DEPARTMENT OF POLITICAL SCIENCE

UCL

TRUST IN PUBLIC LIFE:
RESTORING THE ROLE OF CONSTITUTIONAL WATCHDOGS

ROBERT HAZELL AND PETER RIDDELL

The Constitution Unit

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List of Acronyms

ACOBA	Advisory Committee on Business Appointments
ALB	Arms length body
C&AG	Comptroller and Auditor General
CRAG	Constitutional Reform and Governance Act 2010
CSC	Civil Service Commission
CSPL	Committee on Standards in Public Life
FOI	Freedom of Information
HOLAC	House of Lords Appointments Commission
ICGS	Independent Complaints and Grievance Scheme of House of Commons
IPSA	Independent Parliamentary Standards Authority
JACU	Joint Anti-Corruption Unit in the Home Office
NAO	National Audit Office
NDPB	Non-departmental public body
OBR	Office for Budget Responsibility
OCPA	Office of the Commissioner for Public Appointments
OECD	Organisation for Economic Cooperation and Development
ORCL	Office of the Registrar of Consultant Lobbyists
PACAC	Public Administration and Constitutional Affairs Committee of House of Commons
PASC	Public Administration Select Committee of House of Commons
PCRC	Political and Constitutional Reform Committee of House of Commons
PCS	Parliamentary Commissioner for Standards
PCA 1986	Parliamentary Constituencies Act 1986
PPERA 2000	Political Parties, Elections and Referendums Act 2000
PSA 2009	Parliamentary Standards Act 2009
SCEC	Speaker's Committee on the Electoral Commission
SCIPSA	Speaker's Committee on IPSA

SCS	Senior Civil Service
SIPM	Senior Independent Panel Member
SNP	Scottish National Party
UNCAC	UN Convention against Corruption 2005

Preface

This report comes at an important juncture, when public trust in politicians has fallen to an all time low. There is a wealth of evidence from survey data about the decline in trust; not least from the Constitution Unit's own surveys, as part of our Democracy in the UK after Brexit project. Those surveys show that the public value honesty in politicians above qualities like being clever, working hard or getting things done; but only 6 per cent of the public believe that the system works to deal with politicians who do not act with integrity. There is an urgent need to repair and rebuild the system for upholding standards in public life if trust in politicians is to be restored. Political leaders need to demonstrate that a fresh start is being made.

Constitutional watchdogs are the guardians of the system for upholding standards. The Constitution Unit has long had an interest in constitutional watchdogs, from one of our earliest reports in 1997 to one of our most recent, on parliament's watchdogs published in 2022. This report is complementary to the recent one on parliament, in studying the watchdogs which regulate the conduct of the executive. There is a wealth of evidence supported by a series of official reports that these watchdogs need strengthening; but less agreement on how, or by how much. That is the gap that our report is intended to fill. It sets out a range of strengthening measures, in detail, for implementation early in the next parliament. The reason why they could be introduced early on is that most of our recommendations do not require legislation.

Like all Constitution Unit projects, our report owes a great deal to the input of others. We held two private seminars, in April and November 2023, each attended by about 25 people, including most of the watchdogs and their predecessors. We are grateful to all those who attended, to those who have patiently commented on successive drafts, and those who have answered individual queries. We owe particular thanks to Sir Alex Allan, Lord (David) Anderson, Kate Anderton, Lesley Bainsfair, Piers Barber, Robert Barrington, Sir Nigel Boardman, Baroness (Angela) Browning, Chris Bryant, Tim Durrant, Lord (Jonathan) Evans, Paul Evans, Jim Gallagher, Duncan Hames, George Havenhand, Sue Hawley, Sir Jonathan Jones, Phil Larkin, Sir Laurie Magnus, Catriona Marshall, Sir David Natzler, Sir David Normington, Maggie O'Boyle, Kate Owen, Gillian Peele, Mark Philp, Lord (Eric) Pickles, Tom Price, Harry Rich, Philip Rycroft, Sir William Shawcross, Baroness (Gisela) Stuart, Richard Thomas, and Hannah White. None should be taken as being committed to our conclusions, which are ours alone.

Within the Unit we owe thanks to our colleagues Meg Russell and Alan Renwick, and to research volunteers Greg Chilson, Caitlin Farrell and Wiktoria Jedrzejczak. We owe particular thanks to Alan and to Wiktoria, who both went the extra mile in helping to copy edit and format the report with great speed and efficiency. Any remaining errors and omissions are of course our own.

Robert Hazell
Peter Riddell

The Constitution Unit
February 2024

Executive Summary

Scope and purpose of the report

This report is about seven watchdogs which monitor and regulate the conduct of the executive. They are: the Advisory Committee on Business Appointments (ACOBA); the Civil Service Commission (CSC); the Commissioner for Public Appointments (OCPA); the Committee on Standards in Public Life (CSPL); the House of Lords Appointments Commission (HOLAC); the Independent Adviser on Ministers' Interests; and the Office of the Registrar for Consultant Lobbyists (ORCL). We have not addressed the separate issue of an anti-corruption commissioner.

A series of reports in recent years, from CSPL, PACAC, Sir Nigel Boardman, the Brown Commission and the Grieve Commission, have called for the system of regulating standards to be strengthened. At present, a patchwork of bodies exists with a varying legal basis, insufficient independence and inadequate powers. But the stream of recommendations from these official bodies and others has complicated the debate on reform; in particular, whether to go for a wholesale reform programme, or to adopt a more gradualist approach. This report analyses the different options. The role and functions of most of the watchdogs can easily be strengthened using prerogative powers while considering any further strengthening through legislation.

The report starts with basic principles. Any reform programme needs to have clear objectives; a realistic timetable; and engage with the watchdogs themselves, government, parliamentarians and the public. To be successful, the standards regime and individual watchdogs need to be independent; accountable; effective; economical; accessible; and trusted.

Political background

CSPL and PACAC have called for legislation to strengthen several of the watchdogs by giving them a statutory foundation. In July 2023 the government announced a limited package of reforms. The Business Appointment Rules will be tightened to make compliance mandatory for ministers and senior civil servants. There will be greater transparency around lobbying, with a single database covering all departmental transparency returns.

