

REBUILDING CONSTITUTIONAL STANDARDS: FIVE QUESTIONS FOR THE NEXT CONSERVATIVE LEADER

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Summary

This briefing sets out five key questions which Conservative MPs and others are encouraged to ask the party leadership candidates, based on recent public, parliamentary and expert concerns:

1. Will you commit to strengthening the standards system?
2. What will you do to rebuild parliament's scrutiny role?
3. How will you defend the rule of law?
4. Will you abide by long-established constitutional norms?
5. Will you robustly defend our core political institutions and checks and balances?

Boris Johnson's premiership has been marked by ever-growing concerns about the maintenance of various constitutional standards, which in recent days have reached fever pitch. These were echoed repeatedly in ministerial resignation statements and calls for him to go. Recent opinion polls meanwhile show strong public support for constitutional standards of integrity and accountability.

Conservative MPs now have an opportunity to choose among candidates to take Johnson's place, which also creates an important constitutional responsibility. A high priority when picking the next Conservative leader should be to restore the standards essential to UK democracy, in order both to rebuild integrity in politics, and to work towards rebuilding public trust.

This briefing sets out five key questions for Conservative leadership candidates, reflecting concerns raised by the public, independent expert organisations, and MPs themselves. Conservative MPs and others are encouraged to prioritise these questions, and raise them with the candidates when the party is making its choice.

What Conservative MPs have said in their resignation letters:

- "The British people ... rightly expect integrity from their Government" ([Sajid Javid](#)).
- "A decent and responsible government relies on honesty, integrity and mutual respect." ([Brandon Lewis](#))
- "More important than any government or leader are the standards we uphold in public life and faith in our democracy and public administration." ([Damian Hinds](#))
- "Values, principles, integrity and decency matter more than anything" ([Rachel Maclean](#))

What recent polling shows:

- In July 2021 (notably, pre-partygate), when offered a list of desirable characteristics displayed by politicians, people's top two priorities were being 'honest' and 'own[ing] up when they make mistakes'. In the same survey, when asked to choose, 75% said healthy democracy required 'that politicians always act within the rules'; just 6% preferred 'getting things done, even if that sometimes requires politicians to break the rules'.

- This survey showed significant support for checks and balances on the executive, by parliament, and particularly by judges, who were more trusted than politicians.

Drawn from the Constitution Unit's [Democracy in the UK after Brexit](#) survey of over 6000 people.

To help rebuild standards and restore trust, the following are the key questions on constitutional standards that MPs and others should put to leadership candidates.

1. WILL YOU COMMIT TO STRENGTHENING THE STANDARDS SYSTEM?

Recent months have seen huge strains on the standards system, as illustrated by the resignation of [not just one](#), but two, independent ethics advisers to the Prime Minister (most recently [Lord Geidt](#) in June). The [Institute for Government](#) has argued that the standards system is in need of rapid reform.

Candidates should be urged to implement in full the recommendations from the recent Committee on Standards in Public Life ([CSPL](#)) report, [Upholding Standards in Public Life](#), which include:

- toughening up the Ministerial Code, and reorienting it as an ethical code of conduct
- giving the Independent Adviser on Ministers' Interests the powers to initiate investigations into ministerial conduct and to recommend disciplinary action where appropriate
- strengthening the Commissioner for Public Appointments: e.g. extending their powers to cover Non-Executive Directors of government departments and requiring ministers selecting candidates judged 'unappointable' by independent appointments panel to justify this to the departmental select committee.

Candidates should also be pressed on their own commitment to upholding the Ministerial Code, including an absolute commitment not to deliberately mislead parliament, and to demand the resignation of any minister who does so.

2. WHAT WILL YOU DO TO REBUILD PARLIAMENT'S SCRUTINY ROLE?

There have been numerous significant concerns in recent years about the sidelining of parliament, and policy decisions being taken without adequate oversight. For example:

- Excessive use of delegated legislation, including emergency powers under Covid, has been strongly criticised by the Commons [Public Administration and Constitutional Affairs Committee](#) (PACAC), by [two Lords committees](#), and by the [Hansard Society](#), which is exploring solutions.
- Even non-emergency primary legislation has been rushed through: e.g. the [Dissolution and Calling of Parliament Bill](#) had its Commons committee and all remaining stages in [just over two hours](#). The [National Insurance increase](#) was rushed through in a day, with minimal notice or chance for scrutiny, only to be queried later by numerous Conservative MPs.
- New 'fast track' procedures to amend [retained EU law](#) risk excluding parliament further, over major policy changes post-Brexit.
- The Dissolution and Calling of Parliament Bill itself cut parliament out of decisions on the timing of elections, [despite warnings](#) that this could empower a rogue Prime Minister. The wisdom of resurrecting this prerogative power was questionable, as seen in recent days.

