NORTH YORKSHIRE COUNTY COUNCIL

STANDARDS COMMITTEE

23 September 2016

Local Ethical Framework Developments

1.0 PURPOSE OF REPORT

1.1 To update Members on the development of the ethical framework under the Localism Act 2011.

2.0 BACKGROUND

2.1 Members receive a report at each Standards Committee meeting setting out any recent developments in the ethical framework.

3.0 HOUSE OF COMMONS BRIEFING PAPER ON LOCAL GOVERNMENT STANDARDS IN ENGLAND

3.1 The House of Commons Library has published a Briefing Paper, Number 05707, 27 June 2016, on Local Government Standards in England. A copy is attached at **Appendix 1** for Members' information.

3.2 The Paper looks at the following areas:

1. Councillors' conduct and interests
2. Codes of conduct
3. Complaints about breaches of codes of conduct
4. The standards regimes in devolved areas

and is a brief summary of the current ethical framework. It recognises that whilst, in the past, it was anticipated, there is no statutory model code of conduct for local government officers and it is for local authorities to decide on these issues. NYCC has a specific code of conduct for Officers.

4.0 DISQUALIFICATION OF COUNCILLORS

4.1 In response to written question 28793 on the Parliament website (http://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2016-02-29/28793/), the Government has indicated its intention to review the legislation surrounding the disqualification of Members and will also consider this in the context of the Localism Act 2011 (which sets out the ethical framework). Members will be kept updated as to developments.

5.0 LOCAL GOVERNMENT OMBUDSMAN - REVIEW OF LOCAL GOVERNMENT COMPLAINTS 2015-16

5.1 The Local Government Ombudsman (LGO) has published a report re its review of Local Government Complaints for 2015-16. Key findings from the report are:

a) 19,702 complaints and enquiries received
b) 51% investigations upheld

c) 3,529 recommendations to put things right and remedy injustice
d) the area most complained about is education and children's services
e) Significant changes on previous year (complaints and enquiries received):
    i. up 13% for education and children's services
    ii. down 7% for housing
f) 99.9% of LGO recommendations were complied with across all local authorities

5.2 The full report is available from the LGO website at http://www.lgo.org.uk/information-centre/news/2016/jul/ombudsman-upholding-more-complaints-about-local-government

6.0 COMMITTEE ON STANDARDS IN PUBLIC LIFE (CSPL)

6.1 The Committee on Standards in Public Life ("CSPL") is an advisory Non-Departmental Public Body (NDPB) sponsored by the Cabinet Office. The Chair and members are appointed by the Prime Minister. It advises the Prime Minister on national ethical standards issues.

6.2 The Prime Minister has recently made two new appointments to the CSPL, Jane Ramsey and Dr Jane Martin, following an open competition. Full details are published on the CSPL website at https://www.gov.uk/government/news/new-members-appointed-to-committee

7.0 CSPL REVIEW OF ETHICS FOR REGULATORS

7.1 The CSPL has announced that it has finished its review of ethics for regulators which will be published imminently. Members will be kept informed of developments.

8.0 LAW COMMISSION CONSULTATION ON MISFEASANCE IN PUBLIC OFFICE

8.1 At its last meeting, the Standards Committee was briefed about the Law Commission consultation on the law of misconduct in public office:

Our reform objectives are to decide whether the existing offence of misconduct in public office should be abolished, retained, restated or amended and to pursue whatever scheme of reform is decided upon.

The legal concepts involved in the offence of misconduct in public office are highly technical and complex and not easily accessible to non-lawyers. Furthermore there is often some confusion between what the law is and what it should be. The question of the appropriate boundaries of criminal liability for public officials is clearly a matter of broad public interest …

Misconduct in public office is a common law offence: it is not defined in any statute. It carries a maximum sentence of life imprisonment. The offence requires that: a public officer acting as such; wilfully neglects to perform his duty and/or wilfully misconducts himself; to such a degree as to amount to an abuse of the public's trust in the office holder; without reasonable excuse or justification….

The offence is widely considered to be ill-defined and has been subject to recent criticism by the government, the Court of Appeal, the press and legal academics.

Statistics suggest that more people are being accused of misconduct in public office while fewer of those accusations lead to convictions. One possible reason is that the lack of clear definition of the offence renders it difficult to apply.

We have identified a number of problems with the offence:

1. *"Public office" lacks clear definition yet is a critical element of the offence. This ambiguity generates significant difficulties in interpreting and applying the offence.*
2. *The types of duty that may qualify someone to be a public office holder are ill-defined. Whether it is essential to prove a breach of those particular duties is also unclear from the case law.*
3. *An "abuse of the public's trust" is crucial in acting as a threshold element of the offence, but is so vague that it is difficult for investigators, prosecutors and juries to apply.*
4. *The fault element that must be proved for the offence differs depending on the circumstances. That is an unusual and unprincipled position.*
5. *Although "without reasonable excuse or justification" appears as an element of the offence, it is unclear whether it operates as a free standing defence or as a definitional element of the offence.*

8.2 The Commission has very recently published its second, detailed consultation document on options for law reform in this area. At over 200 pages, the consultation document has not been included with this report but a summary is attached at **Appendix 2** and the full document is available on the Law Commission website (http://www.lawcom.gov.uk/project/misconduct-in-public-office/).

8.3 The website states that the reform objectives are "*to decide whether the existing offence of misconduct in public office should be abolished, retained, restated or amended and to pursue whatever scheme of reform is decided upon*."

8.4 In terms of law reform options, the Law Commission states on its website:

The problems identified in the existing law clearly show that it would be undesirable either to retain the existing offence or to attempt to codify it in statute. All the options in the Consultation Paper therefore assume that the common law offence of misconduct in public office is to be abolished.

The underlying issue tying together the problems with the current offence is that it is not clear what mischief the current offence targets and therefore what form the offence should take.

In our consultation paper we conclude that a reformed offence, or offences, could address one or both of the following wrongs: breach of duty leading to a risk of serious harm; and corrupt behaviour – the abuse of a position for personal advantage or to cause harm to another.

For the purpose of devising any offence or offences to replace misconduct in public office, we need to devise a more rigorous definition of public office. The current, vague definition is a major problem with the present offence. We discuss in the Consultation Paper four possible methods of defining public office. Any new offence will need to be underpinned by the concept of public office. However depending on the particular model of offence, not every form of the replacement offence needs to apply to all public office holders. It may be that certain types of new offence need only apply to a subset of public office holders.

We consider two possible new offences to replace the current offence of misconduct in public office. Option 1 involves a new offence addressing breaches of duty that risk causing serious harm, when committed by particular public office holders (those with duties concerned with the prevention of harm). Option 2

involves a new offence addressing corrupt behaviour on the part of all public office holders. Options 1 and 2 are separate but compatible. That is, it would be possible to implement Option 1 on its own, Option 2 on its own or both together.

Law reform Option 3 involves abolition of the current law without replacement. At this stage, it is our view that reform of this nature would be likely to leave unacceptable gaps in the law.

At the end of the Consultation Paper we discuss two other possible legal reforms which had been raised by consultees during the first phase of consultation. These additional legal reforms could complement any of our Options 1, 2 or 3. The first involves reform of the sexual offences regime. The second involves treating the fact that a defendant is a public official as an aggravating factor for the purposes of sentencing his or her criminal conduct.

8.5 Regarding Option 1 (breach of duty model), this is likely to cover those public office holders with duties relating to the prevention of harm, including:

- where they have powers of physical coercion, including arrest, detention and imprisonment;
- where their role involves the protection of vulnerable individuals from harm.

It is suggested that the type of harm should be restricted to:

- death;
- serious physical or psychiatric injury;
- false imprisonment;
- serious harm to public order and safety; and
- serious harm to the administration of justice.

8.6 The fault element of this new offence would be:
(1) knowledge or awareness of:
  (a) the circumstances that would mean that the person held a public office; and
  (b) the circumstances relevant to the content of any particular duties of that office concerned with the prevention of harm; and
(2) subjective recklessness as to the risk the conduct might cause one of the types of harm specified.

8.7 For Option 2, the consultation proposes the creation of a new offence that takes some aspects from the existing offence of police corruption, but applies it to all public office holders and improves the offence definition.

8.8 The offence under Option 2 would be committed when a public office holder (as defined in statute) abuses his/her position/power/authority with the purpose of achieving an advantage for the office holder/another or causing detriment to another; and the exercise of that position for that purpose is seriously improper.

8.9 The consultation closes on 28 November 2016. The final report will be published in 2017.

8.10 Given the detail of the consultation, it is suggested that the Monitoring Officer consider the consultation paper and consult Members of the Committee on any response he ultimately considers necessary/appropriate. Any initial comments Members may have on the consultation would be most welcome.

8.11 Members will be kept informed of developments.

9.0 CSPL – ANNUAL REPORT 2015-2016 AND FORWARD PLAN 2016-2017

9.1 The Committee on Standards in Public Life has published its Annual Report 2015-2016 and Forward Plan 2016-2017. A copy is attached at **Appendix 3** to this report. The report provides an overview of the CSPL's activities over the year in question and sets out its forward work programme for the coming year.

9.2 In terms of monitoring standards issues, the CSPL intends to:

- *Maintain a watching brief to identify emerging or persistent standards issues and respond promptly to them.*
- *Undertake independent quantitative and qualitative research into public perceptions of ethical standards.*
- *Respond to consultations and key policy announcements and legislation where these impact on ethical standards and we have an informed contribution to make*.

and, in addition to monitoring standards issues, the CSPL will "*take steps to ensure our voice is heard promoting high ethical standards*".

9.3 The Report also sets out the CSPL's views on the Law Commission consultation on Misfeasance in Public Office, referred to earlier in this report.

9.4 Paragraphs 78 to 82 of the Report set out the CSPL's commitment to maintaining a watching brief over the standards regime. The CSPL notes that the role of the independent person is "generally well received" and that vexatious complaints are falling; however, the effectiveness of the sanctions regime is still a concern. The CSPL invites councils to consider whether their own local standards frameworks are sufficient to address standards breaches and build public trust.

10.0 MEETING OF MONITORING OFFICERS AND CHAIR OF STANDARDS COMMITTEES

10.1 A meeting of the Heads of Legal/Monitoring Officers and Chairs/Vice-Chairs of Standards Committees took place at the City of York Council offices, York, on 21 July 2016. The Monitoring Officer and Senior Lawyer (Governance), along with the Chair of the Standards Committee were in attendance on behalf of NYCC. An informative presentation took place regarding an update on the ethical framework by Wilkin Chapman LLP Solicitors.

10.2 It was agreed that the group should meet more regularly, at least twice per year in York and that Independent Persons be invited to future meetings.

11.0 RECOMMENDATIONS

11.1 That the Monitoring Officer consider the Law Commission consultation paper on Misfeasance in public office and consult Members of the Committee on any response he ultimately considers necessary/appropriate.

11.2 That the Committee notes the contents of this report.

BARRY KHAN
Assistant Chief Executive (Legal and Democratic Services) and Monitoring Officer

Background Papers:

- Information published on www.gov.uk
- Local Government Lawyer article 5 September 2016 - Law Commission consults on reform to law on misconduct in public office

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14 September 2016

APPENDIX 1

HOUSE OF COMMONS LIBRARY

BRIEFING PAPER

Number 05707, 27 June 2016

Local government standards in England

By Mark Sandford

Inside:

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Contributing Authors: Mark Sandford

Summary

The Coalition Government announced in its Programme for Government in May 2010 that the "Standards Board regime", regulating the treatment of councillors' conduct and pecuniary interests, was to be abolished. This was done via the Localism Act 2011. Standards for England (formerly the Standards Board) was abolished on 1 April 2012. This note outlines the new regime in England.

The new standards arrangements replace the Labour Government's ethical framework for local councillors. This was introduced by the *Local Government Act 2000* and amended by the *Local Government and Public Involvement in Health Act 2007*.

Local government standards are devolved to Scotland, Wales and Northern Ireland. The bulk of this note addresses the regime in England, with some further links to information regarding the devolved territories.

1. Councillors' conduct and interests

The Coalition Government's *Programme for Government* committed to abolishing Standards for England, the local government standards board for England established by the *Local Government Act 2000*. This was an England-wide regulatory regime regulating councillors' conduct and registration of pecuniary interests, with sanctions applied by the Standards Board. Abolishing the Standards Board was a long-standing Conservative commitment. The *Localism Act 2011* included the following measures:

- The abolition of Standards for England (previously the 'Local Government Standards Board for England');
- A requirement for local authorities to promote and maintain high standards of conduct;
- Provision for the introduction of local codes of conduct and local responsibility for investigating alleged breaches of those codes. Local authorities were to establish a code, which was to be based on the seven 'Nolan principles' of public life,[1] and to specify sanctions for breaking it;
- Requirements concerning how local codes of conduct should treat the registration and disclosure of pecuniary and other interests;
- The creation of a new criminal offence of failing to comply with the statutory requirements for disclosure of pecuniary interests.

The *Localism Bill* originally entirely removed the requirement for local councils to maintain a code of conduct, intending to make it a voluntary matter. The provisions in the Act were introduced in the House of Lords.

A DCLG press release stated:

> These new measures, outlined in the Localism Act, will replace the bureaucratic and controversial Standards Board regime, which ministers believe had become a system of nuisance complaints and petty, sometimes malicious, allegations of councillor misconduct that sapped public confidence in local democracy.[2]

Local government standards are devolved to Scotland, Wales and Northern Ireland. The bulk of this note addresses the regime in England, with some links to information regarding the devolved territories.

These legislative changes apply to codes of conduct for councillors, not to those for local authority staff. There has never been a statutory code covering the conduct of local authority staff in England. The *Local Government Act 2000* contained a power to introduce one, but this power was repealed by the *Localism Act 2011*, so one cannot now be introduced in England. Local authorities are free to decide to institute a code of conduct for their own staff: alternatively, staff employment contracts may contain requirements regarding their conduct. Statutory

1 These are set out in statute in the *Localism Act 2011*, s. 29
2 New rules to ensure greater town hall transparency, DCLG press release, 28 June 2012

codes of conduct for local authority staff do exist in Scotland, Wales and Northern Ireland: these must be adopted by councils in those areas.[3]

[3] See Northern Ireland Local Government Staff Commission, *Code of Conduct for Local Government Employees*, 2004; the *Code of Conduct (Qualifying Local Government Employees) (Wales) Order 2001* (SI 2001/2280); *National Code of Conduct for Local Government Employees in Scotland*, 2010.

