

Written evidence from Spotlight on Corruption¹ (PGG18)

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

Introduction

The revelations arising from the Greensill affair and its fallout, coming alongside other recent and ongoing scandals, have exposed significant weaknesses in the UK system for managing conflicts of interest, lobbying, and business appointments. This is a vital opportunity to bring the UK's standards landscape up to date, and to ensure that integrity and ethics in government are regulated in a way that befits a modern democracy.

Taking action to strengthen the UK's integrity and ethics framework would benefit the UK by helping to:

- build trust in politicians and government;
- strengthen the stability, predictability and attractiveness of the UK as a place to do business;
- give the UK greater credibility on the international stage in promoting democracy and good governance; and
- implement outstanding recommendations made by international bodies such as the UN and Council of Europe about how the UK can improve its integrity and ethics framework to prevent and tackle corruption.

Key Recommendations

1. **Integrity and Ethics legislation.** The government should consult on the introduction of an Integrity and Ethics Bill, by the spring of 2022, which gives legislative effect to: the Law Commission's recommendations on the introduction of a corruption in public office offence; recommendations made by international bodies to put ACOBA and the Independent Advisor on Ministerial Interests on a statutory footing; recommendations that are likely to be made by the Committee on Standards in Public Life's Standards Matters 2.0 review in the Autumn of 2021; and recommendations likely to be made from both the Boardman review and parliamentary committees such as PACAC, including legislative reform to the Lobbying Act.
2. **Consolidated and strengthened regulatory landscape.** The landscape for regulating standards is in desperate need of consolidation. Regulators need to be given more teeth, more independence, greater resourcing, a stronger statutory footing and greater sanctioning powers. The creation of an Ethics Commission would in our view be the best way of

¹ Spotlight on Corruption is an anti-corruption charity that works to end corruption within the UK and wherever the UK has influence. Our vision is for a society where strong, transparent, and accountable institutions ensure that corruption is not tolerated.

achieving this, and would bring the UK in line with other jurisdictions such as the US and Australia which are both looking to introduce central Ethics or Integrity Commissions. It is critical that any such consolidated regulator is properly resourced, has the power to compel witnesses to give evidence and investigate individual cases, and can hold public hearings. In the absence of consolidation, there is an urgent need for a standardisation and “levelling up” of powers and implementation.

3. **More robust accountability at ministerial and special adviser level.** The Ministerial Code should be put on a statutory footing in line with other codes of conduct. It should also be updated to reflect modern practices, including ensuring that mobile phone communications and other informal meetings are recorded. The Code should cover situations where ministers are lobbied during party political or donor events and in social contexts. The Code of Conduct for Special Advisers should also be updated to include informal, social contact, text messaging. Additionally, the recommendations from the Committee on Standards in Public Life with regard to the Independent Adviser on Ministerial Interests should be implemented in full at the earliest opportunity.
4. **The Business Appointment Rules should be strengthened and their enforcement properly resourced.** In line with recommendations made over the past decade by the PACAC, we strongly support the strengthening of the Advisory Committee on Business Appointments (ACoBA) to ensure it has greater independence, statutory footing, stronger powers to impose sanctions and significantly greater resources to cover its workload.
5. **Enhanced management of conflicts of interest.** In line with recommendations from the Boardman review into Cabinet Office Communications Procurement during COVID and the National Audit Office (NAO) review of emergency PPE procurement, much more robust measures needed to be taken to identify and manage conflicts of interest within government. In our view this should include:
 - a. fully functional, centralised public conflict of interest declaration databases for each department which should include any outside employment and which can be cross-referenced by other government departments;
 - b. the introduction of legally binding supplier codes of conduct similar to the US, with penalties for failing to disclose conflicts of interest or for employing former public servants and ministers in breach of business appointment rules;
 - c. harmonisation of conflicts of interest rules for civil servants, special advisers, outside contractors, non-executive directors and ad hoc appointees; and
 - d. clear and binding rules that civil servants and ministers should not directly own shared in companies winning contracts in their sphere of influence, with divestment as the gold standard, and strict criteria laid down for the use of blind trusts.
6. **Independent review into the role of crown representatives and more robust and transparent management of potential conflicts of interest.** The Greensill scandal has highlighted the need for greater transparency and the importance of contractors and pro bono representatives such as the crown representatives being subject to conflict of interest and standards rules.

7. **Tightened regulation of lobbying and increased transparency.** In our view, the Greensill affair has highlighted widely recognised and significant weaknesses in the Lobbying Act. Urgent reform to enhance public confidence should include:
- a. legislative reform to the Act, along lines advocated by the lobbying industry itself, including expanding the act to include all those who engage in lobbying, and expanding the list of those being lobbied;
 - b. increased transparency about the content of lobbying and logging of steps taken in response to lobbying;
 - c. greater parliamentary accountability where rules on publication of lobbying data by government departments are broken; and
 - d. a five-year ban on former ministers engaging in lobbying activity for personal gain or in relation to their area of policy.
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Codes of Conduct

Ministerial Code of Conduct

1. The Ministerial Code is not on a statutory footing - unlike the Civil Service Code and the Code of Conduct for Special Advisers - and there is insufficient information on how ministers should deal with lobbying and no information about phone calls or instant messages.²
2. Ministers are required to declare their interests to help avoid conflicts,³ with guidance on what constitute “*relevant interests*” provided by the Cabinet Office Propriety and Ethics team.⁴ Informal dialogues between a minister and the Propriety and Ethics team filter and narrow potential interests according to the minister’s responsibilities, despite the fact that decisions are taken by the government collectively. Both the Group of States Against Corruption (GRECO)⁵ and the 2019 review of the UK’s implementation of the UN Convention against Corruption (UNCAC)⁶ recommended clarifying and broadening the scope of “*relevant interests*”.

