Written evidence from The Transparency International UK (PGG14)

The Public Administration and Constitutional Affairs Committee
Propriety of governance in light of Greensill inquiry

Executive Summary

The relationship between Greensill Capital and the Government has called the propriety of governance into question. It involves a complex network of individuals with privileged access to those in senior positions, the failure to adequately monitor and manage conflicts of interest, and significant gaps in lobbying regulation that have put public money at risk. This case has received significant attention in part because it involves lobbying by a former Prime Minister. However, it is important to recognise that issues raised by the Greensill case go far beyond the way one company or even one individual used privileged access to try and influence public policy. They reflect systemic problems that need addressing urgently to protect the public purse and the UK's reputation for good governance.

Key Recommendations:

Codes

- The Ministerial Code should be put on a statutory footing.
- The Independent Adviser on Ministers' Interests should have the power to initiate investigations into alleged breaches of the code, receive the support of permanent staff, and be subject to a pre-appointment hearing.
- There should be a range of sanctions available to the PM if a minister is found to be in breach of the code rather than there being a presumption that a breach automatically requires a resignation.
- The Cabinet Office should have a greater enforcement role in ensuring compliance with the business appointment rules across government and ensuring ministerial meetings data is meeting the requirements in the Ministerial Code.
- The ministerial code should require ministers declare any conversions concerning official business to their officials – whether in an official or personal capacity, and via whatever means - which are then published in quarterly transparency disclosures. The Cabinet Office should publish its guidance for departments and ministers on how to comply with this aspect of the code.
- The transparency requirements for special advisers should be strengthened and include reporting of meetings with outside organisations, as is the case currently for ministers and permanent secretaries.

Conflicts of Interests

- Publication of declarations interests required by the ministerial code should be made monthly and independent of any political interference.
- ACoBA should be replaced with a statutory body that has the powers and resources to effectively enforce the rules on business appointments. This new body should have a role in ensuring standards and compliance with business appointment rules in

Whitehall departments.

- There should be a review of both the types and seniority of roles that should be subject to scrutiny by ACoBA.

Lobbying

- The UK should meet international best practice by introducing a comprehensive statutory register of lobbyists that covers both in-house and consultant lobbyists. The register should include information on the policy, bill or regulation being lobbied on; key communications with ministers, senior government officials and special advisors; information on any public office held during the past five years by any employees who are engaged in lobbying; the use of secondments or advisers placed within government who may influence development of policy; and their expenditure on lobbying, including gifts and hospitality to public officials. Exemptions to ensure the reporting requirements are proportionate and do not unduly inhibit engagement with government should be available.

Consultants

- All Government departments should be required to have policies on the management of conflicts of interest for consultants and this should be subject to internal audit.

Do the Codes governing the conduct of Ministers, Special Advisers and Officials properly reflect the behaviours we want them to display in this area?

1. In any system of standards regulation there needs to be three broad elements: aspirations, rules and sanctions. All three need to function well for standards in public life to be well managed. This is not currently the case in the UK.

2. The Nolan Principles are an integral part of building positive social norms and practices in our democratic system. However, as they are by nature very broad, on their own it is entirely possible for those in public life to interpret them very differently in practice, whilst believing in good faith that they are upholding them. This inconsistency in approach, combined with poor transparency, limited scope of regulations, a lack of independence for key oversight bodies and weak sanctions for breaches of the rules mean that ethical standards cannot be upheld effectively.

3. In some cases, such as the special advisers code of conduct or the arrangements for providing transparency over lobbying (see below), there are significant gaps in the rules that have been put in place to uphold standards in public life. Special advisers can be very influential members of a minister's team and regularly engage with civil society organisations, the media, business and others. Their access to ministers and their perceived ability to influence them means that they are a key target for lobbying activity. Last year Hanbury Strategy, a firm with close links to the Government, was even used to recruit special advisers that they would then go on to lobby.[1] In some

[1] https://www.prweek.com/article/1675815/hanburys-spad-recruitment-role-prompts-public-affairs-industry-

cases, special advisers have significant power and influence in their own right, even if they cannot formally make decisions.

4. Despite this, the transparency obligations[2] on special advisers are exceptionally light. They are required to report gifts and hospitality as well as meetings with newspaper and media proprietors, which are supposed to be published quarterly. However, unlike ministers and permanent secretaries, there is no requirement for them to disclose the details of who they meet with and those lobbying special advisers are not covered by the statutory Register of Consultant Lobbyists. This is a significant gap in our transparency regime. We know more about the lobbying activities of individuals given a parliamentary pass by an MP than we do by some of those at the heart of Government decision making.

5. In other cases, such as the ministerial code, it is not the rules themselves that are the problem but the enforcement of them. We do not believe that it is possible for the ministerial code to be an effective tool in upholding ethical standards whilst its implementation is so closely tied to the Prime Minister. Leadership is very important in creating an ethical culture and it is important that the Prime Minister is able to set the tone of the standards and ethics that they expect their ministers to uphold. However, the level of control the Prime Minister can exert over the process is a concern. As your predecessor committee stated 'the title of 'independent adviser' is a misnomer.'[3]

The need for independent investigations into alleges breaches of the Ministerial Code

6. Despite the recent changes to the terms of reference for the Independent Adviser, investigations into a potential breach of the code can only be triggered by the Prime Minister. The Independent Adviser may now confidentially raise an issue that he believes warrants an investigation with the Prime Minister, but an investigation cannot begin unless requested by the Prime Minister. It is not clear whether this ability to raise issues confidentially will have any meaningful impact.

