to a Minister who was also the subject of an inquiry under the Ministerial Code, you would have had a conversation with the parliamentary commissioner about how that duality of jurisdiction was to be separated so that the different issues were not confused. I am describing to you a situation in which there is informal contact and there would be contact across boundaries as needed, or between different investigators as needed.

I am not sure of the value of having a single statutory ethics commission, for a number of reasons. One is to do with the breadth of the remit that that body would end up with. A second it is to do with the separation of powers. For example, it is not clear to me whether parliamentary arrangements would be part of the remit of this statutory commission.

I have read the relevant speech in which the proposals were outlined but the precise extent of the remit of the commission is not clear to me. There are questions around the breadth of the remit, the separation of powers, and the one commission combining all the tasks, as far as I can see, of advice, investigation and oversight. Those are different functions. Advice and investigation often, and should, go together but oversight is a separate question. I am not necessarily sold on the proposals as they are now.

Also, frankly, I do not like the idea of what I might describe as outsourcing responsibility for these matters to another body—a Government commission. I have emphasised in earlier responses the importance of the tone being set from the top of the organisation itself. This applies in professional life, in businesses, in public service and in Government. The tone has to be set and the culture has to be dictated from the top. I would not want anybody to sit back and think that somehow these responsibilities were not theirs and that had passed to an outside body—a professional statutory ethics commission. My comments may reflect more uncertainty and lack of precision at the present in how the proposed commission would work than fundamental flaws, because frankly we do not know quite what would be involved.

Can I add one point that I think is important? There is a case, as I indicated earlier, for widening the scope of the independent adviser's role in Government to embrace the investigation of serious complaints against the civil service as well as against Government Ministers. Alex has explained the chronology of what happened in the partygate affair and how it was that Sue Gray came to be involved. But having the flexibility for the independent adviser to look at both the civil service and the ministerial aspects of any situation would be helpful.

Therefore, what I am seeking to say is that some bringing together of functions within the ministerial context, which are currently separate, would be helpful. You can have an adviser with different reporting lines,



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either to the Prime Minister or to the Cabinet Secretary, depending on the nature of the parties under investigation, the code being discussed and so on. I offer that as a reinforcement of existing arrangements. I have more questions than answers in my head about the statutory ethics commission proposal.

Q305 **Karin Smyth:** Thank you. Before I come to Sir Alex, can I clarify something? When you talk about informal workings and relationships, how are you defining informal, for the record? Is that picking up the phone, or are there meetings that are recorded as part of the duties of each of those different commissioners?

**Sir Philip Mawer:** No. In my day, which is now some time ago, they were entirely informal. Do not forget that ethics advisers/regulators occupy pretty lonely positions. The opportunity to talk to your peers exercising judgments in similar sorts of circumstances is a valuable one in itself. You will have contact at all sorts of levels, more or less formal, depending on the nature of the issues that you are addressing. Purely informal contact tended to be the practice in my day but as dictated by the issues that came up.

Q306 **Karin Smyth:** Thank you. Sir Alex, will you comment on this wider issue of broader statutory co-operation and bringing bodies together?

**Sir Alex Allan:** First, building on the issue about informal contact, when I was adviser there were fairly regular roundtable meetings, normally chaired by the chair of the Committee on Standards in Public Life but including me as the independent adviser, the two parliamentary commissioners, the Electoral Commission, the First Civil Service Commissioner, the Commissioner for Public Appointments. That was an opportunity to go around the table and discuss some of the issues that were troubling the individuals—as Sir Philip said, it can be a lonely role—giving an opportunity to discuss informally and confidentially with peers some of the particular issues and problems. They were not recorded and, as I said, they were informal.

On a statutory commission, I very much welcome the fact that there is now debate about all these issues. There are points to consider, there are issues about how the overall standards of integrity across all the different aspects of public life can be reinforced. I do not fully understand the implications of a statutory commission covering all the different areas but I very much welcome the fact that this is now an issue under active debate.

**Chair:** I thank both Sir Alex Allan and Sir Philip Mawer for their time this morning and answering our questions. It has been invaluable, given their experience. If there is anything further that they wish to add that they have not had opportunity to say today, they are very welcome to write to the Committee and we will gladly receive that correspondence. For the meantime, I thank both of our witnesses for their time.