² <https://www.instituteforgovernment.org.uk/sites/default/files/publications/ethical-standards-government.pdf>

³ Report by the Independent Adviser on Ministers’ Interests

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/579780/Independent-Adviser-on-Ministers-Interests-2016.pdf

⁴ For example, the Cabinet Office determined that the contents of the Chancellor’s blind trust, in circumstances that indicate a possible conflict of interest, does not amount to a relevant interest: Garside, J. (17 November 2020) *Rishi Sunak refuses to say if he will profit from Moderna Covid vaccine*

<https://www.theguardian.com/politics/2020/nov/17/rishi-sunak-refuses-to-say-if-he-will-profit-from-moderna-covid-vaccine>

⁵ GRECO (8 December 2017) *Fifth Evaluation Round Report of the United Kingdom* <https://rm.coe.int/fifth-evaluation-round-preventing-corruption-and-promoting-integrity-i/168088ea4c> pg. 31

⁶ UN Office on Drugs and Crime (May 2019) *Review by Turkey and Israel of the implementation by the United Kingdom of Great Britain and Northern Ireland of articles 5-14 and 51-59 of the United Nations Convention against Corruption for the review cycle 2016-2021*

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/935066/Country_Review_Report_of_the_United_Kingdom.pdf pp. 91-92

Independent Adviser on Ministers' Interests

3. The Independent Adviser on Ministers' Interests is a non-statutory role appointed by the Prime Minister to enforce the Ministerial Code. He or she can investigate alleged breaches of the Ministerial Code only when directed by the Prime Minister, and only the Prime Minister can decide what is an appropriate sanction, if any. There have been few investigations by the Independent Adviser since the role was created in 2006 and they did not result in sanctions.⁷
4. Because the Prime Minister has the sole power to initiate investigations,⁸ ministers are often not held accountable for alleged wrongdoing. We share the view of the Chair of the Committee on Standards in Public Life, that it is not satisfactory for the Prime Minister alone to judge ministerial standards or for issues of public concern to be unresolved because investigations are not triggered.⁹
5. In November 2020, the former Independent Adviser stepped down after the Prime Minister overruled his decision that Priti Patel had breached the Ministerial Code for alleged bullying, and due to other concerns.¹⁰ The Adviser's role was further diminished by an amendment in 2019, with the result that they "may" (formerly "will") be asked to investigate alleged breaches.¹¹
6. There have been long-running calls for the role of the Independent Adviser to be reformed. In 2012, the Public Administration Select Committee's recommendations to make the role independent and having more powers, including the power to launch investigations, were rejected by the government.¹² These concerns have been echoed by GRECO, which identified that "*the system is largely reliant on self-regulation, integrity and reputation*",¹³ and by the Committee on Standards in Public Life, which has called for more independence to be afforded to the role.¹⁴

⁷ GRECO (8 December 2017) *Fifth Evaluation Round Report of the United Kingdom* <https://rm.coe.int/fifth-evaluation-round-preventing-corruption-and-promoting-integrity-i/168088ea4c> pg. 31

⁸ Reflecting in part the constitutional principle that the Prime Minister has the power to appoint and dismiss ministers – The Cabinet Office Manual (October 2011) https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/60641/cabinet-manual.pdf pg. 21

⁹ Committee on Standards in Public Life (24 November 2020) *oral evidence: Code of Conduct*, HC 671 <https://committees.parliament.uk/oralevidence/1296/html/>; for example, the Prime Minister declined to ask the Cabinet Secretary to investigate allegations that Robert Jenrick breached the Ministerial Code for alleged abuse of his powers: Syal, R. (26 June 2020) *Labour reports Robert Jenrick to parliamentary watchdog* <https://www.theguardian.com/politics/2020/jun/26/labour-reports-robert-jenrick-to-parliamentary-watchdog>

¹⁰ Haddon, C. (20 November 2020) *The handling of the Priti Patel bullying inquiry has fatally undermined the Ministerial Code* <https://www.instituteforgovernment.org.uk/blog/priti-patel-bullying-inquiry-undermined-ministerial-code>

¹¹ Gordon, M. (23 November 2020) *Priti Patel, the Independent Adviser, and Ministerial Irresponsibility* <https://ukconstitutionallaw.org/2020/11/23/mike-gordon-priti-patel-the-independent-adviser-and-ministerial-irresponsibility/>