7. If the Prime Minister decides an allegation should be looked in to, the investigation is run by the Independent Adviser, who reports their findings to the Prime Minister. Ultimately, it is for the Prime Minister to decide what, if any, sanctions are appropriate. The Independent Adviser is appointed by and reports to, the Prime Minister. This is not to suggest that investigations by the Independent Adviser are not independent, just that the lack of autonomy in deciding when an issue should be investigated means compliance with integrity and ethical standards for ministers are essentially based on self-regulation and the risk of reputational damage. As we have seen from recent experience in the US, where similar measures proved highly

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[2] See paragraph 15 of the Code of Conduct for Special Advisers https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/832599/201612_Code_of_Conduct_for_Special_Advisers.pdf

[3] 2012 Public Administration Select Committee *The Prime Minister's adviser on Ministers' interests: independent or not?* https://publications.parliament.uk/pa/cm201012/cmselect/cmpubadm/1761/176107.htm

inadequate to the task of ensuring probity in the President's conduct, this is not a strong enough framework to ensure trust in political system and to prevent the perception that wrongdoing in high office goes unchecked.

8. There is also no consistency over which allegations warrant and investigation and which do not. In recent years there have been a number of cases where serious allegations of misconduct by ministers were made but there were no investigations. In 2012, the close relationship between Secretary of State for Culture Media and Sport and both James Murdoch and Fred Michel, News Corporation's lobbyist, was raised at the Leveson Inquiry. It was revealed that the Secretary of State had lobbied the Prime Minister to encourage him to approve the takeover, writing a memo against the advice of his officials and contradicting his statements to Parliament.[4] The Secretary of State and his special adviser remained in contact with James Murdoch and Fred Michel even when the Secretary of State knew he would be making a decision on whether to allow News Corporation's takeover of BSkyB. There were calls for an investigation into potential breaches of the ministerial code, which were declined by the then Prime Minister.

9. In 2017, the Secretary of State for Leaving the EU was rebuked by the Speaker for misleading MPs when he stated to the Brexit Select Committee that there were no impact assessments on the economic impact of Brexit. In 2018, the Secretary of State for Work and Pensions was publicly rebuked by the Head of the National Audit Office for misleading Parliament by misrepresenting an NAO report on universal credit. The Secretary of State apologised to the House but remained in post. In both cases there were potential breaches of the ministerial code that were not referred to the Independent Adviser[5].

10. Analysis by Transparency International UK found that there were nine alleged breaches of the ministerial code in 2020 alone. These include:

- The Towns Fund case, which saw former Secretary of State for Local Government (now Secretary of State for Housing) have to answer serious questions on £3.6 billion of taxpayer money directed to marginal constituencies, including his own, just months before the 2019 General Election.[6]
- Allegations that a former International Trade Secretary, personally lobbied the Bahraini royal family to give an oil contract to a company, headed by a majorparty donor, who was also under investigation for suspected bribery and money laundering.[7]
- The Prime Minister facing questions over who funded a £15,000 Caribbean holiday after a party donor denied funding the trip.[8]

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[4] https://www.theguardian.com/politics/2012/may/24/leveson-inquiry-jeremy-hunt-bskyb {accessed 27/1/2021]
[5] https://www.theguardian.com/uk-news/2018/jul/04/esther-mcvey-welfare-secretary-misled-parliament-over-reforms-auditors-say
[6] https://www.independent.co.uk/news/uk/politics/robert-jenrick-handout-towns-fund-b1720559.html
[7] https://www.theguardian.com/business/2020/feb/10/fox-lobbied-bahraini-royals-for-oil-contract-with-tory-donors-firm

- A Cabinet Office Minister holding shares in a firm given UK government contracts.[9]
- Concerns about association and communications between the Secretary of State for Health and Social Care and a company owned by his local pub landlord linked to a contract.[10]

11. Lord Evans, Chair of the Committee on Standards in Public Life, wrote to the Prime Minister to recommend that the Independent Adviser be empowered to investigate allegations of breaches the code and also to determine that an allegation did not warrant an investigation.[11] This would be broadly equivalent to the role of the Parliamentary Commissioner for Standards who investigates allegations that MPs have breached their code of conduct. In rejecting this proposal, the Prime Minister argued that there was a risk that this would incentivise vexatious or partisan complaints and risk undermining public trust.[12] Calls for an investigation to do not mean that there has been a breach of the rules, but the lack of an investigation in the face of serious allegations creates the perception that those in government are above the law.

12. Furthermore, the appointment and resources available to the Independent Adviser are not sufficient to secure its independence. Currently, they are not subject to an open appointment process as is the case for most other public roles within government, and their resourcing is dependent on secondments from the Cabinet Office. Providing an open and transparent appointments process, preferably with parliamentary oversight, should ensure the Independent Adviser is both suitable and sufficiently detached from the patronage of the Prime Minister to carry out their role effectively. They should also have a dedicated team to help them deliver their duties.

Recommendation: The Independent Adviser on Ministers' Interests should have the power to initiate investigations into alleged breached of the code, receive the support of permanent staff, and be subject to a pre-appointment hearing.

Recommendation: Unlike the code of conduct for civil servants and special advisers, the ministerial code does not carry the weight of statutory backing. Currently, the existence of a code is based on convention, which means it is subject to the whims and discretion of the Prime Minister. This is an anomaly that should be rectified.

Recommendation: The Ministerial Code should be put on a statutory footing.

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[8] https://www.independent.co.uk/news/uk/politics/boris-johnson-holiday-gift-david-ross-tory-donor-carphone-warehouse-caribbean-a9332771.html
[9] https://www.theguardian.com/world/2020/sep/03/minister-lord-agnew-relinquishes-control-of-shares-in-firm-awarded-uk-government-contracts
[10] https://www.theguardian.com/world/2021/mar/11/covid-test-kit-supplier-joked-matt-hancock-whatsapp-never-heard-of-him-alex-bourne
[11] Letter from Lord Evans to the PM 15 April 2021 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/981904/Lord_Evans_Letter_to_the_Prime_Minister_on_the_Independent_Adviser__15_April_2021.pdf
[12] Letter from the PM to Lord Evans 28 April 2021 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/981905/Letter_from_the_Prime_Minister_to_Lord_Evans__28_April_2021.pdf

How well understood are they by those to whom they apply and how well are they complied with by them?