The government's reluctance to go further and legislate to put all the watchdogs on a statutory basis stems primarily from unwillingness to surrender executive control, either to the watchdogs or to parliament. Almost half the recommendations from CSPL and PACAC were rejected, including all those which would strengthen the watchdogs' independence, or give them more effective powers. The one exception is ACOBA; but it remains to be seen whether ACOBA can be given effective powers of enforcement without statutory backing.

Labour has said it would go further, by legislating to create a new, independent Ethics and Integrity Commission. ACOBA and the Independent Adviser would be subsumed into the Commission. It would have stronger powers of enforcement, independent of political control. The Commission would be able to determine breaches, and recommend sanctions, including financial penalties for those who break the rules. The Public Appointments Commissioner and Civil Service Commission

might be brought under the new Commission's umbrella; but other watchdogs would be left in place, including CSPL, which is not a regulator but has an oversight and advisory role.

Strengthening the watchdogs' independence and powers

The Independent Adviser, ACOBA, HOLAC and CSPL are set up by the executive using prerogative powers: putting them in statute would give them a much firmer legal foundation. It would also help to define more clearly their role, functions and powers; method of appointment; funding; and accountability.

All the watchdogs, including the Independent Adviser, should have power to initiate inquiries, obtain information, publish reports, say whether Codes have been broken, and advise on the severity of the breach. HOLAC should have stronger powers to advise on the suitability of party nominees for the House of Lords, including an ultimate power of veto on propriety grounds. If an employment law solution fails to give ACOBA enforcement powers, legislation will be necessary to confer power to impose financial penalties, and seek injunctions.

Strengthening watchdogs' accountability

The stronger the independence of constitutional watchdogs, the stronger their accountability needs to be. This requires active engagement by watchdogs to maintain the interest of select committees. Accountability to the public is mainly through websites with annual reports, minutes of meetings, and select committee appearances. ACOBA and the Independent Adviser need their own independent websites. The watchdogs are all accountable to the courts, but in practice few judicial review actions have been brought against them. A right of appeal could be introduced to the First-tier Tribunal. Only two watchdogs (CSPL and the lobbying Registrar) come under the Parliamentary Ombudsman; the other five should be brought within that jurisdiction. The watchdogs could also be made subject to external reviews on a regular basis.

Appointment and dismissal

The appointment of all watchdogs should be by open competition, regulated by OCPA; with a majority of fully independent members on the panel, who should not have engaged in political activity or be linked to the sponsoring department. The Appointments Commissioner should have a more active role in the selection of the Senior Independent Panel Member, and the latter should be required to report back on the appointment process. The chairs of collegiate watchdogs should have a veto over the appointment of the other members. Select committees conducting pre-appointment hearings could be given a power to require reconsideration by ministers, and exceptionally a power of veto. Appointment of watchdogs should be for a single, non-renewable term, generally five years. To protect against arbitrary or wrongful dismissal, watchdogs should only be removed if they are unfit or unable to carry out their functions.

Mergers and institutional re-organisation

Labour has given a clear commitment to legislate for a new Ethics and Integrity Commission. Such a commission could be a regulatory body, or an umbrella body. If it is to be a regulatory body, it could subsume the role of the Independent Adviser with the ministerial side of ACOBA. The difficulty with this merger is that they have different responsibilities; it involves splicing a single office holder together with a committee; and there is a risk of regulatory divergence if the Business Appointment Rules are policed by two different bodies.

The key problem is that the existing watchdogs are too weak. This can be addressed by strengthening their independence, giving them more effective powers, and putting them on a statutory basis. The risk of mergers is that, apart from transitional costs, any new body could be less effective since the present regulators have such different roles and responsibilities.

If the new commission is to be an umbrella body, the main risk is duplicating the work of CSPL. There is not room for two coordinating bodies. CSPL does not undertake strategic oversight of the entire standards landscape, but it does undertake reviews of particular standards issues, and its chair speaks out when necessary, while holding informal gatherings of the other watchdogs. But CSPL could form the core of the new Ethics and Integrity Commission if it is strengthened, given a wider remit and put on a statutory basis. It could be charged with leading the debate on standards issues, providing a single portal explaining the work of the other watchdogs, convening regular meetings, conducting regular reviews, being their collective voice, and encouraging greater transparency and accountability to parliament and the public. Retaining CSPL outside a new Commission might enable it to take a more detached view, but risks duplication and ultimately could lead to the withering away of CSPL.

Action in the next parliament: non-legislative measures

Because many of the watchdogs are set up under the prerogative, their role, functions and powers can easily be altered. Ahead of any legislation, a government with the political will could introduce changes relatively quickly. The Prime Minister could give a speech committing to uphold watchdogs' independence, follow their advice, and comply with their rulings. To carry credibility the speech should include the specific changes which can be introduced without legislation, as the first stage of a phased reform plan.

The Independent Adviser could be empowered to initiate their own investigations, and to state whether the Ministerial Code has been breached. HOLAC could be given stronger powers over political as well as Crossbench appointments. OCPA could be strengthened by ensuring greater independence on assessment panels. Regulations could be made under the Lobbying Act to require lobbyists to record whom they had lobbied, about what, and to extend the regime to Special Advisers. All these changes could be introduced soon after a general election without taking up any parliamentary time beyond a statement.

Action in the next parliament: the options for legislation

Further work will be required before a new government might be ready to legislate for an Ethics and Integrity Commission. Even our limited preference for turning CSPL into the new Commission requires debate as part of a package also covering strengthened powers for the individual regulators.

If the government wants to press ahead with legislation, the quickest and simplest solution could be to defer plans for an Ethics and Integrity Commission, allowing time for debate about its role; and initially legislate simply to strengthen the existing watchdogs. This could be done in a single omnibus bill. Legislation would give a more secure legal foundation to ACOBA, CSPL, HOLAC, the Independent Adviser and OCPA. Before legislating, decisions would have to be made about their role; functions; powers; method of appointment, and dismissal; funding and staffing; and accountability. Legislation would strengthen the regulators, while recognising ministerial prerogatives: ministers would remain the ultimate decision makers, accountable to parliament.

Extending the lobbying regulatory regime to in-house lobbyists would require legislation; as would extending reporting requirements to communications with a wider range of senior officials. Legislation could also remove the VAT registration threshold for lobbyists, and the 'incidental exemption'. And legislation would be required if it were decided to bring Whitehall's reporting requirements within the statutory regime.