¹² Government's response to the Public Administration Select Committee's 22nd report of session 2010-12 (12 February 2013) <https://publications.parliament.uk/pa/cm201213/cmselect/cmpublicadm/976/976.pdf>

¹³ GRECO (8 December 2017) *Fifth Evaluation Round Report of the United Kingdom* <https://rm.coe.int/fifth-evaluation-round-preventing-corruption-and-promoting-integrity-i/168088ea4c> pg. 28

¹⁴ Evans, J. (12 November 2020) *The Hugh Kay Lecture: Are we in a post-Nolan age?* <https://www.gov.uk/government/speeches/the-hugh-kay-lecture-are-we-in-a-post-nolan-age>

7. The Prime Minister appointed Lord Geidt as new Independent Adviser in April 2021 after a 5-month delay, but he was not given new powers to initiate investigations into alleged breaches of the Ministerial Code, despite widespread calls – including from two former Independent Advisers¹⁵ – for the role to be given those powers.

Code of Conduct for Special Advisers

8. The Code of Conduct for Special Advisers has a statutory footing under the Constitutional Reform and Governance Act 2010.¹⁶ Ministers are responsible for ensuring that special advisers they appoint comply with the Code of Conduct and for any disciplinary measures that stem from a breach.¹⁷ Apparent breaches being tolerated without consequence – as with apparent breaches of the Ministerial Code – have had a corrosive effect on public confidence in the government.¹⁸ Furthermore, the publication of special advisers’ financial interests is subject to the discretion of the relevant department’s Permanent Secretary rather than being automatic.¹⁹

Civil Service Code

9. The Civil Service Code has a statutory footing in the Constitutional Reform and Governance Act 2010. The Code needs a clearer set of principles for private sector interests²⁰ and monitoring and reporting on the appointments of former civil servants is presently inadequate.²¹ As noted further below, the private appointments of senior civil servants leaving public office, at level SCS1 and above, should be regulated by a statutory body with the powers to investigate and impose proportionate sanctions.

Recommendations

- a. **That the Ministerial Code be given a statutory footing.**
- b. **That both the Ministerial Code and the Code of Conduct for Special Advisers be updated to reflect modern lobbying practices, to help tackle conflicts of interest, and to enhance financial disclosures and post-employment rules.** They should at a minimum

¹⁵ https://www.youtube.com/watch?v=x_5eul7_ITI

¹⁶ Section 8 of the Constitutional Reform and Governance Act 2010

¹⁷ GRECO (8 December 2017) *Fifth Evaluation Round Report of the United Kingdom* <https://rm.coe.int/fifth-evaluation-round-preventing-corruption-and-promoting-integrity-i/168088ea4c> pg. 12

¹⁸ Gordon, M. (3 June 2020) *Dominic Cummings and the Accountability of Special Advisers*

<https://ukconstitutionallaw.org/2020/06/03/mike-gordon-dominic-cummings-and-the-accountability-of-special-advisers/>; see also The Lancet (6 August 2020) *The Cummings effect: politics, trust, and behaviours during the COVID-19 pandemic* [https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(20\)31690-1/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(20)31690-1/fulltext)

¹⁹ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/980366/Government_Submission_to_Standards_Matter_2.pdf

²⁰ House of Commons Public Administration and Constitutional Affairs Committee (24 April 2017) 13th report of 2016-17, *Managing Ministers’ and officials’ conflicts of interest: time for clearer values, principles and action* <https://publications.parliament.uk/pa/cm201617/cmselect/cmpubadm/252/252.pdf> pg. 35

²¹ House of Commons Public Administration and Constitutional Affairs Committee (24 April 2017) 13th report of 2016-17, *Managing Ministers’ and officials’ conflicts of interest: time for clearer values, principles and action* <https://publications.parliament.uk/pa/cm201617/cmselect/cmpubadm/252/252.pdf> pg. 16

ensure that mobile phone communications and other informal meetings are recorded (including lobbying during party political, donor and social events) and require departments to publish information on all meetings with outside groups on a quarterly basis.

- c. **Those statutory codes of conduct should be overseen by an independent statutory regulator with the remit, resources and powers to properly regulate ethical standards.** Our preference is for an independent statutory Ethics Commission, but in the absence of a new regulatory body, the remit of the Independent Adviser should be set out in legislation, and the Independent Adviser should be given the powers to initiate investigations, gather evidence, recommend and oversee enforcement of a range of proportionate sanctions, and be provided with a permanent staff.²²

Conflicts of Interest

10. One of the key findings of the NAO's report into government procurement during COVID-19²³ is that government departments did not always adhere to the regulations relating to how conflicts of interest should be managed when firms bidding on public contracts had political connections in government. In three of the four case studies included in its report,²⁴ the NAO concluded that contracting authorities failed to identify any potential conflicts of interest, record any documentation or detail steps taken to mitigate the risks, effectively ignoring their obligations under Regulations 24 and 84 of the Public Contracts Regulations.²⁵
11. Sir Nigel Boardman's 2020 review into the way conflicts of interest were handled at the Cabinet Office²⁶ additionally concluded that there "*remains considerable discretion*" in the way government departments collect conflict of interest declarations.²⁷ Boardman's review called for the establishment of a departmental register of conflicts of interest declarations recorded and logged alongside the departmental gift register which would be made available to officials involved in the procurement process. This measure isn't sufficient when companies may be bidding on several contracts across government simultaneously which would potentially mean