13. The ministerial code makes it clear that is the responsibility of ministers themselves to ensure that they comply with its requirements and that the Prime Minister is the ultimate arbiter of the rules. This makes it hard from outside of Government to get a sense of how well the rules are understood. Reports from the Parliamentary Commission for Standards into allegations that MPs have broken the Code of Conduct regularly highlight where those rules had been misunderstood. As investigations into alleged breaches of the ministerial code are very rare and the details of findings seldom published, there is not an equivalent mechanism for assessing how well it is understood. What we can see are clear differences in the ways that the rules are followed.

14. For example, *The Guardian* newspaper recently published a series of stories about the Chancellor of the Exchequer's financial declarations.[13] The suggestion was that insufficient information was being provided about his wife's and wider family's extensive financial interests. The declarations had gone through the appropriate scrutiny process and been approved by the Independent Advisor. However, this minimalist approach to reporting was in sharp contrast to other senior office holders. When David Cameron was Prime Minister, he reported extensively on the financial interest of a wide range of his family members. The fact that individuals can, in good faith, take such different approaches to reporting their interests whilst following the same rules and codes of conduct creates confusion and concern that they are not being followed.

Inconsistencies in whether ministerial meetings are recorded and published

15. We see a similar trend in what is included and published in ministerial meetings data. According to the ministerial code any meeting that involves official business should be reported in the departmental returns and published. This does not happen consistently. There are a number of examples where meetings that involved Government business but were not recorded.

16. In the Greensill case it has emerged that the Secretary of State for Health, met David Cameron and Lex Greensill for a drink in October 2019, not long after Lex Greensill had written to him to set out a proposal to allow the NHS access to an app Greensill Capital had devised, called Earnd. Having received the letter, the Secretary of State commissioned advice from civil servants to explore the idea. Some NHS trusts went on to use Greensill Capital's Earnd app during the pandemic. The Health Secretary has stated that he did declare this meeting to officials within his department, but it was not included in the published details of ministerial meetings and was instead revealed by the Sunday Times. It is possible this was thought to be a private drink and so did not need to be published, yet the code and its associated guidance are clear that it should have been.in a way that meant Desmond would not have to pay over £40 million in community infrastructure levy money to Tower Hamlets Council. Despite

[13] https://www.theguardian.com/politics/2020/nov/27/huge-wealth-of-sunaks-family-not-declared-in-ministerial-register [accessed 27 January 2021]

the Secretary of State's conversation with Richard Desmond clearly relating to official business, this was not included in departmental transparency disclosures.

17. In both cases they only became public after newspaper investigations.

The potential confusion of what needs to be reported was also highlighted when the Trade Secretary initially reported two meetings and a dinner with the Institute for Economic Affairs in 2020, they were later deleted on the grounds that they were personal meetings rather than Ministerial. Although the meetings were ultimately restored to the public record, this example demonstrates the differences in approach to compliance and why there are concerns about the accuracy of ministerial meetings data.

The need to focus on influencing activity and not the format of the interaction

18. As well as different approaches to whether a meeting is required to be reported, the scope of the form of activity covered by the code is unduly narrow and a cause of confusion.

19. The ministerial code requires that meetings with outside organisations are recorded and published. Hitherto, many departments have only reported face-to-face interactions, omitting phone calls and the kind of interactions highlighted by the Greensill saga, such as WhatsApp, which are of equal, if not higher, public interest given they are more accessible to those with close personal relationships with ministers. Given these other forms of communication are included within the definition of lobbying for the statutory register, it is perplexing that they are not also reflected within the definition in the ministerial code.

20. During the pandemic the level of in-person meetings have inevitably fallen but the same types of interactions have been taking place online or by telephone. Despite the code only covering in-person meetings explicitly, some departments have started including other forms of communication. Analysis of ministerial meetings data by Transparency International UK shows that phone calls are increasingly being reported in ministerial meetings data but there is inconsistency between departments. In total, 236 'meetings' where the purpose included the word 'call' were recorded in January – September 2020.[14] The Department for Culture Media and Sport accounted for the most calls, with 82 recorded. However, many other departments, including the Cabinet Office, have not recorded any calls at all. This does not mean that there were not any, just that this level of detail has not been provided. Some departments just state that 'Meetings were conducted in line with Government requirements during the COVID-19 pandemic and may include virtual meetings.' Whilst it is welcome that some departments go beyond the letter of the rules to deliver of the spirit and intention of the code, the current pick and mix approach to reporting is not reflective of its general intent: that interactions involving Government business are captured and made available to the public.

21. In evidence to this committee, the Cabinet Secretary confirmed in evidence to this committee that,

    'Government business is Government business however it is conducted and by whatever means of communication. Any Government business has to be handled in line with the codes, FOI, the Public Records Act and so on. These things have to be retained and declared to officials as per the code, whatever the means of communication.'[15]

22. It is not clear how, if at all, text messages that involve Government business are recorded, though it seems there are not published proactively by departments. As the Greensill case shows, significant lobbying activity, including getting agreement from the Chancellor of the Exchequer that civil servants will review a decision, is being done by text. There clearly needs to be a balance between attempting to capture all

[14] This is only covers Jan-Sept 2020, as Q4 ministerial meetings data has not been published at the time of writing.
[15] Q745 https://committees.parliament.uk/oralevidence/2084/default/

communication, even trivial interactions, and a system the recognises that while the technology used to do the lobbying work may change, the influencing activity remains the same. In part this can be addressed by regulating the behaviours of lobbyists as well as public office holders. However, it should be possible for Ministers in conjunction with senior civil servants to agree where an interaction is aimed at influencing public policy and what is incidental conversation. Therefore, it is highly feasible and desirable to make more explicit in the ministerial code that any discussion of official business that is reported back to officials be published, regardless as to whether it was during a face-to-face meeting or some other form of communication.