A statute could require the appointment of the constitutional watchdogs to be by open competition, regulated by OCPA. The Codes of Conduct could be underpinned by creating a statutory requirement on the minister to consult the relevant regulator, and the select committee, before laying the Code before parliament.

Preparation of legislation takes time. Ideally there should be a green paper in the first year of a new parliament, followed by a white paper. The legislation could be published in draft, allowing for pre-legislative scrutiny. That is likely to be in the second year, leading to implementation in the third year of the new parliament.

Conclusion

Action can be taken quickly after the next election to signal a fresh start on standards in public life by the use of prerogative powers. That would give time for consultation and debate on legislation to put the watchdogs on a statutory footing, and about the structure and remit of a possible Ethics and Integrity Commission.

Above all, a fresh start to sustain high standards in public life requires not just the actions outlined above, but also a continuing commitment from the Prime Minister and government in their own behaviour and the lead they give to others. There is only so much that regulators and Codes can achieve.

Chapter 1. Purpose of this report, and Principles guiding reform

1.1 The constitutional watchdogs which monitor and regulate the conduct of the executive are central to the maintenance of standards in public life. But most have faced serious challenges in recent years, while public concern over standards has increased to a worrying extent, as shown in a Constitution Unit survey published in November 2023.[1] There has been no shortage of official and other reports recommending changes, with widespread calls for a fresh start, but less agreement on what precisely this should involve. Behind the various proposals for strengthening the watchdogs lie deeper debates about the respective roles of the executive, the legislature and the constitutional watchdogs themselves. This report aims to clarify the issues involved, to explain the current position and to recommend a package of specific changes. Several of these changes could be implemented quickly without requiring primary legislation.

1.2 The report is complementary to the Constitution Unit's July 2022 report on *Parliament's Watchdogs*, which was about those watchdogs which deal with the conduct of MPs, peers and parties.[2] The seven bodies covered in this report are those with responsibilities for the executive:

- The Advisory Committee on Business Appointments (ACOBA)
- The Civil Service Commission (CSC)
- The Commissioner for Public Appointments (OCPA)
- The Committee on Standards in Public Life (CSPL)
- The House of Lords Appointments Commission (HOLAC)
- The Independent Adviser on Ministers' Interests
- The Registrar for Consultant Lobbyists (ORCL).

Further details of each body are given in Chapter 2.

1.3 There has been a plethora of recent inquiries, discussed in Chapter 3 and Annex B, recommending changes to their legal status and powers. The government's July 2023 response, discussed in Chapter 3, was minimalist and gradualist.3 But most of the inquiries themselves were also limited, given their terms of reference; resulting in partial answers, and

[1] Renwick A., B. Lauderdale and M. Russell, *The Future of Democracy in the UK*, Constitution Unit report no 207, November 2023.
[2] Hazell, R., M. Boo and Z. Pullar, *Parliament's Watchdogs: Independence and Accountability of Five Constitutional Regulators*. Constitution Unit report no 195, July 2022.
[3] Cabinet Office, *Strengthening Ethics and Integrity in Central Government*. CP 900, July 2023.

a series of incremental recommendations. Few have gone back to basic principles of why constitutional watchdogs exist, before going into practical questions of how they are appointed, what functions they perform, and what powers they need.

1.4 The sheer abundance of recommendations and the differing roles of the various watchdogs make it difficult for any government, present or future, to decide what reforms to introduce. Should it go for a wholesale, ambitious reform programme, or adopt a more gradualist, piecemeal approach? The current government has decided on the latter, seeing what can be achieved through a series of administrative changes. This minimalism has also reflected a distinct view of the role of the watchdogs and of the balance between the executive and the legislature. Our report will set out the different options, including legislation. At the end, we summarise all the changes which require legislation, and those which can be introduced without. A surprising number of changes can be made without waiting for legislation, because many of the watchdogs are based on prerogative powers rather than primary legislation. Overall, we believe that our proposals represent a credible and workable fresh start which will help bolster public confidence that standards are being followed and enforced in public life.

1.5 There is no universally accepted terminology in this field. People write about ethical regulation, constitutional regulators, standards bodies, guardians, constitutional watchdogs. The latter is the term used in a long series of Constitution Unit reports going back to 1997, and is the term we continue to use.[4] It is shorthand for a range of different bodies, some single office holders, others committees, some advisory, others with regulatory power. We define our terms as follows:

- Constitutional watchdog is an independent body established to advise, or monitor and regulate behaviour to ensure high standards in public life and restrict abuses of power
- High standards in public life are maintained through a combination of laws, rules, conventions and values
- Rules are set out in Codes of Conduct, and values in the Nolan Principles (of selflessness, integrity, objectivity, accountability, openness, honesty, and leadership)
- A regulator is a watchdog responsible for monitoring compliance with a specific Code of Conduct, investigating complaints and reporting breaches
- An overview body is one charged with keeping the whole system of maintaining standards under review, but with no power to investigate individual cases.

Principles to underpin the reform programme

1.6 Any reform programme must have clear objectives. It is not an objective to say you want to establish an Ethics and Integrity Commission: that is a means to an end. What are the ends

[4] See Constitution Unit reports nos 10 (1996), 91 (2002), 100 (2003), 144 (2008) and 195 (2022).

which a Commission is intended to deliver? Only when those are clearly articulated can it be judged whether the reform has been a success. And to ensure the reforms do succeed:

- First, any reform programme must be carefully planned, divided into phases, with a realistic timetable: too many government projects fail because ministers are in a hurry and the programme is rushed
- Second, and linked to the first, the programme should be consultative and participatory: it is more likely to succeed if experts, parliamentarians and the public are involved in making it a success
- Third, any reform proposals must make explicit the balance of roles, functions and powers between the executive, the watchdogs and parliament.

Principles to ensure watchdogs are a success

1.7 The reform programme can be judged a success if it delivers an effective system for upholding high standards in public life. To that end, the system needs to be supported by constitutional watchdogs which are independent; accountable; economical; effective; accessible; and trustworthy. Each of those criteria will be developed in the following paragraphs.

1.8 **Need for a high degree of independence**. Constitutional watchdogs are not like other regulators or public bodies: they are not responsible for delivering or inspecting the delivery of government programmes. They are more like umpires, ensuring proper conduct and fair play. As such, they need a much higher degree of independence than other regulators: independence comparable to that enjoyed by judges, because of their quasi-judicial role. How to achieve that high degree of independence is discussed in Chapter 7.