2. Codes of conduct

2.1 Drawing up codes of conduct

Section 27 of the *Localism Act 2011* requires relevant authorities to promote and maintain high standards of conduct by members and co-opted members of the authority. Each local authority must publish a code of conduct, and it must cover the registration of pecuniary interests, the role of an 'independent person' to investigate alleged breaches, and sanctions to be imposed on any councillors who breach the code.

There is no 'official' model code of conduct. Councils may choose to retain the standard code of conduct used under the previous regime, most recently updated in 2007.[4] Since the passage of the 2011 Act, model codes of conduct have been produced by DCLG, the Local Government Association, and the National Association of Local Councils (NALC).[5]

Parish and town councils are covered by the requirements to have a code of conduct and to register interests. They may choose to opt in to the code of conduct adopted by their principal authority (the local district or unitary council).[6]

Co-opted members of local authorities are covered by local codes of conduct in the same way as elected members.

There is no national code of conduct for local authority staff in England, though many councils operate their own codes of conduct for staff. A power existed in section 82 of the *Local Government Act 2000* to introduce a national code of conduct for local authority employees. However, no such code was ever introduced. The power was repealed by Schedule 4 paragraph 49 of the *Localism Act 2011*.

2.2 How interests must be registered

Alongside the requirement to draw up a code of conduct, the *Localism Act 2011* strengthens requirements on members to register and disclose interests. Schedule 2 of the *Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012* lists the disclosable pecuniary interests specified for the purposes of the Act.

Councillors must notify the monitoring officer of their local authority of any disclosable pecuniary interests, within 28 days of taking up office. As with the code of conduct, the requirement to disclose pecuniary interests applies to co-opted members as well as to elected ones. Councillors who were already in office when the new code of conduct came into force were required to declare their interests immediately:

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4 The *Local Authorities (Model Code of Conduct) Order 2007* (SI 2007/1159)

5 See *Illustrative text for code dealing with the conduct expected of members and co-opted members of the authority when acting in that capacity*, DCLG, 11 April 2012; *New code of conduct for parish and town councils*, NALC media release, 20 June 2012; LGA, *New standards for councillors*, 12 April 2012

6 See the *Localism Act 2011*, section 27 (3)

they could not wait until they were next elected to the council. Any interests must also be disclosed at a meeting of the council if they are relevant to the matters under discussion.

Authorities must maintain a register of councillors' interests, and publish it. Registered interests may be excluded from versions of the register that are available for public inspection or published where a member and monitoring officer agree that the disclosure of these details could lead to harm or intimidation of the member or their family.

The requirements to register interests apply to either an interest of the member or an interest of the member's spouse, civil partner or partner. However, guidance issued by DCLG states that the member does not have to differentiate between their own or their spouse/civil partner/partners interests or to name them:

> **Does my spouse's or civil partner's name need to appear on the register of interests?**
>
> No. For the purposes of the register, an interest of your spouse or civil partner, which is listed in the national rules, is your disclosable pecuniary interest. Whilst the detailed format of the register of members' interests is for your council to decide, there is no requirement to differentiate your disclosable pecuniary interests between those which relate to you personally and those that relate to your spouse or civil partner.[7]

2.3 Dispensations

Councillors may apply to the council for a 'dispensation' to allow them to take part in a debate from which they would otherwise be debarred by the nature of their pecuniary interests. A dispensation may be granted for any reason, but the Act specifies a number of scenarios in which this may be done: this includes so many councillors having interests that the meeting cannot proceed, or the political balance of the meeting being substantially affected. A dispensation may last for a maximum of four years.

Guidance published in September 2013 clarified that owning a property in the local authority area does not constitute a disclosable pecuniary interest for the purposes of setting council tax.[8] Councillors owning property in the council area would be expected to declare this as an interest, but it is not a disclosable pecuniary interest. Therefore a councillor is not prevented from taking part in a debate on that issue, nor would they need to seek a dispensation from the council to take part. Nevertheless, some councils have granted four-year dispensations on this point, to ensure compliance with the 2011 Act.

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7 DCLG, *Openness and transparency on personal interests: A guide for councillors*, 2012, p4

8 DCLG, *Openness and transparency on personal interests*, September 2013, p. 7-8

3. Complaints about breaches of codes of conduct

3.1 Investigating alleged breaches

The 2011 Act requires local authorities to have mechanisms in place to investigate allegations that a member has not complied with the code of conduct, and arrangements under which decisions on allegation may be made. The Act removed the statutory requirement for local authorities to have a standards committee, found in the previous regime, although authorities are free to set one up.

If either a complainant, or the councillor against whom a complaint has been made, is unhappy with the way in which the local authority resolves the complaint, there is no higher authority to which they may appeal. Neither the Local Government Ombudsman nor the Department for Communities and Local Government has a role in respect of councillors' conduct or registration of pecuniary interests.

The powers of the local authority in relation to alleged breaches are for local determination, following advice from the authority's Monitoring Officer or legal team. These powers might include censure or the removal of a member from a committee, but the authority cannot disqualify or suspend councillors. Standards for England was able to suspend councillors under the previous regime from the 2000 Act.

3.2 The independent person

Local authorities must appoint at least one 'independent person' to advise the council before it makes a decision on an allegation.[9] There are restrictions on who can be appointed as the independent person; they cannot be a councillor or officer, or a relative or close friend of one.[10] The independent person must be consulted by the authority if an allegation received, and may be consulted by a councillor who is the subject of an allegation.

Individual authorities are to determine how the independent person would work as part of their local standards regime. Baroness Hanham said during debate on the *Localism Bill* in the House of Lords:

> I want to make it clear that whatever the system and whether local authorities have independent members in that committee structure, they will still be required to have a further independent member [i.e. the independent person] who will act outside the committee system and will have to be referred to.[11]

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9 See section 28 (7) of the 2011 Act.

10 The *Localism Act 2011* defines the term 'relative' (see section 28 (10)), but not the term 'close friend'.

11 HL Deb 31 Oct 2011 c1051. A useful discussion of some of the principles involved is provided on the website of the Association of Council Secretaries and Solicitors.

3.3 Sanctions

It is a criminal offence if a member or co-opted member fails, without reasonable excuse, to comply with the requirements to register or declare disclosable pecuniary interests.

It is also a criminal offence to take part in council business at meetings, or act alone on behalf of the council, when prevented from doing so by a conflict caused by disclosable pecuniary interests. This applies only to *pecuniary* interests, not to any breaches of the other elements of a code of conduct.

Either offence is punishable by a fine of up to level 5 (currently an unlimited amount), and an order disqualifying the person from being a member of a relevant authority for up to five years. A prosecution must be brought within 12 months of the prosecuting authorities having the evidence to warrant prosecution, but any prosecution must be brought within 3 years of the commission of the offence and only by or on behalf of the Director of Public Prosecutions.[12]

[12] So far there has been one instance of these provisions applying: see "Councillor first to be convicted of Localism Act pecuniary interest offence", *Local Government Lawyer*, 1 April 2015.

4. The standards regimes in devolved areas

4.1 Scotland

Local government standards in Scotland are governed by the *Ethical Standards in Public Life etc. (Scotland) Act 2000*. This Act applies a series of ethical standards to local councillors and the board members of specified public bodies. The standards are based on the 'Nolan principles' (see above) and are applied by the Commissioner for Ethical Standards in Public Life in Scotland (the CES). The CES reports on complaints to the Standards Commission for Scotland, who may then decide to hold a hearing and apply a sanction to the councillor if appropriate. Sanctions may include suspending or disqualifying councillors.[13]

The latest edition of the Councillors' Code of Conduct dates from 2010. It is published by the Standards Commission for Scotland. It covers matters such as relations with council staff, dealing with gifts and hospitality, use of council facilities, and registration of interests. Employment, ownership of property, directorships and contracts, shares, election expenses and non-financial interests must be registered with the local authority.

As in England, a dispensation may be granted to councillors to speak and vote in meetings when they have pecuniary interests in the matter under discussion. Applications for dispensations must be made to the Standards Commission.

4.2 Wales

The Public Services Ombudsman for Wales (PSOW) was established in 2004-5. It took on the power to investigate complaints against councillors in Wales from the Local Government Ombudsman.

Councillors in Wales are required to comply with the model code of conduct set out in the Schedule to the *Local Authorities (Model Code of Conduct) (Wales) Order 2008* (SI 2008/788). Guidance on the Code is issued by the Public Services Ombudsman for Wales.[14] Potential breaches of the Code include bullying and harassment, disclosing confidential information, making improper use of the office of councillor, and failing to reach decisions objectively.

Dispensations to speak at meetings where a councillor has a prejudicial interest must be applied for from local authority standards committees.[15]

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13 The relevant legislation is the *Public Services Reform (Commissioner for Ethical Standards in Public Life in Scotland etc.) Order 2013*.

14 Public Services Ombudsman for Wales, *The Code of Conduct for members of local authorities in Wales*, March 2015

15 Ibid., p. 35

The Code requires the registration of interests with the councillor's local authority. Local authority standards committees have powers to censure or suspend members who are found to have breached the code of conduct. In more serious cases, the Adjudication Panel for Wales may suspend or disqualify a member from holding office. A case in 2014, *Heesom v PSOW*, covered a number of points regarding the power to suspend or disqualify and the interaction of these provisions with human rights legislation.[16]

4.3 Northern Ireland

The *Local Government Act (Northern Ireland) 2014* permits the Northern Ireland Executive to issue a code of conduct, to be monitored by the Northern Ireland Ombudsman. The initial Code was issued in May 2014. The code includes 12 principles of conduct and a number of rules. Complaints of breaches to the Code must be made to the Northern Ireland Commissioner for Complaints, who has produced guidance for councillors on interpretation of the Code. The Commissioner may suspend or disqualify a councillor found to have breached the code. S/he may also make recommendations to the local authority in question.

Potential breaches of the Code include improper use of the councillor's position, improper use of council resources, and the failure to register gifts. The Code also requires local authority chief executives to ensure that a register of members' interests is maintained. Interests which must be registered include property owned, interests in companies, any remuneration, and any position of responsibility. A dispensation can be granted by the Northern Ireland Department of the Environment to allow councillors to speak in meetings where their interests would otherwise prevent them from doing so.

[16] See the account of the case, plus a link to the judgment, on the website of Bindman and Partners.

BRIEFING PAPER
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APPENDIX 2

Law Commission
Reforming the law

Reforming Misconduct in Public Office
Summary

Consultation Paper No 229 (Summary)
5 September 2016

LAW COMMISSION

REFORMING MISCONDUCT IN PUBLIC OFFICE: CONSULTATION PAPER

SUMMARY

INTRODUCTION

1.1 A review of the offence of misconduct in public office was included in our 11th Programme of law reform.[1] Our terms of reference are to decide whether the existing offence of misconduct in public office should be abolished, retained, restated, or amended; and to pursue whatever scheme of reform we decide to recommend. In this consultation paper, we set our provisional proposals for the reform of misconduct of public office.

History of the offence and calls for reform

1.2 The offence is of significant age.[2] The most well-known statement of the offence was made in 1783, by Chief Justice Mansfield in the case of *Bembridge.*[3] The offence fell largely into disuse between the late 18th century and the beginning of the 21st century, except for the occasional high profile case. It is probably unsurprising, therefore, that many people, including judges and lawyers, were unsure of the definition of the offence.

1.3 There have been numerous calls for reform from academics, judges, lawyers, Government ministers and the media. The Court of Appeal recently stated:

> This is without doubt a difficult area of the criminal law. An ancient common law offence is being used in circumstances where it has rarely before been applied.[4]

The background paper and the first phase of consultation

1.4 On 20 January 2016 we published *Misconduct in public office: Issues paper 1 – The current law* ("the background paper").[5] This was a background paper to our review of the offence of misconduct in public office, which set out the current law and identified a number of problems with it.

[1] Eleventh Programme (2011) Law Com No 330. Work on the review was thereafter halted due to demands of other, urgent projects and began again in January 2015.

[2] See Appendix A to the background paper for further analysis of the historical development of the offence. Available at http://www.lawcom.gov.uk/wp-content/uploads/2016/01/apa_history.pdf.

[3] *Bembridge* (1783) 3 Doug KB 327, 99 ER 679.

[4] Lord Thomas CJ in *Chapman* [2015] EWCA Crim 539, [2015] 2 Cr App R 10.

[5] Misconduct in Public Office Issues Paper 1: The Current Law (January 2016), available at http://www.lawcom.gov.uk/wp-content/uploads/2016/01/misconduct_in_public_office_issues-1.pdf.

1.5 The background paper asked consultees to respond to twelve questions, relating to the many areas of uncertainty surrounding the offence. This was to enable us to gather views on the operation of the offence and take them into account in framing our provisional proposals for reform. The vast majority of consultees who responded to the background paper agreed that the need to reform the offence of misconduct in public office was pressing. The responses confirmed for us particular concerns that had been raised in discussions we have had with some of the people and organisations with experience of the offence and its operation. These include Government departments, prosecutors, academics, barristers with expertise in defending and prosecuting the offence, independent bodies and legal representatives of the press.

1.6 The consultation paper now published sets out our provisional law reform proposals.

The symposium and responses to the first paper

1.7 In addition to publishing the background paper on 20 January, we launched our consultation with a symposium held at the Dickson Poon School of Law, King's College London. The event was attended by approximately 100 delegates from a variety of backgrounds and provided stimulating discussion of some of the key issues raised in our paper. An analysis of the contributions made at the symposium is contained in Appendix A to the Consultation Paper.[6]

1.8 The background paper received a total number of 36 consultation responses. We are extremely grateful to both those individuals and bodies who took the time to respond in writing. The relationship between the questions asked in the background paper and the responses received is explained, and the main themes arising from the responses are analysed, in Chapter 2 of the Consultation Paper.

1.9 As part of this initial phase of the consultation process we met with a number of organisations and individuals directly, in the following forums:

(1) A representative stakeholder group:[7]

(2) An academic advisory group.[8]

(3) A judicial and practitioner advisory group.[9]

[6] Available online at: http://www.lawcom.gov.uk/project/misconduct-in-public-office/.

[7] Meeting took place on 23 February 2016. All meeting attendees are listed in ch 1 of the full consultation paper.

[8] Meeting took place on 5 May 2016. We are also grateful to Professor Jeremy Horder and Professor Anthony Duff, both of whom provided written comments on parts of our draft consultation paper.