23. To avoid confusion inside and outside of government as to what should and should not be reported, the Cabinet Office should publish its guidance on how ministers and their departments comply with this requirement in the code.

Recommendation: The ministerial code should require ministers declare any conversions concerning official business to their officials – whether in an official or personal capacity, and via whatever means - which are then published in quarterly transparency disclosures. The Cabinet Office should publish its guidance for departments and ministers on how to comply with this aspect of the code.

How are potential conflicts of interest of current and former Ministers, Special Advisors and Officials identified and managed and how effective is this? Are there gaps in the current system?

24. The movement of people between the public and private sectors can be beneficial by improving understanding and communication between those in public office and business, as well as allowing the sharing of expertise. However, it also brings risks that those in public office passing through this revolving door will be influenced by the interests of past or prospective employers.

25. The conflicts of interest associated with revolving door movements can occur before, after, or during a role in government. For example:

- Ministers/officials being overly sympathetic to those who were previous clients during a past role outside of government.
- Ministers/officials favouring a certain company, to ingratiate themselves and gain future employment.
- Former Ministers/officials seeking to influence their former colleagues to make decisions in a way that favours their new employer.
- Former Ministers/officials using confidential information to benefit their new employers – for example, during the development of government policy or tendering process.

26. One of the issues highlighted by the Greensill case is the benefit, specifically the level of access that a company can gain by employing people who have worked at senior levels within Government. As a former Prime Minister, David Cameron was able to simply text the Chancellor of the Exchequer, go for a drink with the Secretary of State for Health, email the Deputy Governor of the Bank of England, the Chief Executive of NHS England and the Head of NHSX to promote the work of the company[16]. Sir

Tom Scholar, permanent secretary at the Treasury and formerly his international adviser in Downing Street, was one of many Treasury officials lobbied by David Cameron on behalf of Greensill. In evidence to the Public Accounts Committee, he was very open about how these connections work. He said,

'If a former minister I've worked with asked to talk to me, I would always do that.[17]'

27. This is a level of access to policy makers – across a number of different departments, institutions and agencies, that most people will simply never have demonstrates the risks of the revolving door. It also highlights the significance of informal contacts which arenot captured by current regulations. Even in cases like Greensill lobbying the Treasury, where the access doesn't ultimately lead to the desired outcome for the person or organisation involved, it provides them with an advantage over commercial competitors or organisations making different arguments.

28. Overall the current arrangements for mitigating these revolving door risks across Whitehall are inadequate. In particular, there are serious deficiencies in the powers available to ACoBA, on which we provide more details in the section below.

29. Improving the management of conflicts of interest was an early priority for the Biden Administration. The President signed an Executive Order[18] on the day of his inauguration setting out stricter controls on the revolving door and lobbying and making these contractual obligations for those taking up post in his administration. The political system and ethics framework is obviously very different in the USA. However, it is interesting to note the seriousness with which the issues are being addressed and the approach taken, particularly in light of the Summit for Democracy proposed to take place in the coming year.

Management of business appointments rules within Government departments

30. Where business appointment decisions are managed within departments we find that, as with implementation of the ministerial code, there different approaches taken to the application of the rules. This was highlighted in the National Audit Office (NAO) investigation into business appointment rules, which found a variety of different approaches being taken in the eight departments they reviewed.

31. Of these eight departments, only one consistently informed prospective employers of conditions attached to a business appointment approval, as required by the rules. Four departments approved retrospective business appointment applications, which the

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[16] The full list of people currently known to have been lobbied by David Cameron for Greensill is Matt Hancock, Health Secretary, Rishi Sunak, Chancellor of the Exchequer, Jesse Norman, Financial Secretary to the Treasury, John Glen, Economic Secretary to the Treasury, Lord Feldman, senior adviser at the Department of Health and Social Care: 23rd March- 15th May, Lord Prior, Charles Roxborough, Second Permanent Secretary , HMT Treasury Tom Scholar, Permanent Secretary. HMT Treasury, Jon Cuncliffe, Bank of England Deputy Governor James Benford, Bank of England, Julian Kelly, NHS England's Chief Financial Officer, Simon Stevens , Chief Executive, NHS England, Matthew Gould, head of NHSX

[17] Evidence session on 22 April 2021. Answer in response to Q15 https://committees.parliament.uk/oralevidence/2083/default/

[18] https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-ethics-commitments-by-executive-branch-personnel/

rules state will not normally be accepted. Only one department had set out and communicated to staff measures for dealing with non-compliance. No department had assurance that former civil servants remained compliant with the rules for up to two years after they have left public service.[19]

32. The NAO also found that the guidelines for departments on administering the rules have been removed from the civil service code. The Cabinet Office had been preparing amended guidelines for departments to underpin the rules since 2012, but these had not been published by the time of the NAO investigation in 2017. While the Cabinet Office has the right to inspect and observe compliance with the civil service code the NAO found no evidence of this being done with regards to business appointments.

33. There may have been improvements in practice since the NAO was published. However, these findings are consistent with our current concerns about the implementation of the ministerial code and publication of transparency disclosures, such as ministerial meetings data. This speaks to a wider culture within Government about regulating standards. A good regulatory system should be prompt, predictable and provide consistent advice. This is not currently the case for managing standards in public life in the UK.

- **Recommendation**: There needs to be a consistent approach to the implementation and enforcement of business appointment rules across Whitehall. This new body should have a role in ensuring standards and compliance with business appointment rules in Whitehall departments.

Publication of Financial Interests

34. To help avoid these risks whilst in public office, Government ministers, under section 7.1 of the ministerial code, have to 'ensure that no conflict arises or could reasonably be perceived to arise'. They also have to submit to their Permanent Secretary a list of their interests, these include their financial interests, any shareholdings, investment property and the interests of their spouse and close family. The ministerial code also states that a list of ministers' interests will be published twice yearly.