1.9 **Need for a high degree of accountability**. Constitutional watchdogs need a correspondingly high degree of accountability: the stronger the independence, the stronger their accountability needs to be. Accountability needs to be defined broadly; watchdogs should have lines of accountability to the wider public, in explaining and reporting on their role; to Parliament, especially via relevant select committees; to the NAO, for the economy, efficiency and effectiveness of their operations; to the courts, for the legality of what they do; to the Information Commissioner, for their openness and transparency; and to the Parliamentary Ombudsman, for maladministration. These multiple lines of accountability are explained in Chapter 7.

1.10 **Need for effective powers**. Constitutional watchdogs also need effective powers. Without sufficient powers to perform their functions they are like an umpire with no power to discipline the players. That is now the case with bodies like HOLAC and ACOBA: as purely advisory bodies, they have no powers of enforcement. But once their advice is ignored (as Boris Johnson did with HOLAC), or not even sought in the first place (as Johnson did with ACOBA over his own affairs), they lack wider credibility.

1.11 **Need for economy and efficiency.** Particularly in the current financial and fiscal climate, watchdogs need to be as economical and efficient as possible. The current watchdogs are

remarkably cheap; any increase in expenditure must be justified by an increase in effectiveness.

1.12 **Need to be accessible.** Like administrative tribunals, watchdogs need to be simple, speedy and accessible. They need to be accessible individually, with good websites which are easy to navigate; and responsive to citizens' requests and complaints. But the whole system of upholding standards also needs to be accessible, in the sense of being comprehensible to the public.

1.13 **Need to be trustworthy.** Watchdogs need to be respected and trusted by those regulated, as well as by the wider public. As part of this, watchdogs themselves need to observe the Nolan principles laid down by CSPL: selflessness, integrity, objectivity, accountability, openness, honesty and leadership. To take just the last item, watchdogs showing leadership could be expected to offer positive guidance and encouragement, not simply negative enforcement. Examples of positive guidance are CSPL's latest report, *Leading in Practice*;[5] the visits made by OCPA to departments to discuss best practice in public appointments;[6] ORCL's proactive communication programme to potential registrants; ACOBA's letters to departing ministers;[7] and the outgoing approach of the new Parliamentary Commissioner for Standards, Daniel Greenberg.[8]

Balance between the executive, parliament and regulators

1.14 Finally, there are two important distinctions to be made. The first is understanding the respective roles of the executive, parliament and regulators. This is fundamental. It goes to the question of who owns the Codes, discussed at the end of Chapter 7. The Codes are owned by the executive: it is responsible for producing the Codes, revising and updating them. Parliament can, and should, scrutinise the Codes; if an extra check is required, parliament could be required to vote on them.[9] Likewise with the regulators: the executive is responsible for establishing the machinery to monitor and enforce public standards through observance of the Codes. Most of the watchdogs policing the executive (the Independent Adviser, ACOBA, HOLAC, CSPL) are creatures of the executive, having been set up under the prerogative, and ministers play the key role in their appointment. If the watchdogs are deemed to be too weak, it is the responsibility of the executive to strengthen them. If they are to be put on a statutory basis, as many have recommended, that requires parliament to pass legislation. But such legislation immediately raises questions about the role, functions, powers, composition, methods of appointment and removal, lines of accountability etc, which are discussed in subsequent chapters of this report. All the

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[5] CSPL, *Leading in Practice*, January 2023.
[6] OCPA, *Annual Report 2021-22*, p15.
[7] For the latest batch see https://www.gov.uk/government/publications/acobas-correspondence-to-all-departing-ministers-a-brief-guide-to-acoba.
[8] The PCS website states 'Daniel believes strongly in the importance of outreach and public engagement as a method of building trust and confidence between the Members and staff of the House of Commons and the public whom we serve'.
[9] For an example, see the vote on the principles of ministerial accountability to parliament, House of Commons Hansard, 19 March 1997, cols 1046-7.

watchdogs are accountable to parliament, whether statutory or not; whether parliament fulfils that role adequately is discussed in Chapter 7.

1.15 The legitimate role of ministers and the executive tends to be ignored or downplayed: discussion has understandably focused on the challenges to standards and conventions by recent ministers, and particularly Prime Ministers, and so emphasises new institutional checks. Safeguards do need to be strengthened, but it is mistaken to ignore the role of ministers since, unlike regulators, they draw authority from commanding the confidence of the House of Commons, and being directly accountable to it. Equally, the opposition to the power of unelected regulators allegedly usurping the rights of elected politicians ignores the need for an outside body to establish the facts of a case, and the need for an independent element in any system of professional regulation. There is a balance between ensuring that inquiries into alleged breaches of standards are genuinely independent, and recognising that the ultimate decisions on the fate of ministers must lie with the Prime Minister. The same applies to appointments, where an independent assessment and interview process has to be balanced by a final choice made by a minister. A primary role for ministers in these matters was envisaged in the very first report of the CSPL under Lord Nolan in 1995.[10] That is why some of the suggestions for transferring virtually all power from ministers to new commissions are misguided and unrealistic. If powers are transferred from ministers, it cannot just be to unelected watchdogs; parliament has to be involved. The question is one of balance, and treating the constitutional watchdogs in a separate category from other regulators and other public appointees.[11]

Distinguish between oversight, regulation and anti-corruption

1.16 The second distinction is between oversight, regulation and anti-corruption. Many of the recent criticisms of alleged abuses in standards of public life have led to demands for the creation of more powerful regulators and, in some cases, a single all encompassing regulator to champion and monitor ethics and integrity, and to fight corruption. But there is a danger of confusing very different roles. First, oversight is not the same as regulation. In its 30 years of existence, the CSPL has always refused to investigate complaints about specific alleged abuses, saying that this is a matter for the various regulators. That has permitted the committee to take a more detached view of regulatory and standards issues in a regular series of reports. Second, the work of the various regulators is, in general, distinct from identifying and fighting corruption. Most of the time, regulators monitor and advise on the conduct of various aspects of government in relation to published Codes of Conduct. Breaches of these Codes only rarely involve corruption. Proposals for a wide ranging anti-corruption commission raise important but much wider questions, which we could not cover in this report: our focus is on the seven watchdogs described in more detail in the next chapter.