Candidates should be pressed on how they will return to higher standards of parliamentary scrutiny, and return powers from the executive to parliament.

3. HOW WILL YOU DEFEND THE RULE OF LAW?

At both domestic and international levels there has been significant concern about the government undermining the rule of law, as emphasised by expert bodies such as the [Bingham Centre on the Rule of Law](#). Candidates should be asked to confirm that they will:

- Comply with the UK's international law obligations, and not ask parliamentarians to vote in breach of them. The biggest current controversy concerns the Northern Ireland Protocol Bill, with serious concerns articulated by former Prime Minister [Theresa May](#), and the Conservative chairs of the [Justice Committee](#) and [Northern Ireland Committee](#). Previously, the Internal Market Bill led to the resignation of the [government's most senior lawyer](#), and objections from other [former party leaders](#) including Michael Howard and John Major.
- Recognise and be prepared to defend the independent role of the courts, including limiting the use of 'ouster clauses' in legislation, which seek to shut the judiciary out of decisions about legality.

4. WILL YOU ABIDE BY LONG-ESTABLISHED CONSTITUTIONAL NORMS?

The Johnson premiership was marked by various incidents where constitutional conventions were stretched or broken. The UK has a political constitution, which depends on respecting traditions and conventions. Examples include:

- Johnson was the first Prime Minister in the 20-year life of the House of Lords Appointments Commission (HoLAC) to [reject its recommendations](#) on the propriety of a nominee for a peerage.
- He appointed numbers of peers [well in excess](#) of the recommendations of the cross-party committee on the size of the House of Lords established by former Lord Speaker Norman Fowler.
- The attempted five-week prorogation of parliament in autumn 2019 was ruled unlawful by the Supreme Court, deepening animosity between government, parliament and courts and setting up an unhelpful populist narrative of '[parliament versus people](#)' (see below).
- At the [Liaison Committee](#) on 6 July, Johnson resisted ruling out a request to dissolve parliament in order to avoid removal by his own MPs, potentially dragging the Queen into political matters.
- There were previously widespread suggestions that Johnson might even '[dare the Queen to sack him](#)' if subject to a vote of no confidence by the House of Commons.

Candidates should commit to respecting convention in the use of prerogative powers, and respecting the advice of independent and cross-party constitutional bodies.

5. WILL YOU DEFEND OUR POLITICAL INSTITUTIONS AND CHECKS AND BALANCES?

Recent years have been marked by negative rhetoric directed at core institutions of UK democracy: the courts, parliament, the civil service and independent regulators. These attacks are often unwarranted, and have a corrosive effect on public trust. To rebuild that trust, and defend the fundamentals of UK democracy, such rhetoric must end and checks and balances in the constitution be defended. Particularly problematic examples include:

- The 2019 [Conservative Party manifesto](#) said that the UK had been ‘paralysed by a broken Parliament that simply refuses to deliver Brexit’, and that ‘MPs ha[d] devoted themselves to thwarting the democratic decision of the British people’. Most parliamentarians were in good faith trying to do their jobs, and Johnson [was among those](#) who had blocked Theresa May’s Brexit deal.
- Key ministers failed to defend the judiciary robustly against media attack, when judges were referred to as [‘enemies of the people’](#). Indeed, some ministers [echoed that same rhetoric](#).
- Cabinet ministers claimed that policy is being blocked by [‘remainer civil servants’](#) or [‘lefty lawyers’](#).

A healthy democracy depends on checks and balances, and crucially on public support for core constitutional bodies such as parliament and the courts. Candidates should be pressed on whether they will defend these principles, and insist on an end to such denigratory rhetoric.

CONCLUSION

The UK has long been a stable democracy, respected by numerous other countries around the world. That reputation has recently been badly tarnished. Meanwhile, experience in other countries such as the US has illustrated how easily constitutional norms and institutions can be weakened, and how vulnerable seemingly stable democracies can be. There are increasing international concerns about the phenomenon of [‘democratic backsliding’](#).

The Conservative Party has traditionally been a stern defender of constitutional traditions, of the importance of deference to norms and respect for the core bodies in the constitution. Recent events have brought that into question, and the current leadership contest offers an important opportunity for the party to reassert these essential values.

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