²² <https://www.instituteforgovernment.org.uk/sites/default/files/publications/ethical-standards-government.pdf>

²³ National Audit Office. Investigation into government procurement during the COVID-19 pandemic. <https://www.nao.org.uk/wp-content/uploads/2020/11/Investigation-into-government-procurement-during-the-COVID-19-pandemic.pdf>

²⁴ Ayanda Capital, a firm which supplied facemasks and was advised by Andrew Mills who at the time also advised the Board of Trade, as uncovered by the Good Law Project. Public First was given a contract to supply communications support. The company's directors had previously worked for Cabinet Office Minister Michael Gove, as reported by the Guardian. Faculty Science were awarded three contracts to provide data services to NHSX, the Ministry of Housing, Communities & Local Government and the Department for Business, Energy & Industrial Strategy.

²⁵ Even though the rules were relaxed during the COVID-19 pandemic, specific rules on handling conflicts of interest and the need to record decisions were not. Regulation 24 of the PCRs required awarding bodies to be responsible for managing conflicts of interest while Regulation 84 required them to keep sufficient documentation to justify decisions taken during all stages of the procurement procedure.

²⁶ Boardman Report on Cabinet Office Communications Procurement [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/982161/Boardman-Review-of-Cabinet-Office-COVID-19-Communications-Procurement-final-report](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/982161/Boardman-Review-of-Cabinet-Office-COVID-19-Communications-Procurement-final-report.pdf).pdf

²⁷ Ibid, p13.

conflicts go unnoticed in other departments. A better system would incorporate the register into government IT systems so that relevant conflict of interest register entries are visible to officials at the point a supplier registers for a tender and throughout the procurement process. This would encourage improved record keeping and would require departments to record how any relevant assessment of the consideration of prior professional or personal relationships with individuals in government were mitigated during contract awards.

12. Many of the conflicts of interest identified in the NAO may have emerged sooner if suppliers and contractors had faced stricter disclosure rules during the bidding process. Since February 2019 the UK has in place a voluntary Supplier Code of Conduct,²⁸ but the code is a voluntary arrangement and so is not intended to be legally enforceable, to create any legal obligations to declare declarations. This lack of any legally enforceable rules means that suppliers failing to comply with rules will not result in any action being taken against them. A better approach can be observed in Canada which has in place a legally enforceable supplier code of conduct backed up by strong legislative framework that imposes financial sanctions on companies for failing to adequately declare any conflicts of interest.²⁹
13. Recent revelations of senior civil servants taking outside employment with the private sector shows that an overhaul of conflicts of interest is overdue. At present, the Civil Service Code³⁰ establishes broad conflict of interest provisions while the Civil Service Management Code³¹ has more detailed provisions requiring individuals to declare any business interests they or their immediate family hold that could be at risk of being perceived as in conflict with their role. In the absence of a blanket prohibition on accepting outside roles, it is left to the discretion of departmental permanent secretaries to make the final decision. In the case of Bill Crothers, his role at Greensill was approved despite it posing a clear conflict of interest with his role as the head of government procurement.³² In order to avoid a repeat of the scandal the government should tighten up the rules to require all civil servants to declare any additional outside employment or financial interests to their departments, which in the case of senior civil servants should be published regularly.
14. Similar provisions should be applied for other appointment categories including special advisers, departmental non-executive directors, and other ad-hoc appointees. At present disclosures made by special advisers are not published, but this can occur where the departmental permanent secretary judges them to be “relevant.” As the recent cases of Baroness Finn has shown, when

²⁸ Supplier Code of Conduct v2. Government Commercial Function.

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/779660/20190220-Supplier_Code_of_Conduct.pdf

²⁹ In Canada the supplier code of conduct is underpinned by the Financial Administration Act and the Federal Accountability Act. Under the code, suppliers are bound by rules on accurate declarations and must not have paid any fees to anyone covered by the scope of the country’s Lobbying Act, or employ public servants in any role that is incompatible with their official duties. Unlike in the UK, Canada’s code of conduct is legally enforceable and suppliers are subject to penalties for acting in violation of the two Acts.

³⁰ The Civil Service code. Updated 16 March 2015.