[9] Meeting took place on 12 May 2016. We are also grateful to Cheema Grubb J and Jamas Hodivala who were unable to attend the meeting for providing us with comments in writing.

(4) A government stakeholder group.[10]

(5) A wider government stakeholder group.[11]

1.10 The contributions made at the symposium, the consultation responses received and the input we have had as a result of the above meetings have provided us with a wealth of material that we draw upon in constructing our proposed law reform options.

THE CURRENT LAW AND ITS PROBLEMS

1.11 The leading modern case is *Attorney General's Reference (No 3 of 2003)* ("*AG's Reference*"),[12] in which the Court of Appeal stated that the elements of the offence of misconduct in public office are:

(1) a public officer acting as such;

(2) wilfully neglects to perform his duty and/or wilfully misconducts himself;

(3) to such a degree as to amount to an abuse of the public's trust in the office holder; and

(4) without reasonable excuse or justification.[13]

This implies that there is a single offence which can be committed in two ways, namely wilful neglect and wilful misconduct, though both may be present in the same case.

1.12 In the background paper we identified numerous problems with the current formulation of the common law offence that make it difficult to use. These are:

(1) "Public office" lacks clear definition yet is a critical element of the offence. This ambiguity generates difficulties in interpreting and applying the offence.

(2) The types of duty that may qualify someone to be a public office holder are uncertain. Whether it is essential to prove a breach of those particular duties is also unclear from the case law.

[10] Meeting took place on 8 July 2016. We are also grateful to members of the Home Office Police Integrity and Powers Unit who were unable to attend the meeting for providing us with comments in writing. Likewise, we are grateful to the Sentencing Council for providing us with their comment on relevant parts of the draft paper.

[11] Meeting took place on 27 July 2016. We are also grateful to David Prince (former member of CPSL, former managing director of the Audit Commission and former chief executive of the Standards Board for England) who was unable to attend the meeting for providing us with comments in writing.

[12] [2004] EWCA Crim 868, [2005] QB 73 at [61].

[13] This remains the clearest statement of the elements of the offence, although other more recent cases have refined aspects of it. In particular, see *W* [2010] EWCA Crim 372, [2010] QB 787; *Chapman* [2015] EWCA Crim 539, [2015] 2 Cr App R 10; *Cosford* [2013] EWCA Crim 466, [2014] QB 81; and *Mitchell* [2014] EWCA Crim 318, [2014] 2 Cr App R 2.

(3) An "abuse of the public's trust" is crucial in acting as a threshold element of the offence, but is so vague that it is difficult for investigators, prosecutors and juries to apply.

(4) The fault element that must be proved for the offence differs depending on the circumstances. That is an unusual and unprincipled position.

(5) Although "reasonable excuse or justification" appears as an element of the offence, it is unclear whether it operates as a free standing defence or as a definitional element of the offence.

1.13 The responses received to the background paper suggest that our analysis of the problems was both accurate and comprehensive. At the end of Chapter 2 of the Consultation Paper we conclude that, given the extent and fundamental nature of the problems with the current offence, we should not propose, as reform options, either its retention or codification into statute.

1.14 The remaining law reform options open to us are either the creation of one or more new offences to replace the current law or abolition of the current offence without replacement. We discuss these options in Chapters 3 to 8 of the Consultation Paper.

THE RATIONALE FOR THE OFFENCE

1.15 The underlying issue tying together the problems with the current offence is that it is not clear what mischief the current offence targets and therefore what sort of offence it is meant to be. In Chapter 3 of the Consultation Paper we discuss possible rationales for the current offence and how these might underpin any new offence that could replace it.

1.16 At first sight there are three possible explanations for the current offence: abuse of position for personal advantage, misgovernment and breach of the trust of the public. However none of these explanations alone wholly accounts for the offence. Likewise, none of the rationales identified are clearly enough defined to be able to base the elements of a new offence upon them.

1.17 If the main wrong is the *abuse of position for personal advantage or to cause detriment to another*, it is not clear why this should be restricted to public officers. Private employees are equally under a duty not to abuse their position, and there would be a case for a comprehensive offence covering both public and private sectors, similar to bribery. Further, this mischief does not cover all instances of the offence, in particular those cases which fall within the "wilful neglect of duty" limb of the definition ("neglect cases").

1.18 If the main mischief is *misgovernment* (meaning the oppressive or extortionate use of state power)[14] this would suggest a much narrower offence covering oppressive use of official powers such as powers of arrest. However it is unclear whether misgovernment is a concept that describes a single type of wrong or a number of separate wrongs, such as oppression and extortion. Again the status

[14] We explain in ch 2 of the background paper that misgovernment has been put forward as the rationale for the related tort of misfeasance in public office. For further discussion of the tort see Appendix B to the background paper.

of the neglect cases would be uncertain under this rationale, though these could be regarded as a negative form of misgovernment, namely failure to use official powers when required.

1.19 The wrong that comes nearest to explaining the current offence is *breach of the trust of the public*. There is good legal authority supporting the view that public office holders are in a position of public trust, similar to a trust relationship in civil law, though we regard this as a helpful analogy rather than a precise statement of law. In particular, this concept of breach of trust (which we describe as the "stronger sense" of that phrase) would explain cases involving conflict of interest and abuse of position for private advantage and/or causing detriment, as these are established forms of breach of trust. Once more, however, this fails to explain the neglect cases, as these are only a breach of trust and confidence in a weaker sense, namely failure to perform a duty as expected.

1.20 We proceeded to test these conclusions by considering the five categories of conduct which, according to the background paper,[15] are often prosecuted using this offence because there is no other offence that applies to them.

1.21 Category 1: exploiting a position of public office to facilitate a sexual relationship. Having considered the types of cases that could fall under this category, we conclude that there is no clear reason for this to be criminal unless there is an element of exploitation of a person in a vulnerable position. However, this kind of exploitation can occur in many contexts and is not tied to the fact of public office. Category 1, taken on its own, does not supply a sufficient argument for introducing an offence based on breach of public trust (stronger sense), as in most cases this wrong is secondary to the main wrong of exploiting a vulnerable person. The solution would appear to be a sexual offence, not restricted to public office holders, similar to the existing offences of exploiting children and people with mental disorders, and in Chapter 8 of the Consultation Paper we suggest considering this in a future review of sexual offences. However, if the introduction of an offence of breach of public trust can be justified on other grounds, it will sometimes be appropriate to charge such an offence in Category 1 cases.

1.22 Category 2: engaging in a relationship leading to conflict of interest. Again, having considered the types of cases that could fall under this category, we conclude that there is no clear reason for this to be criminal unless some further wrongdoing results from a particular conflict. Where such tangible wrongdoing occurs, there will generally be an existing offence that addresses it. The typical example is a member of prison staff forming a relationship with a prisoner and subsequently smuggling in prohibited items.[16]

1.23 Category 3: acting under the influence of conflict of interest, bias or prejudice. Here we distinguish between cases involving corrupt motives and those involving no more than biased attitudes. The corruption cases fall within the "breach of public trust" explanation (stronger sense) and could warrant an offence. The bias cases, in our view, can be dealt with without recourse to the criminal law.

[15] See the background paper, ch 6 and Appendix D, both available online at http://www.lawcom.gov.uk/project/misconduct-in-public-office/.

[16] The conveyance of prohibited articles into prison is an offence under the Prison Act 1952, s 40.

1.24 Category 4: neglect of duty leading to a risk of serious harm. This represents the "neglect" branch of the definition of the current offence, and many of the leading cases, including *AG's Reference*,[17] fall within this category. Out of all the categories, this is the clearest example of wrongful and harmful behaviour that, in the absence of the current offence, would escape criminal liability. Category 4 conduct may justify the creation of a new offence addressing breaches of duty, including both acts and omissions to act, where the breach causes at least a risk of serious consequences. On the face of it, a new offence of this type would appear very similar to the current offence of misconduct in public office. However, in order to avoid the creation of an offence that is far too wide to be certain, a new offence of this kind would need to define both:

(1) who it applied to; and

(2) the types of consequence it applied to, much more clearly than the current law.

1.25 Category 5: misuse of official information. We did not pursue the discussion of this category, as it almost always falls within another offence and is the subject of another current Law Commission project.[18]

1.26 In conclusion, there are two main types of wrong which deserve consideration for the purposes of a reformed offence or offences:

(1) Breach of duty leading to a risk of serious harm. This covers Category 4 above, and could be regarded as a negative form of misgovernment or a breach of trust in the weaker sense (a failure to perform a duty as expected). An offence based on this wrong could be made more precise by:

(a) clarifying that it potentially applies to acts as well as omissions (which is why we now speak of "breach" rather than "neglect" of duty);

(b) specifying the types of harm involved; and

(c) narrowing the category of public officers who can commit the offence

An offence of this kind is discussed in detail in Chapter 5 of the Consultation Paper as law reform Option 1.

(2) Corrupt behaviour, including the abuse of a position for personal advantage or to cause detriment to another. This covers Category 3 so far as it relates to corruption rather than bias, and potentially some cases within Category 1. The wrong could be described as either abuse of position or breach of the trust of the public (stronger sense); in cases

[17] *AG's Reference (No 3 of 2003)* [2004] EWCA Crim 868, [2005] QB 73.

[18] See Law Commission project page for Breaches of Protected Government Data, available online at http://www.lawcom.gov.uk/project/breaches-of-protected-government-data/.

where the purpose is to cause harm, it would also constitute misgovernment.

An offence of this kind is discussed in detail in Chapter 6 of the Consultation Paper as law reform Option 2.

LAW REFORM OPTIONS

1.27 As stated above, the problems identified in the existing law clearly show that it would be undesirable either to retain the existing offence or to attempt to codify it in statute without significant change to its definition. All the options in the Consultation Paper therefore presuppose that the common law offence of misconduct in public office is to be abolished.

1.28 Options 1 and 2 each involve the creation of a new offence to replace the current law. Option 3 involves the abolition of the current law without replacement (discussed in Chapter 7 of the Consultation Paper).

1.29 Options 1 and 2 are separate but compatible. That is, it would be possible to implement Option 1 on its own, Option 2 on its own or both together.

Definition of public office

1.30 In Chapter 4 of the Consultation Paper we explain that, for the purpose of devising any offence or offences to replace misconduct in public office, we need to devise a more rigorous definition of public office. The broad concept which this definition should reflect could be explained in any of the following four ways,:

(1) a position with an institutional or employment link to one of the arms of the state;

(2) a position where the person occupying it has a duty associated with a state function, which the public has a significant interest in seeing performed (we believe this is the meaning of "public office" in current law);

(3) a position involving a public function associated with a state or public power; or

(4) a position involving a public function which the office holder is obliged to exercise in good faith, impartially or as a public trust.

We set out reasons why we would not propose using either approach (1) or (2) and we ask a consultation question about which of approaches (3) and (4) should be preferred.

1.31 A separate question is how, once one of these four approaches has been adopted, it should be reflected in a statutory definition. We therefore ask consultees: for the purposes of a reformed offence or offences to replace misconduct in public office, should the statutory definition of public office take the form of:

(1) a general definition which simply places the preferred approach on a statutory footing, leaving it to the courts to apply it in individual cases;

(2) a definition of public office as any position involving one or more of the functions contained in a list;

(3) a list of positions constituting a public office; or

(4) a general definition, supplemented by a non-exhaustive list of functions or positions given by way of example?

1.32 A further supplementary question we ask is: if the definition of public office includes a list of functions or positions, should there be power to add to the list by order (the affirmative resolution procedure)?

Option 1: breach of duty model

1.33 To address the first of the main wrongs we identified in Chapter 3 as justifying criminalisation, namely breach of duty leading to a risk of serious harm, we propose the creation of a new offence of breach of duty by a public office holder with a particular duty concerned with the prevention of harm. We call this the "breach of duty model".

1.34 Those public office holders subject to this offence should be defined as those with duties concerned with prevention of harm, which would include:

(1) those occupying positions carrying powers of physical coercion, including arrest, detention and imprisonment (those with powers of physical coercion); and

(2) those occupying positions including functions for the purpose of protecting vulnerable individuals from harm (those with a protective duty).

1.35 The definition of the category of relevant public officers could take the form either of a general test, or of a list of particular powers, functions, duties and positions.

1.36 The offence should be restricted to breach of a particular duty of the office holder connected with the prevention of harm, and therefore only cover cases where such harm occurs or is risked.

1.37 The type of harm, both for the purpose of identifying the relevant public office holders and for the purpose of defining the breach of duty, should be restricted to:

(1) death;

(2) serious physical or psychiatric injury;

(3) false imprisonment;

(4) serious harm to public order and safety; and

(5) serious harm to the administration of justice.

1.38 The fault element of the new offence should be:

(1) knowledge or awareness of:

(a) the circumstances that would mean that D held a public office; and

(b) the circumstances relevant to the content of any particular duties of that office concerned with the prevention of harm; together with

(2) subjective recklessness as to the risk that D's conduct might cause one of the types of harm listed above.

1.39 We ask consultees a series of questions to elicit views on the need for such an offence and its precise formulation.

Option 2: corruption based model

1.40 This option reflects the second main wrong identified in Chapter 3: the corruption type of wrong. We propose the creation of a new offence that borrows some elements from the existing offence of police corruption under section 26 of the Criminal Justice and Courts Act 2015,[19] but applies to all public office holders and improves upon the section 26 offence in a number of ways. We call this the "corruption based model".

1.41 Under this option, there would be an corruption based model of offence applying to public office holders, defined as follows:

(1) A public office holder commits the offence if he or she abuses his or her position, power or authority.

(2) That is to say, if:

(a) he or she exercises that power, position or authority for the purpose of achieving:

(i) a benefit for himself or herself; or

(ii) a benefit or a detriment for another person; and

(b) the exercise of that position, power or authority for that purpose was seriously improper.[20]

1.42 In determining whether or not the behaviour was seriously improper, there will be a number of relevant factors for a jury to consider. These may include the seriousness of the consequences of the misconduct, the seniority of the defendant's position and the culpability of the defendant.

1.43 The fault element of the offence would be satisfied if:

(1) the office holder was aware of the circumstances which determine that the position in question is a public office; and

[19] This offence is discussed in detail in Chapter 3 of the background paper.

[20] We emphasise here that "seriously improper" could easily be substituted with another form of words, such as (for example) "fell far below the standards of expected propriety". We welcome consultees' comments on this point.

(2) the office holder held the purpose in question.