35. When a potential conflict of interest does arise, the minister can meet with the Permanent Secretary and the Independent Adviser to discuss it and 'agree action on the handling of interests.' For financial interests, these actions could include either taking steps to mitigate against the conflict of interest or disposing of it.

36. Unfortunately, the list of ministerial interests has not been published since July 2020. This is highly unsatisfactory and represents a significant gap in the system for preventing potential abuse of public office, as citizens and the media are not able to scrutinise ministers' potential conflicts of interest and how they are being handled.

[19] Paragraph 14 NAO Investigation into Government's Management of the Business Appointment Rules https://www.nao.org.uk/wp-content/uploads/2017/07/Investigation-into-governments-management-of-the-Business-Appointment-Rules.pdf

Ministers' financial interests as MPs and Peers are made available to the public monthly and through an independent publication process that is not subject to political interference. The same should be the case for the heightened disclosures required of ministers.

Recommendation: Publication of interests required by the ministerial code should be published monthly and independent of political interference

Is the scope of the Business Appointment Rules broad enough? Do the Rules apply to all those to whom they should?

37. The level of coverage of the business appointments rules provides does not adequately manage potential conflicts of interest and ensure standards in public life are maintained. Only the most senior civil servants are regulated by ACoBA and this does not reflect the scale of the revolving door between the civil service and the private sector. In 2020, 34,000 people left the civil service and only 108 were subject to oversight from ACoBA. While other civil servants are subject to rules placed on them by departments this system of risk management has been shown to be inconsistent at best.

38. It is not just a question of which grade of civil servant is included but also the types of roles. Government increasingly relies on informal appointments, from consultants to Trade Envoys, Crown Representatives or tsars. Both Bill Crothers and Lex Greensill who are central to the concerns about how Greensill Capital interacted with Government, served as Crown Representatives. These roles are often part time and unpaid and are intended for people with ongoing successful careers outside of Government. These roles create specific risks that need to carefully managed. They are not covered by the civil service code or ACoBA and it is not clear how, if at all, any conflicts of interest are managed.

39. Lex Greensill, the founder of Lex Capital, also held roles in Government. From 2012 to 2015 he was an adviser to David Cameron's Government. Although there was apparently no contract and he was unpaid, he was given a security pass for both the Cabinet Office and Downing Street, as well as a business card stating that he was an adviser with direct contact details for Number 10 Downing Street, which would certainly give the impression of having a formal role within Government. In October 2012, Prime Minister David Cameron announced that the government supports Greensill's initiative to encourage large companies to use supply chain finance (SCF) to enable their suppliers to access low-cost credit.[20] In 2013 Lex Greensill was also appointed as a Crown Representative and remained in post until he left Government in 2016. Neither of these roles would be regulated by ACoBA.

40. Another regulatory gap revealed by the Greensill Capital case is that civil servants who take on roles with the private sector whilst in Government are not covered by ACoBA. Bill Crothers, who is central to the network of those with links to Greensill Capital inside Government, was given permission to take on a role with Greensill whilst also working as Chief Commercial Officer for the Government. This role gave Mr Crothers shares in the company worth £5.7 million in 2019.[21] It is not clear what,

[20] https://www.bbc.co.uk/news/uk-politics-56716031

if any, consideration of conflicts of interest was done before approving this appointment but a risk-based approach would identify the Chief Commercial Officer who set up a £15 billion-per-year business contracts division, as one of the roles where there are significant corruption risks and conflicts needed to be very carefully managed. The fact that this role started while Mr Crothers was in Government also meant that he was not required to apply to ACoBA regarding this role. This is a significant loophole that needs to be addressed.

41. It is also important to note that until this scandal broke, there was no clear understanding of how many serving civil servants had second jobs and the risks that these may pose. The Cabinet Secretary has since instructed colleagues to report any roles outside the civil service to their departments in the wake of the Greensill scandal.[22]

Recommendation: There should be a review of both the types and seniority of roles that should be subject to scrutiny by ACoBA

Is ACOBA's application of the Business Appointment Rules sufficiently effective and robust?

42. ACoBA has certainly taken a stronger tone recently, using its powers to 'name and shame' those who fail to comply with its rules[23]. The proposals that Sir Eric Pickles outlined in evidence to this committee are sensible and to be welcomed, particularly the focus on a risk-based approach.[24] However, ACoBA can only operate within the framework of the resources and powers that it has been given and these are inadequate for the proper management of conflicts of interest.

43. One of the main reasons for this is that ACoBA is just an advisory body and has no statutory basis. UK Government Ministers are prohibited by the ministerial code from lobbying the UK Government within two years of leaving office. They must also seek advice from ACoBA for any employment or appointments they are offered. In practice however it can be ignored. ACoBA does not accept retrospective applications, meaning that if a former minister or official takes up employment before informing the committee, the only response the committee has is to write to the individual criticising their failure to submit an application in time. If ministers or officials do not apply to ACoBA for guidance, the committee will express its concerns publicly, but cannot force individuals to apply for guidance.

44. ACoBA recently wrote the Welsh First Minister outlining their belief that by failing to wait for advice from ACoBA to accept an appointment, the former Welsh First

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[21] https://www.theguardian.com/politics/2021/apr/13/greensill-scandal-ex-civil-servant-faces-questions-over-whitehall-meetings
[22] https://www.bbc.co.uk/news/uk-politics-56751997
[23] See recent correspondence with George Freeman MP https://www.gov.uk/government/publications/freeman-george-minister-of-state-department-for-transport-acoba
[24] https://committees.parliament.uk/event/4283/formal-meeting-oral-evidence-session/

Minister Carwyn Jones had breached the ministerial code for the Welsh Government. This is a good example of ACoBA using the full extent of their powers. However, Mark Drakeford, the current First Minister, replied to the committee stating that he did not feel an investigation was warranted and that there were sufficient safeguards in place to protect against any abuse of entrusted power.[25]

45. ACoBA also has no authority to ensure that its advice is carried out. Where an application is made to ACOBA and it does impose conditions, it lacks the power to monitor whether those decisions are respected, or to impose sanctions on individuals who disregard their advice.