³¹ Civil Service management code. Published 1 July 2013. <https://www.gov.uk/government/publications/civil-servants-terms-and-conditions>

³² Greensill scandal: ex-civil servant had \$8m stake in lender

<https://www.theguardian.com/politics/2021/apr/13/greensill-scandal-ex-civil-servant-faces-questions-over-whitehall-meetings>

revelations emerge in the press regarding appointees' private sector interests there is a danger that a perception of a conflict of interest can arise and detract from their work in government. Similarly, government appointees ('tsars) do not face any requirement to publish their financial interests by virtue of falling out of the scope of the Public Appointments Commissioner. This creates the possibility for conflicts of interest to go unrecorded and unnoticed where individuals can occupy high-level strategic positions (i.e. Baroness Harding, head of NHS Test and Trace, and Kate Bingham, former head of the UK vaccine taskforce) despite simultaneously working closely with the private sector. Ministerial Non-executive Directors also fall outside the scope of the Public Appointments Commissioner but unlike tsars are required to make a declaration of their financial interest on appointment. There is a strong argument that all three of these appointment categories should be under a harmonised framework requiring pro-active declarations of conflicts of interest to ascertain the extent of potential conflicts allowing for department officials and individuals to design effective mitigation strategies ranging from meeting recusals or divestment if the conflict is unable to be managed.

15. Where Ministers have declared financial interests to their permanent secretaries resulting in the placement of assets under the control of a trustee (*'the blind trust arrangement'*), the rules in their current form³³ have had unintended consequences and do not specify how 'ethical walls' would be created that would erect barriers between beneficiary and assets. Ministers and MPs,³⁴ by placing assets in a blind trust, can effectively keep knowledge of their financial interests out of the public domain while there are no rules which would police communication between the beneficiary and the trustee which leaves the arrangement open to abuse if the trustee receives detailed investment instructions from the beneficiary. If the present system were to function it should include specific codified rules on the type of assets that can be placed into blind trust arrangements (such as indexed funds or diversified portfolios) and how ethical walls may be established between the beneficiary and trustee.

Recommendations

- a. **Establish a centrally managed conflict of interest register.** Creating a central register accessible to officials in all contracting authorities would promote the effective management of potential conflicts of interests and embed greater efficiency into the system.

³³ The Ministerial Code does not make any specific reference to the use of blind trusts. Instead it is left to the "personal responsibility of each Minister to decide whether and what action is needed to avoid a conflict or the perception of a conflict." The July 2019 report from the government's Independent Adviser on Ministers' Interests states that in cases where ministers' interests are connected to their portfolios the cabinet office ministers have been encouraged to place shareholdings in blind trusts or dispose of them entirely. MPs are not required to register blind trusts but the House of Commons Code of Conduct stipulates that if MPs do hold blind trusts then they should be prevented from receiving information on how the shares in the trust are invested. They are also forbidden from offering specific instruction to trustees on their management save for when the trust is established.

³⁴ According to the latest register, seven sitting government ministers have blind trust arrangements in place including: the chancellor Rishi Sunak; The Lord Chancellor Robert Buckland; The Deputy Leader of the House of Lords Earl Howe; and Ministers of State Lord Goldsmith, Lord Grimstone, Lord Keen of Elie, Lord True and Lord Agnew.

According to the House of Commons' register of members' interests, two MPs (Jeremy Hunt and Jonathan Djanogly) pro-actively declare the existence of blind trust arrangements although the number of individuals who have the arrangement in place without declaring it on the register could be higher.

- b. **Introduce a legally binding supplier code of conduct with robust conflict of interest rules.** A legally enforceable supplier code of conduct should subject suppliers to penalties for failing to declare conflicts of interest.
 - c. **All civil servants should declare any additional outside employment or financial interests to their departments, which in the case of senior civil servants should be published regularly.**
 - d. **Conflict of interest rules for special advisers, non-executive directors and ad hoc appointees should be harmonised.** Each of these three groups should face greater transparency requirements to ensure that real or perceived conflicts of interest do not detract from or undermine their work in government.
 - e. **Clear and binding rules that ministers and civil servants should not hold shares in companies that win contracts from government in their sphere of influence.** Ministers and civil servants should not hold financial interests that create the perception of a conflict. The gold standard for avoiding such perceptions is divestment. If blind trusts are to be used, they should be subject to strict criteria to ensure that the beneficiary of the trust is unaware of the ultimate investment in which the assets are committed.
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Business Appointment Rules

16. The Business Appointment Rules require only former ministers and senior civil servants (at level SCS3 and above) to seek ACoBA's advice about appointments they wish to take up within two years of leaving office. There is no requirement for director (SCS2) or deputy director (SCS1) level civil servants to seek ACoBA's advice on the application of the Rules. These are key grades for "*developing policy, delivering services, making decisions and negotiating contracts.*"³⁵ As the Greensill affair highlighted, there is not enough transparency or scrutiny in departments' monitoring and reporting on the appointments of former civil servants below director-general level.³⁶
17. Where those most senior officials are required to seek ACoBA's advice, the body can only advise that an appointment is "unsuitable" but cannot prevent it from being accepted. In addition, ACoBA does not have powers to supervise non-compliance, to investigate any failure to seek its advice, to impose sanctions when its advice is ignored or not sought, or to scrutinise former ministers who return to government.³⁷ Neither ACoBA nor the Rules have a statutory basis and there are no sanctions for non-compliance.