1.44 There should be no separate requirement of awareness that the office entailed a duty not to exercise the position, power or authority for that purpose or that doing so was seriously improper. The duty follows as a matter of law from the fact of being in public office, and the requirement of impropriety already takes account of culpability.

1.45 We again ask consultees a series of questions to elicit view on the need for such an offence and its precise formulation.

Option 3: abolition without replacement

1.46 In order to obtain a full range of responses we include the option of abolishing the existing offence without replacement although our provisional proposal is that the current offence should not be abolished without any new offence being introduced to replace it.

1.47 Doing this would leave a gap in the law if there were types of conduct falling within the existing offence which ought to be criminal, but which:

(1) would not be covered by any other offence if the existing offence were abolished; or

(2) would be so covered, but that other offence would not do justice to the full wrongfulness of that conduct in terms of labelling or seriousness.

1.48 The argument in Chapter 3 (harms and wrongs) concludes that, at least in Category 4 (neglect of duty risking harm) and some cases within Category 3 (acting under a conflict of interest), there is conduct which ought to be criminal and is not covered by other offences. Consultees will favour Option 3 (abolition without replacement) if and only if they are not convinced by either this argument or the argument about labelling.

Complementary reforms

1.49 Whichever of the above options is chosen could be supplemented by either or both of two additional reforms. We discuss these in Chapter 8 of the Consultation Paper.

Reforming the sexual offences regime

1.50 In our discussion of Category 1, the use of a position of public office to facilitate a sexual relationship, we concluded that the only serious wrong was the exploitation of a person in a position of vulnerability, and that the same wrong could occur in contexts unconnected to public office.

1.51 Depending on the options implemented, the exploitation of an opportunity, gained by virtue of a particular position, to facilitate a sexual relationship (Category 1 behaviour) would no longer be criminal unless it amounted to:

(1) Under Option 1: either a sexual offence or a breach of a particular duty to prevent harm that caused a risk of serious injury.

(2) Under Option 2: either a sexual offence or abuse of a position where D's *purpose* was to gain a personal advantage or to cause detriment to V.

(3) Under Options 1 and 2 combined: either a sexual offence, a breach of a particular duty to prevent harm that caused a risk of serious injury (Option 1) or abuse of a position where D's *purpose* was to gain a personal advantage or to cause detriment to V (Option 2).

1.52 This may necessitate a review of the sexual offences regime to assess whether additional sexual offences should be created to address such conduct. The need for such a review would be most apparent if we were to propose outright abolition of current law without replacement (Option 3). It would be least apparent if we were to propose that the current law should be replaced by a combination of Options 1 and 2.

1.53 We suggest that a future reform of sexual offences could consider:

(1) an offence of obtaining sexual activity by improper pressure; or

(2) an offence of obtaining sexual activity by exploitation of a person in a position of vulnerability.

We ask consultees whether reform of the sexual offences regime should be considered in this context.

Treating public office as an aggravating factor for the purposes of sentencing

1.54 The other additional reform would formally treat the fact that the defendant is in public office as an aggravating factor in sentencing for other offences. An offence labelled "misconduct in public office" might be valued because it serves an important communicative function. With any of the reform options we propose, the value of labelling may, depending on the label given to any statutory offence in Option 1 or 2, be diminished or lost. One way that the criminal law can continue to signal the distinct wrongfulness of improper behaviour by public officials is by the courts publicly acknowledging that the sentence for any offence committed by a public office holder should be increased to reflect that aggravating factor.

1.55 This could be combined with any of the three main options, though the need for it would be most obvious in the case of Option 3 (abolition without replacement).

1.56 An important part of the sentencing process involves judges exercising their judicial discretion as to what factors in a particular case either aggravate or mitigate the defendant's criminality, and thereby his or her eventual sentence.

1.57 The factors that a sentencing judge may take account of, include, but are not limited to those specified by the Sentencing Council in relevant sentencing guidelines. An alternative way of reflecting public office as an aggravating factor in the sentencing process would be through the creation of a statutory provision requiring the courts to consider whether, or in fact, to treat public office as an aggravating factor.

1.58 There are no sentencing guidelines for the offence misconduct in public office. Additionally, at present "breach of trust" is commonly referred to as an aggravating factor within various sentencing guidelines whilst public office is not. Likewise, there is no statutory provision relating to the treatment of public office as an aggravating feature of a particular case. That is not to say, however, that the fact that a defendant has committed a crime in the course of carrying out the functions of a public office is not taken into account as an aggravating factor.

1.59 Our considered view, at this stage, is that there is no compelling case for including the factor of public office in either formal sentencing guidelines or a statutory provision specifying that it either can or must be treated as an aggravating feature. We ask consultees whether they agree with this statement.

SUMMARY OF CONSULTATION QUESTIONS AND PROVISIONAL PROPOSALS

Chapter 4: Law reform options: Public office

Consultation question 1

1.60 For the purposes of a reformed offence or offences to replace misconduct in public office, should "public office" be defined in terms of:

(1) a position involving a public function exercised pursuant to a state or public power; or

(2) a position involving a public function which the office holder is obliged to exercise in good faith, impartially or as a public trust?

Provisional proposal 2

1.61 For the purposes of a reformed offence or offences to replace misconduct in public office, "public office" should not be defined in terms of:

(1) a position with an institutional or employment link to one of the arms of the state; or

(2) a position where the person occupying it has a duty associated with a state function, which the public has a significant interest in seeing performed.

Consultation question 3

1.62 For the purposes of a reformed offence or offences to replace misconduct in public office, should the statutory definition of public office take the form of:

(1) a general definition;

(2) a definition of public office as any position involving one or more of the functions contained in a list;

(3) a list of positions constituting a public office; or

(4) a general definition, supplemented by a non-exhaustive list of functions or positions given by way of example?

Consultation question 4

1.63 If the definition of public office includes a list of functions or positions, should there be power to add to the list by order subject to the affirmative resolution procedure?

Chapter 5: Law reform options – Option 1: The breach of duty model

1.64 All provisional proposals and consultation questions in this section refer to the new proposed offence in respect of breaches of duty, causing or risking serious consequences, by public office holders with particular duties concerned with the prevention of harm.

Provisional proposal 5

1.65 The offence should encompass both positive acts and omissions and the conduct element should refer to a "breach of duty" to reflect this.

Provisional proposal 6

1.66 The offence should be limited to breaches of particular duties concerned with the prevention of harm.

Provisional proposal 7

1.67 The category of public office holders under a particular duty concerned with the prevention of harm should be defined to include public office holders with powers of physical coercion (whether or not it also includes any other public office holders).

Consultation question 8

1.68 Should the category of public office holders under a particular duty concerned with the prevention of harm be defined to include those public office holders with a duty of protection in respect of vulnerable individuals (whether or not it also includes any other public office holders)?

Consultation question 9

1.69 Should the category of vulnerable individuals be defined:

(1) in the same way as in the Safeguarding Vulnerable Groups Act 2006; or

(2) in some other, and if so, what way?

Consultation question 10

1.70 Should the offence be defined to include the breach of every legally enforceable duty to prevent (or not to cause) relevant types of harm, or should there be a more restricted definition of the nature of the duty involved?

Provisional proposal 11

1.71 The offence should be defined as consisting of breach of a particular duty concerned with the prevention of specified harms.

Consultation question 12

1.72 Should the definition of the category of public office holders with powers of physical coercion take the form of:

(1) a general definition;

(2) a definition of that type of public office as any position involving one or more of the functions contained in a list;

(3) a list of positions constituting that type of public office; or

(4) a general definition, supplemented by a non-exhaustive list of functions or positions given by way of example?

Consultation question 13

1.73 If the definition of that category (public office holders with powers of physical coercion) includes a list of functions or positions, should there be power to add to the list by order?

Consultation question 14

1.74 Should the definition of the category of public office holders with a duty of protection take the form of:

(1) a general definition;

(2) a definition of that type of public office as any position involving one or more of the functions contained in a list;

(3) a list of positions constituting that type of public office; or

(4) a general definition, supplemented by a non-exhaustive list of functions or positions given by way of example?

Consultation question 15

1.75 If the definition of that category (of public office holders with a duty of protection) includes a list of functions or positions, should there be power to add to the list by order?

Provisional proposal 16

1.76 There should be no requirement on the prosecution to prove that D knew that his or her position was, in law, a public office involving the exercise of powers of physical coercion or a duty of protection. It is sufficient for the prosecution to establish that D was aware of the factual circumstances that made it one.

Provisional proposal 17

1.77 There should be a requirement that D is aware of any circumstances relevant to the content of any particular duties of his or her office concerned with the prevention of harm. For example, what types of harm the duties require D to prevent and in what circumstances.

Provisional proposal 18

1.78 The offence, should include both actual and potential consequences.

Provisional proposal 19

1.79 The risk of the following two types of consequence:

(1) death and serious injury (including both physical and psychiatric harm); and

(2) false imprisonment;

should be regarded as public harm for the purposes of the offence.

Consultation question 20

1.80 Should the risk of serious harm to public order and safety be regarded as public harm for the purposes of the offence?

Consultation question 21

1.81 Should the risk of serious harm to the administration of justice should be regarded as a consequence that would be likely to cause a risk of public harm occurring for the purposes of the offence?

Consultation question 22

1.82 Should the risk of serious harm to property should be regarded as a consequence that would be likely to cause a risk of public harm occurring for the purposes of the offence?

Consultation question 23

1.83 Should the risk of serious economic loss be regarded as a consequence that would be likely to cause a risk of public harm occurring for the purposes of the offence?

Provisional proposal 24

1.84 Liability should only be imposed where a risk of serious consequences arises.

Provisional proposal 25

1.85 The fault element of the offence should include recklessness as to the risk of specified consequence as defined above. The offence should not contain an ulterior intent element.

Provisional proposal 26

1.86 The offence should exclude the element of "without reasonable excuse or justification" but retain the availability of relevant common law defences where it is prosecuted.

Consultation question 27

1.87 Should an offence of breach of duty by a public office holder (subject to a particular duty concerned with the prevention of harm, as described in the foregoing provisional proposals) be introduced?

Chapter 6: Law reform options – Option 2: The corruption based model

1.88 All provisional proposals and consultation questions in this section refer to the new proposed offence in respect of abuse of position by a public office holder, for the purpose of either obtaining a personal advantage or causing detriment to another.

Provisional proposal 28

1.89 The offence should address the following conduct:

(1) D commits the offence if he or she abuses his or her position, power or authority.

(2) That is to say, if:

(a) he or she exercises that position, power or authority for the purpose of achieving:

(i) a benefit for himself or herself; or

(ii) a benefit or a detriment for another person; and

(b) the exercise of that power, position or authority for that purpose was seriously improper.

Provisional proposal 29

1.90 The offence should apply to all public office holders, without further restriction.

Provisional proposal 30

1.91 The offence should not include a requirement that the public office holder, as well as being aware of the circumstances which determine that the position in question is a public office, was also aware that his or her position was, in law, considered to be a public office.

Provisional proposal 31

1.92 The fault element of the offence should include the purpose of achieving an advantage for the office holder or another or a detriment to another. There should be no additional requirement of awareness that acting with that purpose was seriously improper.

Provisional proposal 32

1.93 Common law defences should apply. There should not be further defences.

Consultation question 33

1.94 Should a corruption based model of offence, applying to public officials, as described in the foregoing provisional proposals, be introduced?

Consultation question 34

1.95 If such an offence is introduced should it be introduced on its own or in conjunction with the proposed offence described in Option 1?

Chapter 7: Law reform options – Option 3: Abolition without replacement

Provisional proposal 35

1.96 The offence of misconduct in public office should not be abolished without any new offence being introduced to replace it.

Chapter 8: Complementary legal reforms

Consultation question 36

1.97 Should reform of the sexual offences regime be considered, in respect of:

(1) obtaining sex by improper pressure; and/or

(2) sexual exploitation of a vulnerable person.

Consultation question 37

1.98 Do consultees agree that whether the fact that a defendant is in public office should be treated as an aggravating factor for the purposes of sentencing any criminal offence should remain a matter of judicial discretion in each case (rather than being set out in sentencing guidelines or in statute)?

CONCLUSION

1.99 This summary sets out the arguments in favour of law reform and the law reform proposals put forward in our published Consultation Paper *Reforming Misconduct in Public Office*. The proposals, and in particular the theoretical discussion that underpins those proposals, cannot be done justice in a summary of this length. Consultees are therefore encouraged to refer to the full Consultation Paper available on our website.[21] We welcome responses to the provisional proposals and consultation questions contained in that paper. These should be sent to us by 28 November 2016. We aim to publish a final report on this project in 2017.

[21] Available at http://www.lawcom.gov.uk/project/misconduct-in-public-office/.

Comments may be sent:

By email:	misconduct@lawcommission.gsi.gov.uk
By post:	Justine Davidge, Criminal Law Team, Law Commission of England & Wales, 1st Floor Tower, 52 Queen Anne's Gate, London, SW1H 9AG.
By telephone:	020 3334 3462
By fax:	020 3334 0201

If you send your comments by post, it would be helpful if, whenever possible, you could also send them electronically (for example, on CD or by email to the above address, in any commonly used format).

APPENDIX 3

Committee on Standards
In Public Life

Annual Report 2015–16

Forward Plan 2016–17

THE SEVEN PRINCIPLES OF PUBLIC LIFE

The Seven Principles of Public Life apply to anyone who works as a public office-holder. This includes all those who are elected or appointed to public office, nationally and locally, and all people appointed to work in the civil service, local government, the police, courts and probation services, NDPBs, and in the health, education, social and care services. All public office-holders are both servants of the public and stewards of public resources. The Principles also have application to all those in other sectors delivering public services.

SELFLESSNESS

Holders of public office should act solely in terms of the public interest.

INTEGRITY

Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.

OBJECTIVITY

Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.

ACCOUNTABILITY

Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.

OPENNESS

Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.

HONESTY

Holders of public office should be truthful.

LEADERSHIP

Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.

These principles apply to all aspects of public life. The Committee has set them out here for the benefit of all who serve the public in any way.

The Seven Principles were established in the Committee's First Report in 1995; the accompanying descriptors were revised following a review in the Fourteenth Report, published in January 2013.

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FOREWORD

This report provides an overview of the Committee's activities over the course of the past year and also sets out our forward plan of work for 2016–17.