46. We agree with this Committee's previous finding that ACoBA is 'a toothless regulator'[26] as it cannot impose sanctions for breaches of its rules. There are numerous examples of individuals, including the current Prime Minister,[27] applying to ACoBA retrospectively once they have already taken up a role. This is often noted in the decision letter, in the case of Boris Johnson, the delay in notifying ACoBA was deemed unacceptable. However, no action can be taken so there is no deterrent to prevent future rule breaking.

47. This lack of monitoring capacity means that it falls to the media or NGOs to provide scrutiny, on an ad hoc basis, of how former Ministers and civil servants behave once they have left office. This committee has identified that Private Eye is more effective at tracking post Ministerial appointments than ACoBA.[28] Yet the media is not always interested in portraying the complexities of these cases, with some media tending to sensationalise the risks and ignore any potential benefits.

48. The challenges of regulating the revolving door, preventing abuse of conflicts of interest are not new, but neither are they going to go away. The civil service is no longer considered a 'job for life' and political careers are notoriously unstable. Whilst the creation of ACoBA demonstrates an understanding that this is an area that needs to be regulated, the current system is inadequate. It neither inspires public confidence nor protects the reputations of those in public life.

Recommendations: ACoBA should be replaced with a statutory body with the powers and resources to regulate rules on business appointments.

How should lobbying activity be regulated?

[25] https://www.bbc.co.uk/news/uk-wales-politics-55349980
[26] https://www.civilserviceworld.com/professions/article/pacac-to-relaunch-inquiry-into-toothless-regulator-of-whitehall-revolving-door [accessed 27 January 2021]
[27] https://www.politicshome.com/news/article/boris-johnson-ticked-off-by-appointments-watchdog-over-new-telegraph-role [accessed 27 January 2021]
[28] https://hansard.parliament.uk/commons/2018-01-25/debates/04ED8876-F76E-4959-A9A5-B3E27AFA370B/PublicAdministrationAndConstitutionalAffairsCommittee

49. Lobbying is an essential part of our democracy. In order for governments and legislatures to work effectively they need to engage with those that may be affected by their decisions. As well as constituents, this could include big multinational companies, professional associations, trade unions or civil society groups. This type of engagement can enrich the policy making process. It can provide evidence to inform decision-making, highlight problems with existing policy and enhance legislators' scrutiny of draft laws.

50. However, this process can be abused by those looking to further private interests. Those with deep pockets can spend significant amounts on lobbying and attempt to make sure their sectional interests come first, regardless of the social, economic or environmental consequences.

51. The perception that money can buy access and influence also negatively impacts on how the public views the political system and their place within it. The 2019 Audit of Political Engagement found that 47% felt that they have no influence at all in national decision making and 63% felt that Britain's system of government is rigged to advantage the rich and powerful.[29] The 2020 Eurobarometer survey also found that 64% of respondents agreed that 'too close links between business and politics in the UK leads to corruption.'[30]

52. Greensill Capital was able to make use of a complex network of connections within Government to promote their commercial interests. These had potentially significant implications for the public purse – Greensill's lobbying of the Treasury and Bank of England involved up to £20bn of taxpayer's money[31]. This lobbying largely fell though that gaps in regulation. For example, none of the lobbying activity by David Cameron on behalf of Greensill would normally have been made public. David Cameron was employed by Greensill Capital, albeit in a way which means he could also be employed to do lobbying work for other organisations, so was not required to register as a consultant lobbyist. While meetings that senior officials in the Treasury had with Greensill Capital were reported, they do not reveal the involvement of Mr Cameron or the relationships the company has with Government. They also cannot capture the extensive nature of the lobbying activity within both the Treasury and Bank of England or that this resulted in the Chancellor of the Exchequer instructing officials to re-examine the issue.

53. We endorse the recommendation from GRECO that more information should be made available regarding meetings held by ministers, special advisers and senior civil servants with third parties, including lobbyists, and that such entries contain a sufficient amount of detail on matters discussed, to identify the specific subject matter(s) of the discussion and the specific purpose or intended outcome of the discussion.[32]

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[29] Audit of Political Engagement 16 Hansard Society 2019
https://www.hansardsociety.org.uk/publications/reports/audit-of-political-engagement-16
[30] Special Eurobarometer Report 502 Corruption (2020)
https://ec.europa.eu/commfrontoffice/publicopinion/index.cfm/Survey/getSurveyDetail/instruments/SPECIAL/surveyKy/2247#p=1&instruments=SPECIAL&surveyKy=2247
[31] https://www.theguardian.com/politics/2021/apr/22/david-cameron-kept-pushing-bank-to-risk-20bn-to-help-greensill
[32] GRECO 5th Round Evaluation Report on the Paragraph 78 https://rm.coe.int/fifth-evaluation-round-

54. This case became public because of journalists using Freedom of Information requests. However, this is not a timely or effective way of understanding who is trying to influence public policy. It is also important to note that it is becoming harder to access government information by using freedom of information requests. Although there is a clear time frame set out in the Act for departments to respond, this is frequently not the case, even before specific exemptions are applied. FOI requests are also more likely to be declined today than 10 years ago. Research by openDemocracy shows that the percentage of requests granted in full has declined every year since 2010 – from a high of 62 percent in 2010 to 44 percent in 2019 . The percentage of requests withheld in full has steadily increased from 21 percent in 2010 to 35 percent in 2019[33]. The time taken to receive a response, particularly if the request goes to an internal review or is if it is escalated to the Information Commissioner for a ruling, means that this is not an effective way of getting timely information about lobbying activity. Freedom of Information requests are an essential tool in holding governments to account and any restrictions to these processes, whether in policy or practice, is a cause for concern.