³⁵ High Pay Centre (25 March 2015) *The Revolving Door and the Corporate Colonisation of UK Politics*, pg. 29

³⁶ House of Commons Public Administration and Constitutional Affairs Committee (24 April 2017) thirteenth report of 2016-17, *Managing Ministers' and officials' conflicts of interest: time for clearer values, principles and action* <https://publications.parliament.uk/pa/cm201617/cmselect/cmpubadm/252/252.pdf> pg. 16

³⁷ Miller, P. (28 January 2021) Britain's Africa minister, who welcomed Uganda's flawed election, had business ties to an ally of the country's president <https://www.dailymaverick.co.za/article/2021-01-28-britains-africa-minister-who-welcomed-ugandas-flawed-election-had-business-tiesto-an-ally-of-the-countrys-president/>

18. ACoBA is not structurally independent from the government or the senior officials it oversees. The Prime Minister appoints the Chair – currently a former senior government minister and president of a forum that facilitates dialogue between the business community and the Conservative Party.³⁸ Ministers approved the founder and Chair of that forum to join ACoBA’s panel.³⁹ Independent members of ACoBA can retain roles in commerce and have failed to recuse themselves consistently when a conflict arises.⁴⁰
19. ACoBA has been criticised for rubber stamping approval rather than enforcing high standards of conduct.⁴¹ 137 former ministers sought clearance for 394 jobs from ACoBA between 2010 and 2016 but none were refused.⁴² ACoBA has also been criticised for a lack of transparency and failure to publish information about its decisions⁴³ although the current chair has committed to improving transparency and other reforms.⁴⁴
20. ACoBA’s workload has increased but there has not been a corresponding increase in funding.⁴⁵ ACoBA’s current Chair told PACAC that more funding would be needed if ACoBA is given an additional audit function but otherwise the body does not need more resources.⁴⁶ This is indicative of ACoBA’s narrow mandate and limited powers, and of minor reforms that will do little to meaningfully address the revolving door.
21. Various bodies have made recommendations for enhancing ACoBA and the Rules. In 2012, the government rejected the Public Administration Select Committee’s proposal to replace ACoBA with an independent Ethics Commissioner⁴⁷ on the basis that “[ACoBA] does an effective job ... and proposals to increase transparency would mitigate many of the other problems identified with the current arrangements.”⁴⁸ In 2017, PACAC recommended giving ACoBA statutory status and enhanced powers over the length of prohibited periods, and ability to investigate breaches and penalise non-compliance with the Rules, with suitable penalties available for non-

³⁸ <https://www.opendemocracy.net/en/opendemocracyuk/lobbying-watchdog-chair-failed-publicly-declare-role-tory-business-forum/>

³⁹ <https://inews.co.uk/news/politics/member-government-watchdog-acoba-andrew-cumpsty-lobbying-firm-cabinet-access-957521>

⁴⁰ House of Commons Public Administration and Constitutional Affairs Committee (24 April 2017) thirteenth report of 2016-17, Managing Ministers’ and officials’ conflicts of interest: time for clearer values, principles and action <https://publications.parliament.uk/pa/cm201617/cmselect/cmpubadm/252/252.pdf> pg. 10

⁴¹ House of Commons Public Administration and Constitutional Affairs Committee (24 April 2017) thirteenth report of 2016-17, Managing Ministers’ and officials’ conflicts of interest: time for clearer values, principles and action <https://publications.parliament.uk/pa/cm201617/cmselect/cmpubadm/252/252.pdf> pg. 29

⁴² Private Eye (16 September 2016) Public Servants, Private Paydays https://www.private-eye.co.uk/pictures/special_reports/revolving-doors.pdf pg. 1

⁴³ Transparency International UK (2021), Submission to the Committee on Standards in Public Life Standards Matter 2 Consultation

⁴⁴ <https://committees.parliament.uk/event/4283/formal-meeting-oral-evidence-session/>

⁴⁵ House of Commons Public Administration and Constitutional Affairs Committee (24 April 2017) thirteenth report of 2016-17, Managing Ministers’ and officials’ conflicts of interest: time for clearer values, principles and action <https://publications.parliament.uk/pa/cm201617/cmselect/cmpubadm/252/252.pdf> pg. 13

⁴⁶ <https://committees.parliament.uk/event/4283/formal-meeting-oral-evidence-session/>

⁴⁷ Public Administration Select Committee (17 July 2010) 3rd report of session 2012-13: Business Appointment Rules <https://publications.parliament.uk/pa/cm201213/cmselect/cmpubadm/404/404.pdf>

⁴⁸ Government Response to the Committee’s Third Report of Session 2012–13 (17 July 2014) <https://publications.parliament.uk/pa/cm201415/cmselect/cmpubadm/563/56304.htm> para 33

compliance.⁴⁹ In its 2017 review of the UK, GRECO recommended that the status, remit, resources, and powers of ACoBA be strengthened, with breaches of the Rules made subject to adequate sanctions;⁵⁰ and noted that ACoBA may benefit from being more autonomous from the government and able to investigate breaches.⁵¹ The 2019 review of the UK's implementation of the UN Convention against Corruption also recommended strengthening the application of the Rules and the remit and powers of ACoBA.⁵²