It is twenty one years since the First Report of this Committee made recommendations for reform. They have formed the basis of the language and infrastructure of standards of propriety in public life, which remain in place today. Nolan set out the Seven Principles of Public Life and the mechanisms for embedding and enforcing those principles.

This year the Committee has been undertaking a comprehensive review of how regulators seek to uphold the Seven Principles of Public Life. Despite the central role they play in public life, this is the first dedicated review of regulators that the Committee has undertaken. Created to operate in the public interest, their decisions impact on individuals and organisations. Like much of the public sector, regulators face reduced expenditure and unprecedented scrutiny on how they operate. Our report will argue that it is critical therefore, that regulators are robustly independent of those they regulate and demonstrate high standards with their own activities and decisions. And with the referendum decision to leave the EU, and Britain facing the prospect of having to rewrite much of its regulatory arrangements, these issues have become all the more acute and complex. We will be publishing the review in September 2016.

This year, the Referendum on whether the UK should stay in the EU has dominated the press. We received a number of complaints regarding the conduct of players in the referendum and much has been said as to whether both sides followed the rules. The Committee is clear that the topic requires ongoing review and analysis. To this end, the Committee intends to hold a seminar on referenda.

The issue of party funding has also been raised again – it remains a matter of significant public concern centred on the confluence of money, power and influence. The Committee's own efforts on this issue have continued to play a key role in taking the debate forward, our previous report from 2011 led to further discussion via the Trade Union Bill and subsequent House of Lords Select Committee Report. The Committee has undertaken further research in this area by commissioning a study into party finances, building on previous work. The issue of party funding cannot be resolved without political will; the Committee believes it is long overdue for the main political parties to show leadership, put aside partisan positions and re-convene talks to reach cross-party agreement on possible reforms. Given the destructive nature of this issue for politics in the UK, I believe it is necessary to continue to press for reform.

Finally I must conclude by thanking our departing members. Patricia Moberly and Lord Alderdice have both made invaluable contributions to the Committee. Their knowledge, insight and judgement will be greatly missed. Patricia's contributions in particular to our reports, *Tone from the top* and, most recently, *Ethics for Regulators* have proven absolutely fundamental to the success of these projects. We wish them both well in their future endeavours.

Paul Bew

Chair

July 2016

ABOUT THE CSPL

1. The Committee on Standards in Public Life monitors, reports and makes recommendations on all issues relating to standards in public life.[1] This includes not only the standards of conduct of holders of public office, but all those involved in the delivery of public services.

2. As an independent Committee we are uniquely placed to consider the ethical landscape as a whole. As a standing committee we have a constant presence, which enables us to monitor progress on different issues, including our own recommendations, over time. It also enables us to respond quickly when an ethical issue arises which requires our consideration.

3. Our purpose is to help promote and maintain ethical standards in public life and thereby to protect the public interest through:

   - monitoring standards issues and risks across the United Kingdom (by invitation in the devolved areas);
   - conducting inquiries and reviews and making practical and proportional recommendations that are generally implemented;
   - researching public perceptions on standards issues relating to specific areas of concern, and also over time.

4. The Committee's status is that is an independent advisory non-departmental public body (NDPB). It is not founded in statute and has no legal powers to compel witnesses to provide evidence or to enforce its recommendations. Our secretariat and budget are sponsored by the Cabinet Office.

5. To fulfil our remit effectively it is important that we remain robustly non-partisan and independent of the Government that appoints us. It is for that reason that the chair and other members, other than those representing the political parties, are now appointed through a fair and transparent public appointment process, for non-renewable terms. The Committee's political members are nominated by Party Leaders at the time of appointment.

6. By convention, the Committee consults the Prime Minister before starting an inquiry, and can be asked by the Prime Minister to mount an inquiry on a specific subject, but the decision on whether to proceed will be our own.

[1] See Appendix 1 for our terms of reference

STRATEGIC PLAN

Our strategic objectives

7. The Committee has agreed the following five strategic objectives:

- Where appropriate, we will undertake balanced, comprehensive inquiries which enable us to develop evidence-based, practical recommendations which will help maintain or improve ethical standards across public services.
- We will undertake robust and effective research which will provide useful information about public perceptions of ethical standards across public services. We believe that it is important to check our perceptions of the standards the public expects of public servants and organisations, and the extent to which they are being met, against reality.
- We will make informed contributions to public debates about ethical standards.
- We will constantly be alert, spotting developments and responding promptly to emerging ethical risks, engaging with a wide range of stakeholders to develop the ethical standards agenda.
- We will improve the way we work, evolving so that we continue to be an effective, efficient organisation delivering value for money.

Setting Priorities

8. Since our remit is wide and our resources limited, we will ensure that we take a strategic approach and set priorities. The distribution of our effort between substantive inquiries and the rest of our work will depend on our assessment of current standards issues, their relative importance and how best they can be addressed. We will ensure that time spent in responding to inquiries and consultations initiated by others, while important, and is not allowed to crowd out work on other issues we regard as important.

Selection of inquiries

9. The choice and scope of our inquiries will be informed by our assessment of the importance of the issue, the scope for a distinctive and authoritative contribution and its potential impact. We also have to bear in mind our limited staff and financial resources. In each inquiry we will aim to identify concrete recommendations which will ensure the highest standards of propriety in public life. After reports have been delivered we will continue to follow up on our recommendations, as appropriate, to monitor the extent of their implementation and the effectiveness of the measures taken.

10. Specific areas in which we will continue to take an interest in the next few years, which may not necessarily become the subject of a full inquiry, are set out in detail in the Standards Check section of this report.

11. We will be ready to initiate inquiries promptly on other issues not currently on the horizon, as circumstances require, and to identify any general lessons from individual issues of impropriety that may come to light.

Monitoring standards issues

12. To further our remit to monitor ethical standards across public services as a whole we will:

    - Maintain a watching brief to identify emerging or persistent standards issues and respond promptly to them.
    - Undertake independent quantitative and qualitative research into public perceptions of ethical standards.
    - Respond to consultations and key policy announcements and legislation where these impact on ethical standards and we have an informed contribution to make.

Making sure our voice is heard on standards issues

13. In addition to our inquiries and monitoring of standards issues, we will take steps to ensure our voice is heard promoting high ethical standards, including as appropriate by:

    - Providing evidence to Select Committees and Public Bill Committees in both Houses.
    - Writing to ministers and others on key issues.
    - Participating in conferences, seminars and workshops.
    - Contributing to published consultation papers.
    - Writing articles and delivering speeches to communicate our key messages; and
    - Speaking to the media.

14. We will also aim to increase our collaboration with other bodies providing advice, support and challenge to organisations as they work on standards issues; and jointly promoting high ethical standards in public life. We hope in this way we can add value and use our resources to best effect.

Using our resources to best effect

15. The Committee accepts the importance of being as economical as possible in its use of resources, consistent with delivering effectively against its remit. Its annual budget for 2016/17 is £284 000. Both budget and staff numbers have reduced considerably over the last few years and this has necessarily placed limitations on the scope and extent of work the Committee can undertake and limited the Committee's ability to respond quickly and comprehensively to standards issues as they emerge.

16. We will continue to exercise economy, including in the following ways:

a) *Research*

Our Research Advisory Board added questions to a survey being undertaken by the Electoral Survey. This reduced costs without, we think, significantly compromising the quality of the results. In addition, analysis of the results of the research has been undertaken by a doctoral student part funded by the Committee, under the supervision of the Research Advisory Board.

b) *Visits*

While we continue to maintain an interest in standards issues in the devolved administrations, the Committee has not held public hearings or visited stakeholders in these areas, unless invited, since our remit was amended in 2013 to the effect that we should no longer do so without the agreement of their governments and legislatures.

As part of the evidence gathering for the 'Ethics for Regulators' inquiry we made 26 visits to regulators, however as travel was minimal the costs accrued remained relatively low.

In recent times budgets have not allowed the Committee to investigate comparable issues in countries outside the UK by making visits there. We have instead taken into account international surveys and studies where appropriate and commissioned international comparative work from academic sources. We may, however, request the resources necessary for overseas visits should the circumstances of an inquiry and the absence of the availability of necessary information from other sources appear to demand it.

c) *Administrative processes*

All services (including travel, accommodation, IT and HR) are obtained wherever possible through Cabinet Office framework agreements or approved providers. This ensures best value for money and helps maximise the volume of public sector business being obtained through certain contracts, in order to drive down costs across the public sector.

Measuring our effectiveness

17. Our effectiveness will depend upon the success with which we fulfil the specifics of each year's business plans. But we will continue to identify issues on which our voice has been heard and we have made a difference.

18. We have developed the following Key Performance Indicators:

    - Delivering effective reports as frequently as necessary which identify ways to improve and maintain ethical standards in public services, together with other proactive outputs as specific issues arise. We will always try to produce a rounded and proportionate package of measures intended to be implemented as a whole;
    - Demonstrably increasing the profile of ethical standards as an issue in public services; and
    - Ensuring we continue to justify our role and contribution through meaningful mechanisms of openness and accountability.
    - Ensure adequate media coverage.

19. In making recommendations it should always be our intention to make recommendations that are persuasive, practical and firmly evidence-based. In the past the Committee has usually had the majority of its recommendations accepted, although not always in the precise form suggested and sometimes not immediately. We will monitor this. We will not hesitate to make recommendations that we believe to be right even though we anticipate that those responsible for implementing them may find them difficult.

20. In addition, we will identify and measure the success of our impact and stakeholder engagement by developing, monitoring and evaluating the following measures:

    - Numbers attending events.
    - Numbers responding to consultations.
    - Requests for speeches or presentations.
    - Traffic to our website.
    - Coverage in print and broadcast media.
    - Twitter followers and usage.
    - Feedback and take up rate of quarterly newsletter.
    - Stakeholder survey results and feedback.

OVERVIEW OF ACTIVITIES 2015–2016

21. Our Business Plan 2015–16 set out our plan for the year. We have delivered against that plan and gone further.

Ethics for Regulators

22. The Committee announced in its 2015/16 Business Plan that it would undertake a review of 'Ethics for Regulators'. The initial aim was to undertake a 'health-check' of the way in which regulators manage ethical issues in their own organisations; and the extent to which the unique characteristics of regulators create or demand any specifically tailored ethical solutions. However, the range of issues around regulation we have encountered and the quality of the research has exceeded our initial expectations so we broadened the scope of this project into a full report and a command paper.

23. Regulators play a central role in public life, extending horizontally and sectorally across a broad range of commercial and non-market activity at national regional and local levels. Both within and beyond 22 Non-Ministerial Departments and 346 Agencies and Public Bodies, there are a substantial number of autonomous regulatory bodies in the UK, ranging from the very large to the very small. There has undoubtedly been an assumption that the Seven Principles of Public Life apply to regulators in the same way as to any other holder of public office. However, the Committee does not appear, at any time over its 20 years to have focused an entire report on them.[2] The project received responses to our survey from over 60 regulators and conducted 26 visits to regulators. We also held three roundtables for academics, regulators and stakeholders, respectively, and commissioned four academic papers and conducted desk research.

24. The Committee aims to publish its findings in September 2016.

Ethical standards for providers of public services guidance: follow up

25. In December 2015 the Committee published an online guide for providers of public services – whether outsourced or in-house – to promote high ethical standards. This guide followed up the Committee's earlier report which established the importance of common standards for all those delivering public services.

[2] A brief reference was made to regulators in *Standards Matter* 2013

26. Lord Bew stated in his foreword to the online guidance:

'The purpose of this document is to emphasise the key messages from our report and build on its research and conclusions by providing short practical guidance to both providers of public services in building and embedding ethical standards in an organisation, and to commissioners in setting ethical expectations for the delivery of public services as well as ensuring those standards are met. The Committee recognises the efforts and investments which many providers have already made in enhancing awareness of, and adherence to high ethical standards. The Committee recognises the challenges faced by any organisation large or small in ensuring that all employees adhere to high ethical standards of behaviour...Ethics matter. This is increasingly recognised by the business community as a necessary part of winning trust and building confidence in the public service markets. Ethical standards should not be taken for granted. Commissioners and providers need to be explicit with each other and the public as to the standards expected in the services which are being delivered.'

27. The impact of this document has been considerable with 2750 online views since December. In addition, to coincide with the launch of the online guide, Committee member Sheila Drew Smith OBE gave an interview with the Financial Times which reiterated the need for chief executives to set "a tone from the top" in order to imbue the workforce with the importance of ethical behaviour.

28. The Committee will continue to make the case for public service providers to take steps to embed ethical practices and culture within their organisation. We remain committed to providing research and guidance to this end.