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[10] CSPL, *MPs, Ministers and Civil Servants, Executive Quangos*, May 1995.
[11] For development of these points, see P. Riddell, 'Ministers also have rights – Balancing executive prerogatives and executive scrutiny', UCL inaugural lecture, April 2023.

Chapter 2. Seven watchdogs scrutinise conduct of the executive

2.1 This chapter describes in more detail each of the watchdogs covered in this report. The key features of the seven watchdogs are summarised in the table below. The end of the chapter also gives brief details of the role of the Cabinet Secretary and the Propriety and Ethics team in the Cabinet Office, and of parliament's main watchdogs.

Table 2.1: Executive watchdogs: key features

Watchdog	Status & Basis	Remit	Composition	Term of Office	Appointment/ Dismissal	Budget and Staffing
Civil Service Commission (CSC)	Statutory Body CRAG 2010 Part 1 and Schedule 1	Oversees the recruitment of civil servants and investigates breaches of the Civil Service Code	First Civil Service Commissioner and minimum of 7 Commissioners (currently 10)	5 year non-renewable term	Appointment of First CSC by open competition after consultation with opposition. Pre-appointment scrutiny of First CSC by PACAC. Appointment of Commissioners with agreement of First CSC. Dismissal only for cause: CRAG Sch 1 para 5	£2.4m 23 staff
Committee on Standards in Public Life (CSPL)	Prerogative. Advisory non-departmental public body	Advises the Prime Minister on general standards of public office holders	Chair, plus 4 independent members, and 3 political members	Chair and independent members, 5 years non-renewable. Political members, 3 years renewable	Appointed by the Prime Minister after open competition. Pre-appointment scrutiny hearing for chair by PACAC Dismissible at will	£383k outturn in 2022-23 (budget £424k) 4.5 staff
Commissioner for Public Appointments (OCPA)	Order in Council	Ensures public appointments comply with Governance Code on Public Appointments	Crown Servant	5 year non-renewable term	Appointed by Order in Council after open competition. Pre-appointment scrutiny by PACAC. Dismissible at will	£245k 2 full-time staff
House of Lords Appointments Commission (HOLAC)	Prerogative. Non-statutory advisory body	Appoints Crossbenchers and vets nominations to House of Lords	Chair, plus 3 independent members, and 3 political members	5 year non-renewable term	Appointed by the Prime Minister after open competition. Pre-appointment scrutiny hearing for chair by PACAC Dismissible at will	£37k
Independent Adviser on Ministers' Interests	Prerogative. Non-statutory advisory role	Advises Prime Minister on application of the Ministerial Code	Crown Servant	5 year non-renewable term	Appointed by Prime Minister by tap on shoulder, no competition. Post-appointment scrutiny hearing by PACAC Dismissible at will	4 staff
Advisory Committee on Business Appointments (ACOBA)	Prerogative. Non-statutory advisory body	Advises on appointments after serving in public office	Chair, plus 3 party members and 6 independent members	5 year non-renewable term	Appointed by Prime Minister after open competition. Pre-appointment scrutiny hearing for chair by PACAC Dismissible at will	£320k 4 staff
Registrar of Consultant Lobbyists (ORCL)	Statutory body under Lobby-ing Act 2014	Maintains register of paid lobbyists	Crown Servant: corporation sole	4 years, renewable for two further terms of 3 years	Appointed by Minister for Cabinet Office, after open competition. Pre-appointment scrutiny hearing by PACAC. Dismissible if unable/unfit	£326k 3 staff

Civil Service Commission (CSC)

2.2 The Civil Service Commission is an executive non-departmental public body, independent of government and the civil service. Originally established by Order in Council in 1855, it was placed on a statutory footing in 2010 in Part 1 of the Constitutional Reform and Governance Act (CRAG).

2.3 The primary responsibility of the Commissioners involves recruitment of civil servants on the basis of 'merit and fair and open competition'.[12] Its recruitment principles provide the legal framework for departments on how to run the competitions. The Commissioners chair competitions at the most senior levels, but with a high degree of involvement from ministers. Ministers agree the final role and person specification, and are kept in touch with the competition throughout. Ministers may meet each of the shortlisted candidates, and their views are fed back to the interview panel, which should assess whether the candidates can work effectively with the minister. The final selection of Permanent Secretaries is taken by the Prime Minister from an unranked list of appointable candidates.[13] At other levels (Director General, Director, Deputy Director) the Commissioner chaired panels produce a merit order; ministers only sign off Director General level appointments.

2.4 In addition to recruitment, the commission also serves as a second tier appellate body for complaints brought under the Civil Service Code.[14] But the Commission lacks any formal powers of sanction. It cannot dismiss civil servants or issue fines for breaches of the Code.

2.5 There are currently 11 Commissioners, appointed on the advice of the Prime Minister. Their selection must be on merit by open competition; the appointment is non-renewable, with a maximum term of five years. The First Civil Service Commissioner has traditionally been a former senior civil servant, but the current First Commissioner is Baroness (Gisela) Stuart, former Labour MP and chair of the Vote Leave campaign in the 2016 Brexit referendum. The other Commissioners have a range of backgrounds in the public, private and voluntary sectors.

2.6 The Commission's annual budget in 2022-23 was £2.4m, and it was supported by 16 staff, mainly civil servants on secondment from elsewhere in Whitehall.[15] In evidence to PACAC in April 2023 Gisela Stuart complained that at times the Commission had been treated 'as if it was a business unit of the Cabinet Office'; there had been protracted vacancies in the secretariat, and serious delays in recruiting new Commissioners. She expressed determination to negotiate a new framework agreement which would give the Commission greater operational independence over its staffing and grading decisions.[16]

2.7 Lord (Francis) Maude in his review of civil service governance has indicated he would go a lot further, in making the Civil Service Commission more independent of the civil service.

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[12] CRAG 2010, s.10.
[13] Civil Service Commission, *Recruitment Principles*, 2018, paras 39-47.
[14] Civil Service Code, 2015, 'Rights and Responsibilities'.
[15] The Commission's 2022-23 annual report records a total of 22 staff; but they also support ACOBA and OCPA.
[16] PACAC oral evidence, The work of the Civil Service Commission, HC 1227, 18 April 2023, QQ 4-5.