Recommendations

22. In our submission to the Committee on Standards in Public Life, we recommended that ACoBA and the Independent Adviser on Ministers' Interests should be merged into an independent Ethics Commission.⁵³ However, pending the setting up of a new effective, independent standards regulator, we recommend the following:
- a. **The Rules should be developed into a robust, statutory framework for managing post-employment restrictions** of former ministers and civil servants at level SCS 1 and above, including clear and proportionate sanctions for non-compliance.
 - b. **ACoBA should be put on a statutory footing to improve its impact, status, visibility and perception of independence, with increased powers** to: prevent an appointment from being accepted, investigate breaches or failure to seek its advice, supervise non-compliance, and impose a range of proportionate sanctions.
 - c. **ACoBA should be more structurally independent of the government and decision-makers it scrutinises.** It should not be possible for the Prime Minister to select the Chair of ACoBA.
 - d. **Public officials subject to the Rules should be required to notify ACoBA in advance about jobs or appointments they wish to take up within five years of leaving office, with retrospective notifications penalised. The rulings of ACoBA should be mandatory and binding.**

⁴⁹ Public Administration and Constitutional Affairs Committee (24 April 2017) thirteenth report of 2016-17, Managing Ministers' and officials' conflicts of interest: time for clearer values, principles and action <https://publications.parliament.uk/pa/cm201617/cmselect/cmpubadm/252/252.pdf> pg. 40

⁵⁰ GRECO (8 December 2017) Fifth Evaluation Round Report of the United Kingdom <https://rm.coe.int/fifth-evaluation-round-preventing-corruptionand-promoting-integrity-i/168088ea4c> pg. 30

⁵¹ GRECO (8 December 2017) Fifth Evaluation Round Report of the United Kingdom <https://rm.coe.int/fifth-evaluation-round-preventing-corruptionand-promoting-integrity-i/168088ea4c> pg. 4

⁵² UN Office on Drugs and Crime (May 2019) Review by Turkey and Israel of the implementation by the United Kingdom of Great Britain and Northern Ireland of articles 5-14 and 51-59 of the United Nations Convention against Corruption for the review cycle 2016-2021 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/935066/Country_Review_Report_of_the_United_Kingdom.pdf pg. 91

⁵³ Spotlight on Corruption (2021) submission to the Committee on Standards in Public Life Consultation Standards Matter 2 <https://usercontent.one/wp/www.spotlightcorruption.org/wp-content/uploads/2021/02/Spotlight-on-Corruption-Submission-to-Standards-Matter-2.pdf>

- e. **ACoBA's budget and resources should be increased** in any event and to ensure it has capacity to handle any increased functions or responsibilities.
 - f. **ACoBA should be more transparent** about its decision-making processes and promptly publish detailed information about its procedures for assessing applications and the reasons for its judgments.
 - g. **ACoBA should provide mandatory training and guidance** to those subject to the Rules with a view to improving awareness of and compliance with the Rules.
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Consultants and Contractors / Crown Representatives

- 23. The Greensill scandal has rightly shone a light on the role of 'crown representatives', established in 2011. These officials act as a focal point for public sector providers and help the government "*act as a single customer*" to its strategic suppliers – companies the government deems essential to the delivery of public services⁵⁴ – whilst maintaining close links to business.
- 24. The nature of some of these links has recently been reported, including Bill Crothers and David Brierwood.⁵⁵ However, given the lack of transparency over the role it is not clear how many other crown representatives work in the private sector or whether any conflicts have been declared and managed. The government accepted the recommendation from Nigel Boardman's report on procurement that guidance should make clear the requirement to declare and record actual or perceived conflicts of interest for all those working on behalf of the Cabinet Office, but no declared actual or perceived conflicts of interest are published for crown representatives. In response to the Greensill scandal the Cabinet Office said that crown representatives have regular propriety checks, but these findings have not been published either.⁵⁶
- 25. Crown representatives are reportedly unpaid for their work but the precise nature of their relationship with the government is not clear.⁵⁷ Indications of an informal relationship are concerning, particularly in light of the government having accepted the recommendation from Mr Boardman's report, that pro bono, no charge and trial contracts should be avoided and only used in exceptional circumstances.⁵⁸
- 26. In 2018, both the Public Accounts Committee (PAC) and the Business, Energy and Industrial Strategy (BEIS) Committee called for a review of the role of crown representatives after they failed to spot problems with Carillion. Indeed, the company had not been rated high risk because the government was concerned about the consequences of that information becoming public.⁵⁹ PAC recommended a review of the strategic supplier risk management policy.⁶⁰

⁵⁴ <https://www.gov.uk/government/publications/strategic-suppliers>

⁵⁵ <https://www.instituteforgovernment.org.uk/sites/default/files/publications/ethical-standards-government.pdf>

⁵⁶ <https://www.instituteforgovernment.org.uk/sites/default/files/publications/ethical-standards-government.pdf>

⁵⁷ <https://www.theweek.co.uk/952550/what-are-crown-representatives-are-they-next-lobbying-timebomb>

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/982161/Boardman-Review-of-Cabinet-Office-COVID-19-Communications-Procurement-final-report.pdf