55. To help mitigate against these risks and to deliver timely information about attempts to influence government, it is common practice in advanced democracies, such as the US, Canada and Ireland, to provide transparency over lobbying activities through a statutory register including both in-house and consultant lobbyists. The UK is an anomaly in this respect because its principal means of delivering transparency over engagements with government is through departmental disclosures, which as we mention above are currently late, incomplete and subject to too much political interference to deliver effective oversight of these interactions. Furthermore, its statutory register of lobbyists only covers paid consultants, and provides negligible information about those who do have to register, their activities and influencing objectives.

Recommendation: The UK should meet international best practice by introducing a comprehensive statutory register of lobbyists that covers both in-house and consultant lobbyists. The register should include information on the policy, bill or regulation being lobbied on; key communications with ministers, senior government officials and special advisors; information on any public office held during the past five years by any employees who are engaged in lobbying; the use of secondments or advisers placed within government who may influence development of policy; and their expenditure on lobbying, including gifts and hospitality to public officials. Exemptions to ensure the reporting requirements are proportionate and do not unduly inhibit engagement with government should be available.

How far does the Lobbying Act provide an effective statutory basis for the regulation of lobbying? Are the scope and remit of the Registrar of Consultant Lobbyists adequate?

56. Part 1 of the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014 created a Statutory Register of Consultant Lobbyists. When combined with ministerial meetings data, this was intended to give the public a

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preventing-corruption-and-promoting-integrity-i/168088ea4c

[33] Art of Darkness report https://beta.documentcloud.org/documents/20415987-art-of-darkness-opendemocracy

complete picture of who is trying to influence policy making. In practice this has not been the case. The narrow scope of the lobbying register and limited definition of lobbying activity, combined with problems of accuracy, timeliness, meaningfulness and scope of ministerial meetings data means that lobbying remains largely in the shadows.

57. There are two broad and fundamental problems which mean that it is not possible for the lobbying register to be effective. These are structural problems, rather than failures of implementation or operation. The first is the scope of the register. The UK is highly unusual in only seeking to regulate the activity of consultant lobbyists who contact Government Ministers or Permanent Secretaries.

58. In 2013 when the proposed register was being debated in Parliament, lobbying trade bodies and campaigners came together to warn that the register would capture less than 1% of lobbying activity.[34] The concern was that the very narrow definition, focusing on consultant lobbyists, rather than the lobbying activity, meant that little would be revealed about those seeking to influence the Government. This has proven to be the case.

59. The second is the level of information that is required. The small number of consultant lobbyists that are required to join the register only need to declare the name of their clients. This means it is very difficult to understand the nature of the lobbying that is taking place.

60. The rationale for requiring those on the lobbying register to only declare their clients and not details of the policy on which they are lobbying was that this information could be found in the ministerial meetings data. Although there have been some improvements in recent years, there are still issues with how meaningful, timely and accurate the data is. The most common purposes stated for meetings with ministers are 'introductory meeting', 'general meeting' or simply that this was 'not recorded by the department'. These declarations keep lobbying activity firmly in the shadows.

61. There is also an issue with the timeliness of the data. Departments have three months after the end of the quarter when they can publish the data and are inconsistent about when the do this. There can be significant delays in publication. TI-UK's Accountable Influence report found that the ministerial meetings data available in September 2015 was over a year old.[35] This remains a problem – both HMT and FCO took nearly a year to publish the details of meetings that took place in quarter 4 of 2019. This makes it impossible for the public to understand at the time a policy is being debated who may be seeking to influence the Government.

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[34] See Francis Ingham's evidence to the Political and Constitutional Affairs Select Committee inquiry on the Government's Lobbying Bill https://publications.parliament.uk/pa/cm201314/cmselect/cmpolcon/601/601.pdf

[35] Transparency International UK Accountable Influence 2016 p16 https://www.transparency.org.uk/sites/default/files/pdf/publications/Accountable_Influence_Bringing_Lobbying_out_of_the_Shadows.pdf

62. Academic analysis of more than 72,000 reported ministerial meetings and nearly 1,000 lobbying clients and consultants revealed 'major discrepancies' between these two sources of information about lobbying in the UK. They concluded that the 'wide variation between the two sets of data, along with other evidence, contribute to our conclusion that the Government could have made, and still should make, the lobby register more robust.'[36]

63. These findings are backed up by our recent research, which is due for publication later this year. We analysed both the UK's Statutory Register of Consultant Lobbyists and the ministerial meetings data for the period of January 2017 to March 2020. Out of the 48 consultant lobbyists on the statutory register that represent clients working on housing policy, we could only find three in quarterly departmental disclosures. Presumably, this is because the statutory definition of lobbying activities[6] for consultant lobbyists is much wider than the range of activity covered in departmental disclosures, which tends to only include face-to-face meetings. However, this leaves the public completely in the dark about what the 45 other consultant lobbyists were doing to necessitate their registration.

64. Our findings also reinforced previous research that only a fraction of those recorded as meeting ministers appear in the statutory register. Our analysis of meetings about housing policy in this period found only 3 out of 903 or 0.3% were also on the register of consultant lobbyists. As mentioned above, we propose that this should be addressed by the adoption of a more comprehensive statutory register of lobbyists like those in Canada and Ireland.

Are key aspects of lobbying omitted and, if so, how can they be addressed?

65. The lobbying transparency regimes in comparable countries are not so narrow in scope. In the USA, Canada, Ireland and Scotland, all lobbying activity – whether by in-house or consultant lobbyists – information is captured in one location instead of across multiple data sources. These lobbying registers also provide richer information on the lobbying activity taking place. A table comparing the different lobbying registers and the data included in them is in included in Appendix 1. These gaps should be addressed by introducing a new comprehensive register of lobbyists.