In particular, he would like the Civil Service Commission to have a more active role in driving civil service reform:

> … the Civil Service Commission is a natural place to be the accountability body for a head of the Civil Service who would be charged with delivering reform… strong organisational health and continuous improvement… At the moment, the Civil Service Commission is not remotely set up to do that. Its staff are all seconded civil servants… and its budget is set by the Cabinet Office. It is a bit like saying that Ofgem's budget should be set by British Gas. If it is to be an independent regulator, it needs to be properly independent.17

2.8 Lord Maude also wanted the commission to be involved in succession planning, through the First Civil Service Commissioner chairing the Senior Leadership Committee.[18] The Lords Constitution Committee has also suggested a stronger role for the commission in relation to dismissals, by ensuring due process is followed. But the role would be very limited: the report merely suggested that 'Formal departure processes should be set out in writing, requiring ministers and the Prime Minister to explain to the Civil Service Commission—in private if necessary—their decision to remove and replace a senior civil servant'.[19] The report did not explain what the commission might do if it found that due process was not followed.

Committee on Standards in Public Life

2.9 CSPL is an advisory non-departmental public body established in 1994 by John Major in response to the Cash for Questions scandal.[20] Its terms of reference are 'to examine current concerns about standards of conduct… and make recommendations as to any changes… which might be required to ensure the highest standards of propriety in public life.'[21] The committee's reports range from specific subjects such as MPs' outside interests, ethical standards in local government, and political party finance, to more general topics such as intimidation in public life, and how to promote ethical standards in practice.

2.10 The Committee is composed of a chair, four independent members and three political members, with all appointments being made by the Prime Minister. The current chair is Doug Chalmers, a former General who is Master of Emmanuel College, Cambridge. The chair and independent members are appointed for a five-year non-renewable term following open competition. The political members are appointed from the three largest parties in the House of Commons – currently the Conservatives, Labour and SNP (previously the Liberal

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[17] Lords Constitution Committee oral evidence, The appointment and dismissal of Permanent Secretaries and other senior civil servants, 7 June 2023, Q119 at p16.
[18] Ibid. Q122 at p26.
[19] Lords Constitution Committee, *Permanent Secretaries: their Appointment and Removal*, HL 258, October 2023, para 131.
[20] Two MPs were accused of receiving payments from the owner of Harrods, Mohamed Al-Fayed, in return for tabling parliamentary questions.
[21] CSPL, *Leading in Practice: A review by the Committee on Standards in Public Life* (January 2023), p.71.

Democrats) – on the recommendation of their party leaders. They serve for a three-year term which is renewable.[22]

2.11 CSPL has a secretariat of five civil servants on secondment from the Cabinet Office. In 2022-23 its budget was £424k, with an outturn of £383k. Between its foundation in 1994 and 2023, the Committee has published 27 reports.[23] The website contains the minutes of its monthly board meetings, occasional blogposts by the chair, and the committee's correspondence with ministers.

Commissioner for Public Appointments

2.12 The office of the Commissioner for Public Appointments (OCPA) was created following a recommendation by CSPL in its first report in 1995, 'to regulate, monitor and report on the public appointments process'. The Commissioner operates independently of government and the civil service, and in 2021-22 oversaw some 1250 appointments and reappointments to a wide range of national and regional public bodies (but not to the civil service, regulated by the Civil Service Commission).[24] The Commissioner operates under an Order in Council, the latest version being the Public Appointments Order in Council 2023.

2.13 For the first 20 years the Commissioner was centrally involved in the process, issuing a Code of Practice, and appointing the independent chairs of interview panels for major appointments. Following a review in 2016 by Sir Gerry Grimstone, the Commissioner became an independent regulator of a process run by ministers and their departments. The Cabinet Office is now responsible for issuing the Governance Code on Public Appointments, and ministers and departments are now responsible for choosing all members of interview panels, including the chair. The Commissioner operates at one remove, monitoring public appointment processes by: i) ensuring that appointing authorities act in accordance with the Governance Code, ii) auditing the procedures and practices followed by appointing authorities, and iii) hearing complaints and investigating all aspects of the appointment process.[25]

2.14 The Commissioner is a public servant, appointed by Order in Council, following a process of open competition run by the Cabinet Office,[26] and is appointed for a single, non-renewable five year term.[27] CSPL has criticised the Commissioner's weak legal basis: the Order in Council can be amended (as it was in 2016), or the Commissioner's role could even be terminated by ministers without parliamentary debate.[28] But in practice the Order in Council has not been amended since 2016, save to make occasional changes to the list of

[22] The members can be viewed at the bottom of CSPL's home page.
[23] For list of reports see: Previous CSPL Reports and Reviews.
[24] Commissioner's Annual Report 2021-22, p.33.
[25] See the Commissioner's web page, 'What we do'.
[26] Public Appointments (No. 2) Order in Council 2019.
[27] CSPL, *Upholding Standards in Public Life*, November 2021, p.43.
[28] Ibid., p.81.

regulated bodies: it is cumbersome to change, since it involves consultation with the Commissioner and across Whitehall.

2.15 The Commissioner carries out regular audits of departments, and in recent years the Commissioner's office has worked closely with departments to spread best practice and to improve the efficiency and effectiveness of their public appointments processes. The Order in Council allows the Commissioner to delegate functions, which proved useful when the current Commissioner Sir William Shawcross recused himself after beginning an investigation into Richard Sharp's appointment as chairman of the BBC.[29]

2.16 OCPA's expenditure is included in the accounts of the Civil Service Commission but is also available directly in the Commissioner's annual reports. In 2021-2022, it had a total expenditure of £245k, of which £144k accounted for the costs of two staff.

House of Lords Appointments Commission (HOLAC)

2.17 Peerages are conferred by the monarch on the advice of the Prime Minister. HOLAC is a non-statutory advisory body established by the Blair government in 2000. It has two main functions: to identify suitable individuals for appointment as non-party-political peers to sit on the crossbenches; and to vet other nominations for propriety. Individuals can apply direct to HOLAC for appointment to the crossbenches. In the four year period from November 2018 to December 2022, the Commission received 474 applications, interviewed 19 candidates, and recommended four for appointment as life peers.[30] That was a tiny proportion of the total number of peers appointed: in the same period, 109 individuals took up seats in the House of Lords.