Police Accountability

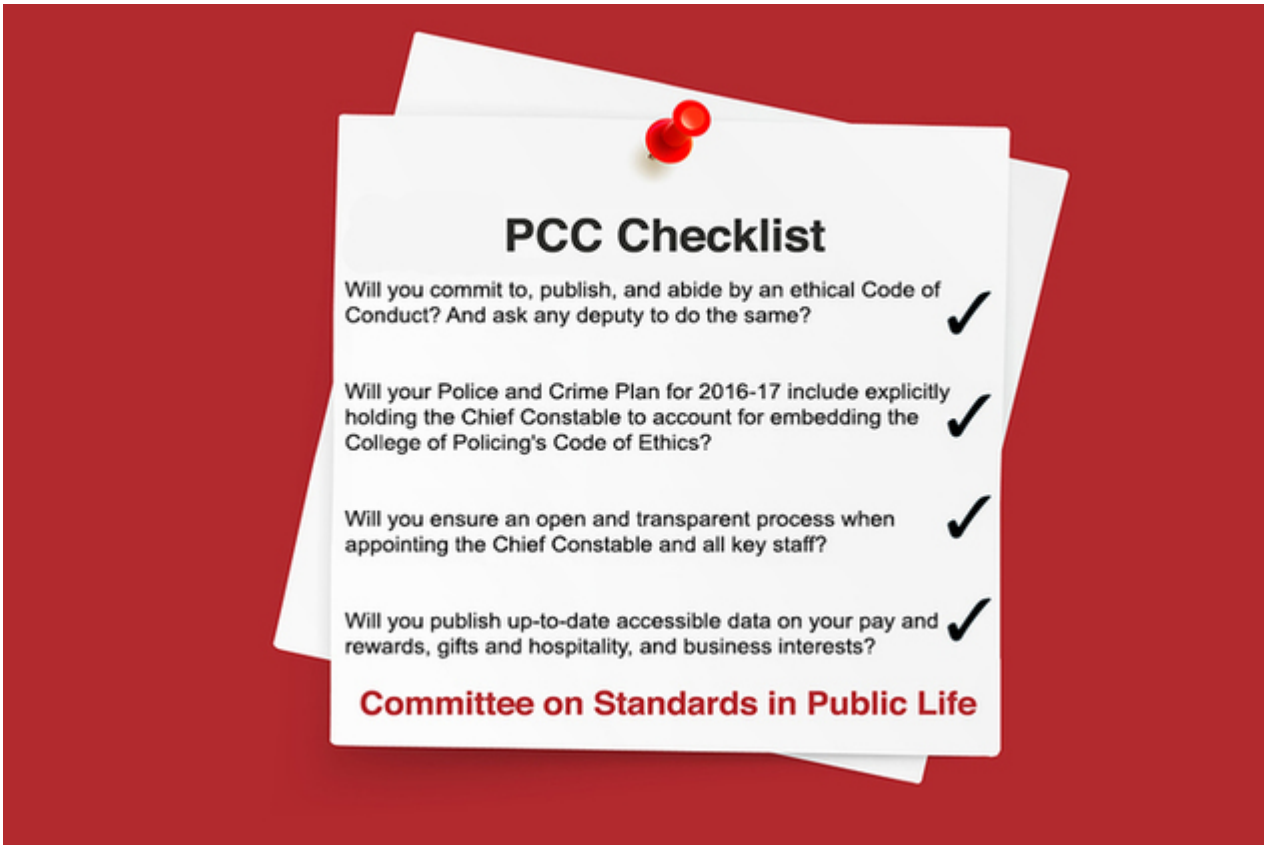
29. On 29 June 2015 the Committee published the final report of its inquiry into policing accountability: Tone from the top – leadership, ethics and accountability in policing. The Committee's research, conducted by Ipsos MORI, asked over 1000 members of the public what they knew about local policing accountability. Through a series of structured questions, it was found that, in general, respondents had a pretty positive perception of the standards of conduct of the police; the majority thought senior police officers could be trusted to tell the truth and felt that the police are held to account for their actions. People also largely thought that police deal with the crime and anti-social behaviour issues that matter.

30. However we also learned that despite being generally happy with the conduct of police and saying that the police are held to account, many people asked were unclear who to complain to about problems with local policing and thought that local people did not have a say in how the police spent their time and budget.

31. Following publication, letters to key stakeholders were sent at the end of July requesting their responses to the recommendations relevant to them.

32. Letters were sent to all Chief Constables, Chairs of Police and Crime Panels, Police and Crime Commissioners and representative organisations. Stakeholders were given until 29 November to respond, and we have received responses from 57 stakeholders to date.

PCC Elections

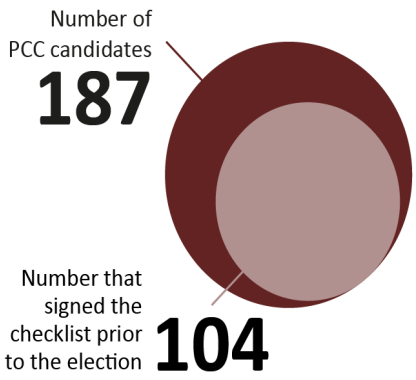


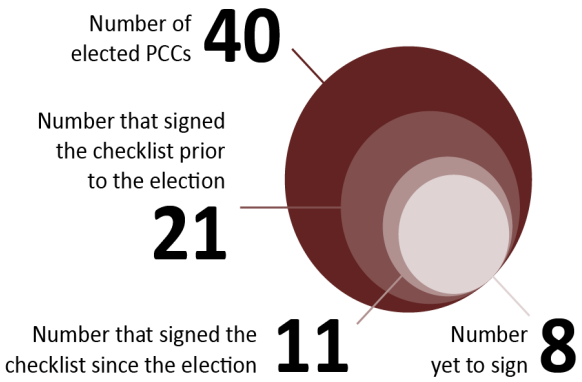
33. On 21 March 2016, the Committee asked for all candidates standing to be Police and Crime Commissioners (PCCs) at the 5 May 2016 local elections to sign up to the ethical standards checklist. Following its inquiry last year into local policing accountability, the Committee called for all candidates to declare their approach to conduct, appointments and hospitality so that the public can make an informed judgement when casting their vote.

34. On 29 April Lord Bew published the blog 'PCCs – important and powerful roles need robust scrutiny and accountability' following the decision by the South Yorkshire Police and Crime Commissioner to suspend the Chief Constable following the verdict in the Hillsborough inquest. Lord Bew noted that this is the most high profile illustration of the powers vested in elected PCCs which poses questions over who keeps the holders of such power to account – the Police and Crime Panels. Lord Bew wrote that after the elections,

we hope that Police and Crime Panels will use their scrutiny and support role to hold the new PCCs to their promises and help ensure that they live up to the standards of conduct and accountability expected by the public. He also reiterated the Committee's call for all PCCs to commit to our ethical checklist.

35. By the election on 5 May, over 50 percent of candidates had signed up to the ethical checklist. Following the elections the Committee wrote to the Police and Crime Panels reminding them of the recommendations in last year's policing report. We also wished to restate our call for PCCs to commit to the ethical checklist, so the public know whether their PCC had signed up, and to bear this in mind when holding their PCC to account.





Lobbying: Follow Up

36. The Government responded in full in October 2015 to our report *Strengthening Transparency around Lobbying*, which was published in November 2013.

37. The lobbying industry, along with their representatives, charities, campaign bodies, academics and think-tanks all gave evidence to our review. With the evidence gathered we aimed to produce proportionate recommendations which would be complementary and separate to the legislation passing through Parliament on lobbying and would help restore public trust and confidence. In particular we were keen that decision makers who experience lobbying are able to clearly demonstrate probity. We concluded that a package of measures was urgently required to deliver a culture of greater openness and transparency around lobbying; provide greater clarity for public office holders on the standards expected of them; and to reassure the public that a more ethical approach to lobbying is actively being applied by all those individuals and organisations involved in lobbying.

38. Following publication, the Committee Chair met with the then Minister, Francis Maude, in December 2014 to discuss the detail of our recommendations and the reasoning behind them. On 21 October 2015 the Government responded further by offering its assurance that transparency around lobbying is a key

priority and the acceptance of a number of recommendations the Committee believes are important. The Committee stated that it welcomed this response. In particular the Government's commitment to improving the timeliness and accessibility of the published information about Ministers' and Permanent Secretaries' official meetings with outside interest groups as well as hospitality received by ministers and members of departmental boards.

39. On 11 February 2016 Lord Bew posted the blog 'Current arrangements aren't enough' where he praised the Government's efforts in this area; but made it clear that the current arrangements and the lobbying register were not going to provide sufficient transparency and accountability to enable effective public scrutiny of lobbying.

40. The Committee will continue to monitor developments in this area in order to promote the highest standards of propriety in public life.

Trade Union Bill

41. Our 2011 report on party funding came back into public debate in early 2016 when the House of Lords agreed on 20 January to appoint a Select Committee to consider the impact of clauses 10 and 11 of the Trade Union Bill, in relation to the Committee on Standards in Public Life's report, *Political Party Finance: Ending the Big Donor Culture (2011)*. The Select Committee reviewed the necessity of urgent new legislation to balance those provisions with the other recommendations made in the Committee's report.

42. The Trade Union Political Funds and Political Party Funding Committee was appointed on 28 January.

43. On Tuesday 9 February 2016 Lord Bew and former chair, Sir Christopher Kelly, appeared before the Select Committee's second evidence session.

    Key points from that session:

    - Lord Bew reiterated the points that the report was intended to be taken as a package; that he had not received positive responses from the party leaders when he contacted them post-election regarding this issue. Lord Bew restated the need for action on this and the issues of party expenses more generally.
    - Lord Bew also raised his ongoing concerns regarding the issue of public trust and the question of money in politics.
    - Sir Christopher answered questions on the aims, content and reception of the 2011 report. He provided detail on the principles and pragmatic reasons for the emphasis of the recommendations as a

package. Sir Christopher confirmed that the aim was to achieve an outcome that was both fair and reasonable to all parties.

44. On 2 March the Select Committee published its report, which concluded that the Trade Union Bill would have a significant impact on union political funds and in turn on Labour Party funding, whilst offering some measures to mitigate this effect. The Committee also advised the Government to convene urgent cross-party talks on party funding reform.

45. The report was debated in the House of Lords on 9 March when the Minister, Baroness Neville-Rolfe commented:

"Evidence to the committee suggested moving ahead with smaller reforms that might command cross-party support, such as finding practical ways in which to encourage more and smaller donations from wider audiences. As part of the Government's broader approach of promoting giving to good causes, the Government would be willing to take that forward for further consideration, such as publishing a discussion paper in the first instance, if there was a positive reaction to such a potential step from the political parties. I hope noble Lords will be pleased to hear that; I shall be particularly interested to hear the views of the committee chaired by the noble Lord, Lord Bew, on these issues".

46. The Committee confirmed to the Minister it would be happy to contribute to the debate and subsequently commissioned Dr Michael Pinto-Duschinsky to update his 2011 report on political funding with some additional work covering party income.

47. On 3 May the Bill returned to the Lords having undergone significant amendments, most notably:

- The government agreed that the switch to an 'opt-in' approach to union political funds would now be contingent on consultation with the union Certification Officer and trade unions – plus the backing of both Houses of Parliament.
- If the consultation and Parliament determine that the switch to 'opt-in' should go ahead, unions will now be given at least a year, as opposed to the three months outlined in the Bill previously, to transition towards making members 'opt in' to their political funds.
- Ministers conceded that unions can trial e-voting for their internal elections and strike ballots.
- Members will now be allowed to opt in to union political funds online.

Both Houses agreed on the text of the Bill which received Royal Assent on 4 May 2016.

48. As stated above, Lord Bew made the point at the Select Committee in February that the landscape had changed since 2011 and that the Committee would undertake further research on the topic. To this end the Committee will be undertaking work in this area in 2016/17 by commissioning the work by Michael

Pinto-Duschinsky as noted above and see forward plan (below) for further details.

Consultation by Law Commission: Misconduct in Public Office

49. In January 2016, the Law Commission announced it was undertaking a review of the offence of misconduct in public office. The reform objectives were to decide whether the existing offence of misconduct in public office should be abolished, retained, restated or amended and to pursue whatever scheme of reform is decided upon.

50. The Committee has previously commented on this issue in the 1997 paper on misconduct in public office. That paper argued that that the current common law offence lacked clarity and advised that consideration should be given to the introduction of a new statutory offence.

51. Lord Bew spoke at the Commission's Symposium on Misconduct in Public Office on 20 January 2016 at King's College London, where he reiterated the general position of our 1997 paper and highlighted that the challenge for the Committee is to negotiate space between those breaking law and moral behaviours in general.

52. The Committee responded to the Commission's consultation and published its evidence on the website. The Committee did not focus on the legal technicalities, which were beyond its scope, but the response considered general principles and standards which are the Committee's primary focus. We did make two key points regarding: (a) the definition of public office holders; and (b) sanctions for any misconduct.

53. With regards to the definition of public office holders the Committee noted the difficulty in defining the term "public office" and "public office holders". There is an increasingly blurred distinction between public, private and voluntary sectors; this has been reflected in the Committee's own remit being widened to make clear that the seven principles apply to any organisation delivering public services. However, the Committee also made clear that the public want all providers of public services to adhere to and operate by common ethical standards, regardless of whether they are in the private, public or voluntary sectors.

54. With regards to the issue of sanctions the Committee acknowledged that the picture had moved on since our previous 1997 paper.[3] We did state that, whilst we believe standards remain high, our position now is that there is the need, to have sanctions in place if standards are not met. We believe that to define clear and principled consequences of any material failure to achieve ethical standards would support the re-building and sustaining of public trust in public office. Therefore, if it is decided to proceed with a legal definition of "misconduct" we, the Committee, would strongly encourage the discussion of sanctions and consequences in the event of any transgression.

[3] Since then the Bribery Act 2010 and the Local Government Act 2000 have addressed many of the issues raised in the 1997 paper.

55. Professor Mark Philp, Chair of the Research Advisory Board provided a note as part of the Committee's response which highlighted the broad issue of the complex nature of this offence, as well as commenting on the distinction between public and political office and on the issue of sanctions.

MPs' Code of Conduct

Parliamentary Commissioner's Consultation

56. On 21 January 2016 the Independent Parliamentary Commissioner, Kathryn Hudson, launched a public consultation exercise to review the current Code of Conduct for MPs. The Committee was asked to respond to the consultation, which comprised a set of questions ranging from what the overall purpose of the code should be, to whether the Commissioner should be able to investigate alleged breaches of the general principles of conduct.

57. The Committee's response argued that the Code's purpose should be to establish the standards and principles of conduct expected of all Members and to set the rules which underpin these standards.

58. Additionally the response made the case for a principles-based approach to the Code, arguing that leadership is essential in promoting and supporting the seven principles, and that the Code of Conduct should reinforce these fundamental values.

59. More specifically, the Committee restated the view that the House needs an Independent Commissioner as her role in overseeing registering interests and investigating breaches remains key in the Commons standards system. Breaches of the Code are the most public aspect of the role and we stated that it is essential that a mechanism for their investigation remain in place.

Oral Evidence

60. Lord Bew also gave evidence on 15 March 2016 to the Parliamentary Standards Committee which is exploring the same issue of the code of conduct alongside the Commissioner's own review. Prior to this appearance, Lord Bew gave an interview with *the Daily Telegraph* where he stated his support for the Committee as well as the importance of input from lay members.

61. During the session, Lord Bew highlighted the strengths of the Code while suggesting it remains open to improvement. He reiterated the role of induction for MPs as well as the repeating the Committee's position that lay members of the Parliamentary Standards Committee should be given voting rights, or at the least that their views should be made public. He also supported the suggestion that the Parliamentary Commissioner be given more power to investigate breaches of the Nolan principles.

Consultation on Review of Public Appointments Process – Grimstone Review

62. On 2 July 2015 the Minister for the Cabinet Office announced that Sir Gerry Grimstone would lead a review of the Office of the Commissioner for Public Appointments. Although the Office of the Commissioner for Public Appointments is technically not a public body, the review followed the guidance on conducting a triennial review.