⁵⁹ <https://publications.parliament.uk/pa/cm201719/cmselect/cmpublic/1031/1031.pdf> pg. 30

27. In 2019, the government replaced the risk management policy with a memorandum of understanding (MoU) with each strategic supplier. Under this approach, strategic suppliers agree to provide the government with information in order to monitor and manage risks. However, the standard form of MoU – which we obtained from the Cabinet Office under the Freedom of Information Act – raises serious concerns about the role of crown representatives and the adequacy of the safeguards in these supplier/government relationships.
28. Under the MoU, crown representatives are responsible for managing the relationship between government and its strategic suppliers, in some cases their former employers. The MoU also requires crown representatives to oversee the suppliers’ risk, financial health and performance of contracts, which they do by preparing subjective risk assessments.

Recommendations

29. In our view, the dual role afforded to crown representatives – as both business relationship managers and watchdogs of the government’s key suppliers and biggest contracts – and their lack of transparency and accountability raises potentially significant risks to the delivery of public services and fails to address the concerns raised by the PAC and BEIS committees.
30. We recommend that PACAC seek evidence from the Cabinet Office about the nature of its contractual arrangements with crown representatives. We also recommend:
- a. **That crown representatives be made subject to the same conflict of interest and business appointment rules as civil servants**, including a requirement to make conflicts of interest declarations.
 - b. **An independent review as to whether the network of crown representatives is the most effective arrangement for monitoring and managing the risks of strategic suppliers and performance of contracts**, and in particular the extent and ways in which the current arrangements safeguard the delivery of public services.

Lobbying

31. While lobbying is an essential means of ensuring that those in government have access to a range of views in order to improve decision making, it can also be a route through which private interests have privileged access to ministers in ways which distort decision making.
32. The current rules in the Lobbying Act have been widely criticised, not least by industry bodies such as the Public Relations and Communications Association,⁶¹ for being too narrow and

⁶⁰ <https://publications.parliament.uk/pa/cm201719/cmselect/cmpubacc/1031/1031.pdf> pp 30-31

⁶¹ [https://news.prca.org.uk/lobbying-industry-publishes-6-point-public-confidence-plan-for-reform-in-response-to-
cameron-
inquiry/?token=b346ca7256d4f7902689e5a94b8b5f59T8h%2F%2B%2BX1bv2MQXF5A1a8HJlhF7bY%2BuePOG6
JA7LjTjJRpl7Q%3D%3D](https://news.prca.org.uk/lobbying-industry-publishes-6-point-public-confidence-plan-for-reform-in-response-to-cameron-inquiry/?token=b346ca7256d4f7902689e5a94b8b5f59T8h%2F%2B%2BX1bv2MQXF5A1a8HJlhF7bY%2BuePOG6JA7LjTjJRpl7Q%3D%3D)

limited. Several recent scandals have exposed the ongoing weaknesses including lobbying that takes place via text, in social settings and at party political or donor events. The Greensill scandal meanwhile has rightly generated significant public debate about whether the two-year ban on lobbying after public service is sufficient for former ministers and prime ministers, particularly where ministers are able to translate extensive and privileged access to government into the potential for private gain.

33. Transparency, including the timeliness, quality and accuracy of data about lobbying continues to be a significant issue. There is little consequence for departments that fail to disclose their ministerial diaries and other lobbying data promptly despite legal requirements to do so. There is also room for considerable improvement in disclosure about the content of lobbying, and steps taken in response to lobbying.

Recommendations

34. The Greensill affair and other recent scandals should prompt an urgent review of the need for:
- a. **Legislative reform to the Lobbying Act**, along lines advocated by the Public Relations and Communications Association, including expanding the act to include all those who engage in lobbying, and expanding the list of those being lobbied.
 - b. **Increased transparency about the content of lobbying and logging of steps taken in response to lobbying.**
 - c. **greater parliamentary accountability where rules on publication of lobbying data by government departments are broken.**
 - d. **A five-year ban on former ministers engaging in lobbying activity for personal gain or in relation to their area of policy.**

Sanctions

35. Penalties for breaches of rules governing standards in public life remain both weak and inconsistent. Because the Independent Adviser on Ministers' Interests and ACoBA have an advisory role, they do not have the powers to sanction those who fail to comply with the rules. The lack of proportionate sanctions available to ACOBA, for example, has long been highlighted by the PACAC. There is a clear need for a review of sanctions across the standards regulators, and for standardisation and 'levelling up'.
36. New legislation being introduced in the US – the 'For the People Act' – provides a striking comparison to the limited range of weak sanctions in the UK. The legislation contains measures to strengthen the US's ethics framework, including include a requirement to divest from financial interests or install blind trusts arrangements where a conflicts of interests are identified, or where officials use their position to affect the legislative process to further a financial interest. These measures are backed up by a tough sanctions regime which establishes criminal liability for

wilful violations of the conflict of interest rules, including a maximum 5-year prison sentences or a range of civil sanctions including a \$100,000 fine, or a sum equivalent to any monies taken from the private sector which gave rise to the conflict.

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