2.18 The Commission vets for propriety other candidates for the House of Lords, in particular nominations made by the main political parties. The Commission defines propriety as evidence of '… good standing in the community in general and the regulatory authorities in particular'; and past conduct which would not bring the House of Lords into disrepute.[31] The Commission will also vet nominations made directly by the Prime Minister, who reserves the right during each parliament to nominate up to ten individuals with a strong record of public service.[32] Originally this was intended for retiring Cabinet Secretaries and the like, but the criteria were extended by David Cameron and the numbers by Boris Johnson, who appointed 25 Crossbenchers and non-party peers in his first 18 months in office.[33] Several of these were Conservative sympathisers who have regularly voted with the government. Prime Ministers are also entitled to nominate people for peerages as part of their resignation or dissolution Honours list: in June 2023 HOLAC advised against the

[29] OCPA Decision Notice, The Appointment of the Chair of the board of the BBC 2020-21.
[30] House of Lords Appointments Commission Report November 2018 – December 2022, p.7.
[31] Ibid, p.8.
[32] Ibid para 36.
[33] Taylor R., *Life Peers since 1958*, House of Lords Library Briefing, January 2021.

appointment of eight nominees put forward as part of Boris Johnson's resignation Honours.[34]

2.19 The Commission's advice is non-binding, and the Prime Minister can act contrary to its advice. The Commission's objections to the appointment of a major party donor, Peter Cruddas in 2020 were overruled by the Prime Minister Boris Johnson.[35] This was the first time a Prime Minister had ignored HOLAC's advice: during its first 15 years ten peerages were screened out, and it successfully queried a further seven nominations in 2015.[36]

2.20 The Commission normally has seven members, including the chair. Three members are appointed to represent the main political parties; the other three members and the chair are non-political and independent. Appointment of the chair and the independent members is by open competition, for a single non-renewable term of five years.[37] The current chair is Baroness (Ruth) Deech, appointed in October 2023.

2.21 The Commission's expenditure is very small, just £37k in 2021-22.[38] The Commission's vetting process and casework as well as its publications and Code of practice can be viewed on its own independent website.[39] Its annual reports appear on an irregular basis, the most recent covering four years from 2018 to 2022.[40]

Independent Adviser on Ministers' Interests

2.22 The Independent Adviser on Ministers' Interests was introduced in 2006, following a 2003 recommendation from CSPL, to avoid the difficulties experienced by Permanent Secretaries and the Cabinet Secretary when asked to investigate the conduct of their own ministers.[41] The Adviser is appointed under the prerogative and has two primary duties: to provide impartial advice to the Prime Minister on matters that engage the Ministerial Code,[42] and to maintain a register of ministerial interests.

2.23 Controversy has dogged the role of the Independent Adviser, particularly under the premiership of Boris Johnson, whose conduct led two Advisers to resign in protest. In November 2020 Sir Alex Allan resigned when Boris Johnson failed to act on his report into

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[34] House of Lords Appointments Commission statement 12 June 2023.
[35] Justin Parkinson, 'Peter Cruddas: PM overrules watchdog with Tory donor peerage' (December 22, 2020, *BBC News*).
[36] House of Lords Appointments Commission, Annual Report 2013-15, para 36.
[37] For the latest advertisement for the chair, in May 2023, see here. For the announcement of the appointment of three independent members in 2019, see here.
[38] Ibid.
[39] https://lordsappointments.independent.gov.uk/.
[40] The justification for not reporting annually is that in some years there is little to report: Lord Bew, oral evidence to PACAC, 20 April 2022, Q7.
[41] CSPL, *Defining the Boundaries within the Executive: Ministers, Special Advisers, and the permanent Civil Service*, Cm 56775, April 2003, paras 5.13-31.
[42] HM Government, Independent Adviser on Ministers' Interests, Terms of Reference.

allegations of bullying by the Home Secretary Priti Patel.[43] After a five month delay Lord (Christopher) Geidt was appointed as the new Adviser in April 2021, and soon had to address the question of the Prime Minister's own conduct. The difficulties and frustrations experienced by Lord Geidt were vividly described in the Preface to his May 2022 annual report:

> An impression has developed that the Prime Minister may be unwilling to have his own conduct judged against the Code's obligations… I have repeatedly counselled the Prime Minister's official and political advisers that the Prime Minister should be ready to offer public comment on his obligations under the Ministerial Code, even if he has judged himself not to be in breach… That advice has not been heeded and, in relation to the allegations about unlawful gatherings in Downing Street, the Prime Minister has made not a single public reference to the Ministerial Code.[44]

2.24 Just prior to the resignation of Christopher Geidt, the Adviser's role, powers and functions were revised, strengthening the office in three respects:

- The Adviser may now initiate an investigation, but before doing so must consult the Prime Minister, who has a right of veto. The Adviser can then require the reasons for the veto to be made public.[45]
- The Adviser 'may require that, at the conclusion of his work, his advice to the Prime Minister is published in a timely manner'.[46]
- Where the Prime Minister determines that a breach has occurred, he may ask the Independent Adviser for confidential advice on the appropriate sanction. Available sanctions include a public apology, remedial action, or loss of salary, and not simply dismissal. The final decision rests with the Prime Minister.[47]

Whilst in the role, Lord Geidt accepted these limited changes, on the basis of their workability. He would, however, resign a month later, saying he had been put in an impossible position after being asked to give advance cover for a deliberate and purposeful breach of international law.[48] There then followed a further vacancy of six months before the current Adviser, Sir Laurie Magnus, was appointed in December 2022. He accepted the terms of reference as they had been amended prior to Lord Geidt's resignation.[49]

2.25 The other key responsibility of the Independent Adviser is to help ministers on the management of their private interests. Under para 7.2 of the Ministerial Code:

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[43] Cabinet Office, *Findings of the Independent Adviser*, November 2020.
[44] Cabinet Office, *Annual Report of the Independent Adviser on Ministers' Interests*, May 2022.
[45] Cabinet Office, Ministerial Code, Dec 2022, para 1.4(b).
[46] Cabinet Office, Independent Adviser on Ministerial Interests – Terms of Reference, April 2021, section 3.
[47] Cabinet Office, Ministerial Code, Dec 2022, para 1.7.
[48] Prime Minister's Office, Correspondence from Lord Geidt and the Prime Minister's response, 16 June 2022.
[49] PACAC, Post-Appointment Hearing - Independent Adviser on Ministers' Interests, HC 316, 23 February 2023 Q10.