63. On 29 October 2015, the Committee published its contribution to Sir Gerry's review. With regards to the role of Commissioner, the Committee stated that, given the role of public scepticism around appointments, it is firmly of the view that the Commissioner's role is still required. The Committee sees no case to depart from the model of a Commissioner for Public Appointments who is demonstrably independent of government and the civil service and can provide effective, external scrutiny. This model has gained broad acceptance and recognition and has stood the test of time. However, we added that this does not mean that more cannot be done to improve the way in which these important appointments are made.

64. The Committee also stated that, in the interests of transparency for stakeholders and the public alike, the Committee believes there should be a separation of post holders between Public Appointments Commissioner and the First Civil Service Commissioner.

65. Sir Gerry Grimstone's report was published on 11 March 2016, and on 17 March the Committee welcomed the announcement of the Rt Hon Peter Riddell CBE as the preferred candidate for Commissioner for Public Appointments.

66. We welcomed the proposals in Sir Gerry Grimstone's report to improve the transparency of the public appointment process. However, the Committee expressed its unease about the cumulative effect of the other changes suggested in the Grimstone review.

67. The Committee stated it fears the changes will remove some of the independent checks and balances of the public appointments process, and may have the unintended effect of offering limited protection for Ministers who wish to demonstrate they have appointed on merit alone.

68. The Committee will be looking at the Grimstone report's recommendations in more detail. The Public Administration and Constitutional Affairs Select Committee (PACAC) offered its qualified support to the appointment of Peter Riddell as the Commissioner for Public Appointments. PACAC expressed its concern that the changes proposed by Grimstone may be leading to an increasing politicisation of senior public appointments. They added that they would report on their inquiry into the Grimstone proposals after the Code of Practice for Public Appointments and a new Order-in-Council have been published. In fact PACAC reported in July and requested the Government to think again about implementing the proposals.

69. Our Committee noted that the Government will be seeking further views and bringing forward changes in the Code of Governance and we hope to work with them and Peter to help address these risks.

STANDARDS CHECK

In addition to the specific areas of inquiry outlined above, we have also maintained an interest in other standards issues during this year:

Party Funding

70. The debate prompted by the Trade Union Bill has brought renewed prominence to the issue of party funding in Britain. As noted above, this is a topic that the Committee has reported on previously, most recently in 2011. One of the key conclusions the Committee reached at the time was that the system, while not corrupt, was perceived to be corruptible. And our research showed that the public were highly sceptical of the motivations of all big donors; regardless of whether they were individuals, trades unions or organisations.

71. The package the Committee put forward required all parties to accept some challenging measures in the interests of the health of democracy in this country. The package also proposed an extra £25m of public funding, which the Committee recognised was a significant request in an incredibly difficult financial climate.

72. Once the report was published, with dissenting notes from both Margaret Beckett MP and Oliver Heald MP, the three main parties convened talks. Despite the fact that reform of party funding was in all three parties' manifestos and in the Coalition agreement, the talks failed.

73. The Committee has maintained an interest in this issue and, as stated in our last report, the Chair wrote to each party following the 2015 general election inviting them to re-convene discussion on party funding; particularly in the light of public dissatisfaction with the political process as evidenced by the Hansard Audit. Unfortunately the response we received to this request was not as forthcoming as we would have hoped and these talks were not held.

74. Given the time that has elapsed since that last report, we have decided to return to the topic of party funding in order to gauge the key developments in what has been a rapidly evolving context. To this end the Committee arranged for questions on party funding to be included in the British Election Study, results of which will be available in Summer 2016. In addition, we have also commissioned Dr Michael Pinto-Duschinsky to update his previous contributions on this topic. These steps will enable the Committee to gauge the current public opinion on party funding, as well as refining its position to contribute to the debate.

Parliamentary Standards

75. The Committee continues to contribute to the issue of Parliamentary Standards. As noted above we responded to the Parliamentary Commissioner's review into the current Code of Conduct for MPs, as well as giving evidence at a session by the Parliamentary Standards Committee which was exploring the same issue. In addition we will be contributing to the Independent Parliamentary Standards Authority's consultation on MPs' scheme of business costs and expenses.

76. The Committee continues to stress role of guidance, education and training on the rules and principles of the standards regime particularly with regard to recall. The public remain highly critical of MPs and are unlikely to accept ignorance of the principles or the rules as a defence in cases of alleged misconduct and, for their part, MPs are unlikely to accept unclear advice on opaque rules. We welcome the recent appointment of four additional lay members to the House of Commons Committee on Standards, which results in an equal number of MPs and lay members on the committee.

77. The Parliamentary Standards Commissioner (the post recommended by this Committee) and the Standards Committee will need to continue the work started with the House Authorities and the political parties on induction training to raise awareness and understanding of a clear and transparent standards regime amongst MPs.

Local Government Standards

78. The Committee on Standards in Public Life has a long-standing interest in local government standards. In our 2014/15 Annual Report we stated that the Committee had agreed at the time of the Localism Act to maintain a watching brief on:

    - the need for a mandatory code of conduct,
    - strong local leadership,
    - effective independent persons; and,
    - concern at the lack of sanctions.

79. We continue to note that there is some evidence to suggest that the role of the independent person is generally well received and that vexatious complaints are falling. However, the effectiveness of the sanctions regime is still a concern.

80. The Committee maintains a watching brief of national and local media on this issue, as well as correspondence. We receive correspondence both from members of the public, Councils and councillors on this issue. This correspondence includes, for example, calls for a national code of conduct, strengthened guidelines or sanctions or a power of recall.

81. The Committee promotes the Seven Principles as consistent descriptors of ethical standards which represent common standards and core values. They can then be translated into outcome focused, locally based rules, codes or methods of implementation which are flexible enough to adapt to changing circumstances. We continue to invite councils to consider whether their own local standards frameworks are sufficient to address standards breaches and build public trust.

82. We will continue to liaise with the relevant stakeholders on the way in which ethical standards can effectively be embedded in all parts of local government.

Civil Service and government

83. The Committee has, over the years, made a number of recommendations relating to the regulatory regime for appointments to the Civil Service and how best to achieve high standards of conduct and propriety by civil servants. Many of these recommendations have been adopted.[4] In October 2014, the Committee responded to the Triennial Review of the Civil Service Commission. We argued that there is a continuing need for the Civil Service Commission, specifically as an independent body, with its remit and the regulatory arrangements for Civil Service appointments, as well as the Civil Service Code values of honesty, integrity, impartiality and objectivity, remaining on a statutory basis.

84. On 11 March 2016, the Government published Sir Gerry Grimstone's review of the Public Appointments Process. As stated above, the Committee's response was to welcome the review, while expressing unease about the cumulative effect of some of its recommendations.

85. On 7 April 2016, the Committee submitted evidence to the Public Administration and Constitutional Affairs Committee (PACAC) inquiry on the review of the public appointments process.

[4] For example, putting the civil service, the Civil Service Code and the principle of appointment on merit after a fair and open competition on a statutory basis (First Report, Sixth Report, Ninth Report); an active role for the (then) Civil Service Commissioners in scrutinising the maintenance and use of the Civil Service Code, particularly in induction and training (Ninth Report); convergence between the regulatory regime of the (then) Civil Service Commissioners and the Commissioner for Public Appointments (Tenth Report).

86. Our submission welcomed the Government's intention to seek further views and consult on the Code of Governance, as the quality of the Code will be vital in ensuring the success of the new system. However the Committee continued to express its unease, about the potential cumulative effect of the changes proposed in the review. The Committee fears that, taken together, the changes proposed may remove too many of the checks and balances on Ministerial powers in relation to the public appointments process. In addition, our concerns are greater where the public appointment is to a sensitive or high profile organisation and in particular appointments to regulatory bodies.

REPRESENTATIONS, SPEECHES AND COMMUNICATION

87. The Committee continues to maintain an international profile in the field of standards promotion in terms of exemplifying an effective principles-based approach to standards in public life. As has been the case in previous years, the Committee has found that the UK has a high international reputation in such matters and many other countries wish to learn from our experience. The Committee will continue to host international delegations, visiting civil servants, scholars and students to explain how the standards framework operates in the UK. The Committee will also continue contributing to the research base on standards, trust and compliance, both by working with national and international institutions and scholars, and conducting in-house research.

88. Over the course of the year, the Chair has spoken at a number of events on standards issues, promoting the work of the Committee and the importance of the Seven Principles of Public Life and providing other examples of best practice, including:

- 07/09/2015 – Police Superintendents Association
- 16/09/2015 – Policing in Northern Ireland
- 08/10/2015 – Solace Annual Summit
- 14/10/2015 – Public Chairs Forum
- 28/10/2015 – CoPaCC – PCCs and Transparency
- 12/11/2015 – Westminster Abbey Institute
- 01/03/2016 – Induction for new peers
- 08/03/2016 – Inside Government – Improving Leadership, Ethics and Accountability in Local Policing
- 14/06/2016 – Policing and Ethics Conference – Bath Spa University

89. Other Committee and Secretariat members also spoke about the work of the Committee and standards issues in a range of contexts including:

- 14/03/2016 – Police and Crime Panelists at an LGA Workshop – Patricia Moberly and Monisha Shah
- 15/03/2016 – CoPaCC PCC Candidate National Briefing Day – Monisha Shah

90. The Committee has been proactive in promoting the Seven Principles of Public Life through responses to a number of consultations including:

- Parliamentary Commissioner's Consultation – MP's Code of Conduct
- Law Commission: Misconduct in Public Office Review
- Review of Public Appointments Process – Grimstone Review

91. The secretariat receives and responds regularly to public enquires and correspondence on standards issues, including requests under the Freedom of Information Act 2000.

Communications

92. Between 1 September 2015 and 31 July 2016, the Committee's corporate website on Gov.uk (https://www.gov.uk/government/organisations/the-committee-on-standards-in-public-life) received 14,420 visits, totalling 19,871 page views. The Seven Principles of Public Life page (https://www.gov.uk/government/publications/the-7-principles-of-public-life) was viewed 42,267 times over this period.

93. We will continue to ensure that we communicate our work effectively, making it visible to public office holders and others with an interest in ethical standards. Recommendations will be targeted, specific and followed up as appropriate. We will contribute to relevant policy debates where we can add an informed and distinctive voice. We will engage in constructive dialogue with key stakeholders including ethical regulators. We will ensure our website provides an effective means of communicating our views and activities.

Policy on openness

94. In its first report, the Committee defined the Seven Principles of Public Life. The Committee has always sought to implement these principles in its own work, including the principle of Openness.

95. The Secretary of the Committee has responsibility for the operation and maintenance of the Committee's publication scheme under the Freedom of Information Act 2000. Most of the information held by the Committee is readily available, and does not require a Freedom of Information Act request before it can be accessed. The Committee can be contacted in writing, by email, by telephone or by fax. The public can also access information via the Committee's website. Requests for information under the Freedom of Information Act should be made to the Secretary to the Committee at the following address:

Committee on Standards in Public Life

Room GC.05

1 Horse Guards Road

London

SW1A 2HQ

public@public-standards.gov.uk

Areas of Interest

96. In addition to following up on our recent reports, which considered a series of standards issues that raised significant ethical risks we will continue to track and monitor and, where necessary, intervene and maintain a watching brief on the issues set out in Standards Check.

97. Given our limited resources, the Committee will need to be very focused on the particular areas it devotes attention to during the next 12 months. We have identified the following topics which will allow the Committee to fulfil its remit, while operating within the context of a reduced budget and secretariat:

Operation of Referenda

98. On 16 July 2015 Lord Bew gave evidence to the Public Administration and Constitutional Affairs Committee (PACAC) inquiry into Purdah and Impartiality.

99. The inquiry focused on the proposal in the EU Referendum Bill to disapply Section 125 of the Political Parties and Referendum Act 2000 (PPERA 2000) which sets out the statutory rules which apply to the 28 day purdah period in the run up to the Referendum.

100. Lord Bew reiterated the Committee's support for the ethos of Section 125. The Section was a response to the Committee's own recommendation from the 1998 report which stated "The Government of the day in future referendums should, as a Government, remain neutral and should not distribute at public expense literature, even purportedly 'factual' literature, setting out or otherwise promoting its case".

101. Following the EU referendum, the Committee received a number of complaints from members of the public regarding the conduct of both remain and leave camps during the campaign. PACAC opened an inquiry into lessons learned from the referendum;[5] the inquiry ran from July to September 2016. Given the timescale of the inquiry and that this issue is a matter of public concern of direct relevance to the Committee, we have decided that the topic requires ongoing review and analysis. We wrote to the Chair of PACAC to explain our plans.

102. We intend to work with interested parties, to co-host a seminar on this issue in the latter half of 2016. The seminar will look at key issues arising from the operation of referenda to identify possible areas for research.

[5] http://www.parliament.uk/business/committees/committees-a-z/commons-select/public-administration-and-constitutional-affairs-committee/news-parliament-2015/lessons-learned-eu-referendum-launch-16-17/

Ethical Standards for Providers of Public Services

103. In June 2014, the Committee published its report Ethical Standards for Providers of Public Services which considered what standards of ethical conduct should be expected from those third-party organisations providing public service. The report was followed by a short guidance document, published in December 2015. We now intend to follow up that work to review whether awareness of the need for ethical standards in the delivery of public services has changed. We will talk to government departments to review the current position and intend to report by Spring 2017.

Local Government

104. The Committee regularly receives correspondence on the issue of ethical standards in local government, at both officer and elected member level. So, looking further ahead, we intend to undertake a review to clarify the topics of substantive concern, research the underlying causes and to identify best practice in well-governed authorities. This work will straddle the Committee's work programme for 2016/17 and 2017/18.

Party funding

105. It is clear that party funding remains a live ethical issue of concern for the public around the confluence of money, power and influence. It is a significant issue of public concern that has not gone away and cannot be resolved without the political will to do so. The Committee remains committed to helping inform the debate. Lord Bew reported to the Select Committee in February 2016 that the Committee would undertake further research on the topic.

106. The Committee will publish in 2016 data from the BES questions on party funding.

107. These steps will help the Committee to gauge current public opinion on party funding, as well as considering whether any further work might be possible.