66. There are smaller changes that can be made to improve the scope of the register, the amount of information that has to be declared and the quality of ministerial meetings data, that could be made through statutory instrument or guidance. These changes would be a step forward within the parameters of the current system. However, a register that covers both in house and consultant lobbying is required to give a clear picture of lobbying activity in Westminster.

67. The UK is in the difficult position where we have a lobbying register but lack real transparency. We still do not have a complete picture of lobbying activity and

[36] McKay, A.M., Wozniak, A. Opaque: an empirical evaluation of lobbying transparency in the UK. *Int Groups Adv* **9,** 102–118 (2020). https://doi.org/10.1057/s41309-019-00074-9

lobbying scandals continue to be a feature of our politics. There have been at least 26 lobbying scandals since 2010 revealing critical information that was not captured by either the statutory lobbying register or departmental disclosures. 12 of these lobbying scandals have been in the last five years. This undermines trust in our democracy.

What are the propriety issues relating to the use of consultants and contractors in government? How are these managed and how effective is this management? Are sanctions for those who breach the current rules sufficient?

68. There are at least four areas of risk whereby consultants and contractors may abuse the power entrusted in them during public service for private gain.

69. Firstly, they may use privileged information obtained by them during their duties to provide a competitive advantage for themselves or clients. For example, this could involve using advance knowledge of forthcoming tenders or major policy decisions to gain weeks or even months of additional preparation time, which would benefit their market positioning over competitors. In theory, there are contractual obligations to prevent consultants or contractors from making use of confidential information such as this; however, in practice, knowing when these provisions are not complied with is incredibly challenging to prove, let alone enforce. Therefore, it is almost impossible to completely mitigate this risk, with the temptation to break these obligations likely increasing with the stakes at play.

70. Secondly, they could be involved in designing policy, contract specifications or other government business that may benefit or affect themselves or their other clients. For example, this could involve developing reforms to the NHS that could benefit a health consortium they work for outside of Government, or specifying tender requirements for medical supplies so that they align strongly with the capabilities and track record of a client. In theory, departments should be attuned to these risks, with the Civil Service Management Code (CSMC) establishing the principles by which those working for the Crown should conduct themselves, including consultants and contractors. It is for departments to manage potential conflicts of interest like this on a case-by-case basis, with those contracted reporting related interests they have to senior management. Outside of departments it is not at all clear how these conflicts of interest are being managed and their likely scale.

71. Moreover, where contractors are brought in to provide highly technical advice – for example, in the procurement of sophisticated I.T. systems or complicated tax issues – none of the permanent civil servants overseeing this process may have the technical expertise to assess recommendations from the consultants independently and objectively. This information asymmetry provides additional barriers to the effective management of any potential conflicts of interest that may be abused for private gain.

72. Thirdly, they may use contacts they make within Government to aid the private interests of themselves or clients. This could include making introductions for friends or business associates to those developing an area of policy in which they have an interest, or even securing an audience with ministers. This activity could happen either whilst they are still in a consultancy role or after they have left. Again,

contractual agreements and the CSMC are intended to set the principles and terms for those working within or for the civil service. Additionally, the Ministerial Code does the same for ministers, including transparency provisions concerning who they engage with outside of Government. Yet as we outline above, there are significant issues with the scope and enforcement of this code, there is a lack of evidence about how the CSMC is applied in practice, and there is woefully inadequate oversight over the conduct of those who have left office.

73. Fourthly, they may use their status as a Whitehall insider to burnish their reputation and attract clients, even if they do not actual divulge any privilege information. For example, Lex Greensill's use of a government business card, including the title 'Special advisor' to the Prime Minister, appears to have been intended to give weight to the credibility of his business proposition both inside and outside of Government. In this particular example the consultant was unpaid so there was no contractual agreement to martial their conduct. Similarly, it is not clear what controls were in place to manage access to official business cards. For those with contractual agreements, the same risk mitigations apply as above.

Recommendation: All Government departments should be required to have policies on the management of conflicts of interest for consultants and this should be subject to internal audit.

May 2021

Appendix 1 - Lobbying Registers: An International Comparison

	Nearest to best practice
	In-between
	Furthest from best practice

	Scope: Lobbyists		Scope: Public officials		Form of communication				Reporting		
Country	**In-house**	**Consultant**	**Executive**	**Special advisors**	**Legislators**	**Face-to-face**	**Written**	**Oral (remote)**	**Purpose of lobbying**	**Spending**	**Reporting period**
US (statutory register) Est. 1946	SEC 3(7) 2 USC 1602	SEC 3(9) 2 USC 1602	SEC 3(3) 2 USC 1602	SEC 3(3) 2 USC 1602	SEC 3(4) 2 USC 1602	SEC 3(8) 2 USC 1602	SEC 3(8) 2 USC 1602	SEC 3(8) 2 USC 1602	SEC 5 2 USC 1604 Example		Quarterly
Canada (statutory register) Est. 1989	Section 7	Section 5	Section 2(1)	Section 2(1)	Section 2(1)	SOR/2008-116 (Sections 6 and 9) Section 5(1)(a)	Section 5(1)(a) NB. is included in registration details	Section 5(1)(a) NB. is included in registration details	Section 5(2) Example		Monthly SOR/2008-116 (Sections 6 and 9)
Ireland (statutory register) Est. 2015	Section 5(2)	Section 5(1)	Section 6(1)(a)	Section 6(1)(e)	Section 6(1)(b)	Section 5(4)	Section 5(4)	Section 5(4)	Section 12 Example		Every four months (Sections 7 and 12)
Scotland (statutory register) Est. 2016	Section 1	Section 1	Section 1(1)(a)(1)	Section 1(1)(a)(1)	Section 1(1)(a)(1)	Section 1 incl. video conferencing			Section 6 Example		Biannually (Section 11)
UK (statutory register) Est. 2014		Section 2	Section 2(3)	Can be introduced via S.I.		Section 2(3)	Section 2(3)	Section 2(3)	Section 5 Example		Quarterly (Section 5)