APPENDIX 1: ABOUT THE COMMITTEE

Our remit

On 25 October 1994, the then Prime Minister, the Rt Hon John Major MP, announced the setting up of the Committee on Standards in Public Life with the following terms of reference:

> **"To examine current concerns about standards of conduct of all holders of public office, including arrangements relating to financial and commercial activities, and make recommendations as to any changes in present arrangements which might be required to ensure the highest standards of propriety in public life.**
>
> **For these purposes, public office should include: ministers, civil servants and advisers; Members of Parliament and UK Members of the European Parliament; members and senior officers of all non-departmental public bodies and of national health service bodies; non-ministerial office holders; members and other senior officers of other bodies discharging publicly-funded functions; and elected members and senior officers of local authorities."**[6]

On 12 November 1997 the terms of reference were extended by the then Prime Minister, the Rt Hon Tony Blair MP:

> **"To review issues in relation to the funding of political parties, and to make recommendations as to any changes in present arrangements."**[7]

On 5 February 2013 the terms of reference were clarified by the Government in two respects:

> **"...in future the Committee should not inquire into matters relating to the devolved legislatures and governments except with the agreement of those bodies."**
>
> **"...the Committee's remit to examine 'standards of conduct of all holders of public office' [encompasses] all those involved in the delivery of public services, not solely those appointed or elected to public office."**[8]

Our remit does not allow us to investigate individual allegations of misconduct. That is usually the role of the relevant regulator. We do, however, seek to draw any general lessons that can be learned from individual instances.

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6 Hansard (HC) 25 October 1994, col. 758

7 Hansard (HC) 12 November 1997, col. 899

8 Hansard (HC) 5 February 2013, col. 7WS

Our members

Committee members are appointed for a three year term, with the possibility of reappointment. The current four independent members were recruited for a five year non-renewable term. The Chair is also appointed for a single non-renewable five year term.

Chair: Lord Paul Bew

Appointed: 1 September 2013 **Term ends:** 31 August 2018

Paul Bew joined Queen's University Belfast in 1979 and was made Professor of Irish Politics in 1991. He acted as historical adviser to the Bloody Sunday Inquiry between 1998 and 2001 and was appointed as a non-party-political peer by the independent House of Lords Appointments Commission in February 2007 following his contributions to the Good Friday Agreement. In 2007 he served on the Local London Authority Bill Select Committee and in 2011 served on the Joint Committee on the Defamation Bill, which addressed key issues of academic freedom. He chaired the independent review of Key Stage 2 (SATs) provision in England which reported in 2011 and was accepted by the government. He also served on the Joint Committee on Parliamentary Privilege which produced its report on in July 2013. Lord Bew continues to teach Irish History and Politics at the School of Politics, International Studies and Philosophy at Queen's University. Among Lord Bew's many publications is the Ireland volume of the Oxford History of Modern Europe.

Members active in 2014–2015

Lord Alderdice

Appointed: 1 September 2010 **Reappointed:** 1 September 2013 **Term ends**: 31 August 2016

John Alderdice is a fellow of the Royal College of Psychiatrists. He led the Alliance Party and was President of the European Liberal, Democrat and Reform Party and or Vice President of Liberal International. He was one of the negotiators of the Good Friday Agreement. Raised to the peerage on October 1996, he took his seat on the Liberal Democrat benches in the House of Lords on 5 November that year. In 1998 Lord Alderdice was elected member for Belfast East and appointed Speaker of the Northern Ireland Assembly. In 2004 he was appointed as a Commissioner for the newly established Independent Monitoring Commission. He is currently a Senior Research Fellow and Director of the Centre for the Resolution of Intractable Conflict at Harris Manchester College, Oxford, and a Clinical Professor in the Department of Psychology at the University of Maryland. He is also the Chairman and a Director of the Centre for Democracy and Peace Building (based in Belfast) and President of ARTIS (Europe) Ltd, a research and risk analysis company.

Rt Hon Dame Margaret Beckett DBE MP

Appointed: 1 November 2010 **Reappointed:** 1 November 2013 **Term ends**: 31 October 2016

Margaret Beckett has been Labour MP for Derby South since 1983. She was Secretary of State for Trade and Industry 1997–1998, President of the Council and Leader of the House of Commons 1998–2001, Secretary of State for Environment, Food and Rural Affairs 2001–2006, for Foreign Affairs 2006–2007, Minister for Housing and Planning (attending Cabinet), Department for Communities and Local Government 2008–2009. She has also been Chair of the Intelligence and Security Committee. Margaret is a member of the Labour National Executive Committee and Chair of the Joint Committee on National Security Strategy.

Patricia Moberly

Appointed: 17 May 2012 **Term ends:** 1 September 2016

Patricia Moberly was Chair of Guy's and St Thomas' NHS Foundation Trust from 1999 to 2011. During her previous career as a schoolteacher, she worked in secondary schools in London and Zambia, and was Head of the Sixth Form at Pimlico School from 1985 to 1998. She served on the National Executive of the Anti-Apartheid Movement, was a member of Area and District Health Authorities and of the General Medical Council, a local councillor and a magistrate. Currently she is a prison visitor and serves on an advisory panel to the Secretary of State for Transport on drink and drug driving. She is a panellist for the Judicial Appointments Commission.

Sheila Drew Smith OBE

Appointed: 17 May 2012 **Term ends:** 16 May 2017

Sheila Drew Smith OBE is an economist by background. She was an independent assessor for public appointments (OCPA) from 1997 to 2012 and undertakes selection work in the private sector. She is the Chair of the National Approved Letting Scheme and a committee member for Safe Agents. She is also a member of the appointments panel of the Bar Standards Board, the Member Selection Panel of Network Rail, an independent panel member for RICS and a number of other regulatory bodies. She was a board member of the Housing Corporation between 2002 and 2008, the Audit Commission between 2004 and 2010, and the Infrastructure Planning Commission and the Office of the Regulator of Social Housing until March 2012. Prior to this she was a partner in the predecessor firms of PricewaterhouseCoopers working in the UK and internationally. Her earlier career was in the civil service.

Dame Angela Watkinson DBE MP

Appointed: 30 November 2012 **Term ends:** 30 November 2017

After an early career in banking and a family career break, Dame Angela Watkinson worked for several local authorities in special education and central services. She has served as a councillor for both the London Borough of Havering and an Essex County Council. Angela was elected as Conservative MP for Upminster in 2001 and continues to serve her enlarged constituency of Hornchurch and Upminster. She has spent most of her

Parliamentary Career as a Whip, and Lord Commissioner to the Treasury. Angela is also a member of the Parliamentary Assembly of the Council of Europe.

Richard Thomas CBE

Appointed: 17 May 2012 **Term ends:** 16 May 2017

Richard Thomas CBE LLD was the Information Commissioner from November from 2002 to 2009 and the Chairman of the Administrative Justice and Tribunals Council (AJTC) from 2009 to 2013. He is currently a Strategy Adviser to the Centre for Information Policy Leadership and has served as Deputy Chairman of the Consumers Association, as Trustee of the Whitehall and Industry Group, and as Board Member of the International Association of Privacy Professionals (IAPP). During his earlier career his roles included Director of Consumer Affairs at the Office of Fair Trading from 1986 to 1992 and Director of Public Policy at Clifford Chance, the international law firm, from 1992 to 2002.

Members appointed in 2015

Monisha Shah

Appointed: 1 December 2015 **Term ends:** 30 November 2020

Monisha took up post on 1 December for a five year term. She is Chair of Rose Bruford College of Theatre and Performance, non-executive director of Imagen Ltd, Cambridge, and independent non-executive director, Next Mediaworks Plc, India.

Monisha served as Trustee of Tate until July 2015. She was also Tate's Liaison Trustee to the National Gallery Board from June 2013. In July 2013, she joined the Board of the Foundling Museum. She has served on several councils and committees for all of the above, including Nominations, Governance, Remuneration, Digital Media, Ethics and Freedom of Information. Monisha has served on several panels as an Independent Member, including Triennial Reviews of the British Council and the British Film Institute, and the appointments panel for the Chair of the BFI.

Monisha's last executive role was with BBC Worldwide, where she worked for 10 years. She was Director of Sales for Emerging Markets, including Europe, Middle East, India and Africa where she was responsible for the exploitation of British intellectual property across television, radio, digital media and publishing. She represented BBC Worldwide on several Boards including joint ventures for radio and magazines. She stepped down from this role in 2010.

Monisha is a graduate of the University of Bombay, India; she also has a post-graduate degree from SOAS, and an executive MBA from the London Business School. She was elected Young Global Leader by the World Economic Forum in February 2009.

Research Advisory Board

The Committee's work is supported by a Research Advisory Board. The current Board members are:

- **Professor Mark Philp** (Chairman), Professor, Director of the European History Research Centre, Dissertation Coordinator, Department of History, University of Warwick
- **Dr Jean Martin**, Senior Research Fellow, Social Inequality and Survey Methods, Department of Sociology, University of Oxford
- **Professor Cees van der Ejk**, Professor of Social Science Research Methods, Director of Social Sciences Methods and Data Institute, University of Nottingham
- **Dr Wendy Sykes,** Director of Independent Social Research Ltd (ISR) and Member of the SRA implementation group on commissioning social research.

Members' attendance (1 April 2015 – 31 March 2016)

The table below shows the total number of meetings that each member of the Committee could have attended and the number they actually attended.

Name	Possible meetings	Actual meetings
Lord Bew	10	10
Lord Alderdice	10	4
Rt Hon Dame Margaret Beckett DBE MP	10	8
Patricia Moberly	10	10
Richard Thomas	10	9
David Prince	4	2
Sheila Drew Smith OBE	10	10
Dame Angela Watkinson DBE MP	10	9
Carolyn Fairbairn	4	4
Monisha Shah CBE	3	3

In addition to the monthly Committee meetings, all members attend a variety of other meetings and briefings in relation to the business of the Committee.

Remuneration

Committee members who do not already receive a salary from public funds for the days in question may claim £240 for each day they work on committee business. The Chair is paid on the basis of a non-pensionable salary of £500 per day, with the expectation that he should commit an average of 2–3 days a month, although this can increase significantly during Committee inquiries. All members are reimbursed for expenses necessarily incurred.

For the period 1 April 2015 to 1 March 2016 committee members other than the Chair claimed a total of £34,897.13 in fees and expenses.

In total, the Chair claimed £15,373.52 in fees and expenses.

Code of Practice

In accordance with the best practice recommended in its first report, members of the Committee formally adopted a code of practice in March 1999. The code is available on the website and has been reviewed periodically by the Committee, most recently in July 2011. The Code is required to be reviewed once during the tenure of each Chair. The Code is currently under review and an updated version will be published in the second half of 2016. Members provide details of any interests that might impinge on the work of the Committee through the Committee's register of interests, also available on the website at https://www.gov.uk/government/publications/register-of-interests

APPENDIX 2: FINANCIAL INFORMATION

Expenditure	2014–2015 (£)	2015–2016 (£)
Staff costs and fees	254,950	218,009.44
Other running costs	124,000	85,423.49
Total net expenditure	378,950	303,432.93

As an advisory Non-Departmental Public Body (NDPB), the Committee receives its delegated budget from the Cabinet Office. The Cabinet Office Accounting Officer has personal responsibility for the regularity and propriety of the Cabinet Office vote. Day-to-day responsibility for financial controls and budgetary mechanisms are delegated to the secretary of the Committee including responsibility for certain levels of authorisation and methods of control. Creation of all new posts and the use of external resources are subject to the approval of the Cabinet Office Approvals Board.

The Secretary and the rest of the secretariat are permanent civil servants employed by the Cabinet Office or on secondment from other departments.

Whilst the core secretariat has been reduced to three, the Secretary can and has used the budget to buy-in additional time limited resource to service specific inquiries and reviews. This level of resource necessarily constrains the choices the Committee makes in relation to its work programme and, together with the time taken to secure approvals, affects its ability to respond quickly and comprehensively to standards issues as they emerge.

The Secretary to the Committee is responsible for setting out the outputs and outcomes which the Committee plans to deliver with the resources for which they have delegated authority, and for reporting regularly on resource usage and success in delivering those plans. The Secretary is also responsible for maintaining a robust system of internal control over the resources she has delegated authority, and for providing the accounting officer with assurances that those controls are effective.

For the year 2014–15 the Committee's budget allocation was £400,000. There was an under spend of £21 050. The main causes of this underspend were savings generated by small forecast underspends on pay costs and press officer services. Both of the projects on the two most recent reports also ran into the current financial year.

APPENDIX 3: REPORTS AND PUBLICATIONS

The Committee has published the following reports:

- Ethics for Regulators – (Cm XXX) (July 2016)
- Tone from the top – leadership ethics and accountability in policing (Cm 9057) (June 2015)
- Ethics in Practice: Promoting Ethical Standards in Public Life (July 2014)
- Ethical standards for providers of public services (June 2014)
- Strengthening transparency around lobbying (November 2013)
- Standards matter: A review of best practice in promoting good behaviour in public life (Fourteenth Report (Cm 8519)) (January 2013)
- Political Party Finance – Ending the big donor culture (Thirteenth Report (Cm 8208)) (November 2011)
- MPs' Expenses and Allowances: Supporting Parliament, Safeguarding the Taxpayer (Twelfth Report (Cm7724)) (November 2009)
- Review of the Electoral Commission (Eleventh Report (Cm7006)) (January 2007)
- Getting the Balance Right: Implementing Standards of Conduct in Public Life (Tenth Report (Cm6407)) (January 2005)
- Defining the Boundaries within the Executive: Ministers, Special Advisers and the permanent Civil Service (Ninth Report (Cm 5775)) (April 2003)
- Standards of Conduct in the House of Commons (Eighth Report (Cm 5663)) (November 2002)
- The First Seven Reports – A Review of Progress – a stock-take of the action taken on each of the 308 recommendations made in the Committee's seven reports since 1994 (September 2001)
- Standards of Conduct in the House of Lords (Seventh Report (Cm 4903)) (November 2000)
- Reinforcing Standards (Sixth Report (Cm 4557)) (January 2000)
- The Funding of Political Parties in the United Kingdom (Fifth Report (Cm 4057)) (October 1998)
- Review of Standards of Conduct in Executive Non-Departmental Public Bodies (NDPBs), NHS Trusts and Local Public Spending Bodies (Fourth Report) (November 1997)
- Standards of Conduct in Local Government in England, Scotland and Wales (Third Report (Cm 3702)) (July 1997)
- Local Public Spending Bodies (Second Report (Cm 3270)) (June 1996)

- Standards in Public Life (First Report (Cm 2850)) (May 1995)

Since 2004, the Committee has also undertaken four biennial surveys of public attitudes towards conduct in public life. Findings were published in 2004, 2006, 2008, 2011 and 2013.

Annual Report 2015–16 and Business Plan 2016–17

Published electronically by the Committee on Standards in Public Life

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