> It is the personal responsibility of each Minister to decide whether and what action is needed to avoid a conflict or the perception of a conflict, taking account of advice received from their Permanent Secretary and the Independent Adviser on Ministers' interests.50

2.26 Ministers are expected to complete a declaration upon appointment, and to make further declarations when taking up a new appointment, or when their portfolio of interests is subject to change.

2.27 The Independent Adviser will advise ministers on how to avoid any conflict of interest: they may be advised to put their investments into a blind trust, or to recuse themselves from decisions on certain issues. The List of Ministers' Interests is published twice a year and sets out the disclosable private interests of all serving ministers. The list is not a register of interests and does not therefore include every interest that a minister has declared. To do so would represent an excessive degree of intrusion into the private affairs of ministers, particularly in respect of their family members. The list instead documents those interests, including those of close family, which are directly relevant to a minister's ministerial responsibilities. Since 2023 ministers now attest, when completing their declaration of interests, that they accept the provisions of the Ministerial Code and their personal responsibility for deciding how to act and conduct themselves in light of the Code.[51]

2.28 Unlike other watchdogs, the Independent Adviser is not appointed following a process of open competition, but by what CSPL called a 'tap on the shoulder'.[52] Potential candidates are identified and interviewed, some several times; but the post is not openly advertised. In its 2021 report, *Upholding Standards in Public Life*, CSPL recommended that the independence of the Adviser be strengthened, by giving it a statutory foundation: this would formalise how an Adviser is appointed, and how long they serve, as well as creating greater clarity about their remit in respect to investigations.[53] Lord Geidt's annual report in May 2022 recorded that the Adviser would now be supported by a dedicated secretariat, led by a senior civil servant and comprising three other members of staff.[54] Sir Laurie Magnus's first annual report recorded further improvements in the process of gathering and publishing information on ministers' interests.[55] The Independent Adviser's role is becoming gradually more transparent; the website is still minimal, but their reports and activities are available online through the GOV.UK website.[56]

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[50] The Ministerial Code, para 7.2.
[51] See the December 2023 List of Ministers' Interests, paras 5 and 7.
[52] CSPL, *Upholding Standards in Public Life* , p.57.
[53] Ibid, p.62.
[54] Independent Adviser on Ministers' Interests, Annual Report 2021-22, p.17.
[55] Independent Adviser on Ministers' Interests, Annual Report 2022-23, May 2023.
[56] For the Independent Adviser's web page, see here.

Advisory Committee on Business Appointments (ACOBA)

2.29 ACOBA is a non-statutory advisory body that provides independent advice to all former ministers and senior Crown servants over any external appointments which they might seek within two years of leaving public office.[57] Crown servants include ministers, Special Advisers, civil servants, diplomats and the armed forces but not the wider public service. Established in 1975, its remit applied originally only to Crown servants, but was extended to ministers following a recommendation by CSPL in 1995.[58] Both ministers and senior Crown servants are now required to seek advice; but the committee has no powers of enforcement. There are no sanctions if people fail to seek the committee's advice, or fail to follow that advice once it has been given.

2.30 The committee's role is to apply the Business Appointment Rules issued by the Cabinet Office. The underlying principle is that while it is in the public interest for people with experience of government to move into business or other sectors, there should be no cause for suspicion of impropriety. Officials should not be influenced in their duties by any hope or expectation of future employment; and on leaving office they should not improperly exploit access to government or sensitive information. ACOBA considers applications only from the most senior Crown servants (Director General and above); below that level civil servants apply to their employing department.

2.31 Most of ACOBA's business is casework conducted by correspondence, circulated twice a week, to consider individual applications.[59] The results are published as advice letters, sent also to prospective employers. ACOBA may typically recommend a waiting period; a ban on lobbying for two years; and restrictions on activities to ensure no exploitation of privileged information. Apart from these letters the website contains very little information. In particular there is no proper record of the committee's policy discussions. ACOBA was said in 2019 to meet as a full committee three to four times a year,[60] and now to meet twice a year.[61] But it is hard to find the minutes of those board meetings: the most recent published minutes (not directly accessible on ACOBA's website) relate to a meeting in May 2021.[62]

2.32 The Committee has produced 20 annual reports, the most recent under the previous chair Baroness (Angela) Browning, for the 2018-19 and 2019-20 financial years.[63] No annual reports have been published since then. Secretariat support is shared with the Civil Service

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[57] Jeremy Horder, 'Ministers' business appointments and criminal misconduct' [2019] Crim.L.R. 4 272, 274.
[58] CSPL, *Standards in Public Life*, Cm 2850, May 1995, p.60.
[59] Lord Pickles oral evidence to PACAC, 21 April 2021, Q30.
[60] Armstrong H., and C. Rhodes, *The Business Appointment Rules*, Commons Library Research Briefing 03745, July 2023, p.11.
[61] The job description advertised in April 2023 said members are expected to 'attend and contribute to bi-annual ACOBA meetings (in London or virtually)'.
[62] ACOBA board minutes, May 2021.
[63] ACOBA Twentieth Annual Report 2018-19 & 2019-2020. There is a joint Foreword by Angela Browning and her successor Eric Pickles, who became chair in April 2020.

Commission, with four full time members of staff, and total expenditure of £302,000 for 2022-23.[64]

2.33 ACOBA is sponsored by the Cabinet Office, and membership currently consists of nine members. Three are political appointees nominated by the three largest parties in the House of Commons, and six are independent members from different professional fields. All are appointed by the Prime Minister under the prerogative, for five-year non-renewable terms.[65] The chair is subject to a pre-appointment hearing by PACAC,[66] and the appointment process is regulated by the Commissioner for Public Appointments. The current chair is Lord (Eric) Pickles, former Chairman of the Conservative Party, Secretary of State for Communities and Local Government under David Cameron, and later UK Anti-Corruption Champion: he has been in post since April 2020.

Registrar of Consultant Lobbyists

2.34 The Public Administration Select Committee (PASC) first recommended statutory controls on lobbying in 2009, and the 2010 Conservative–Liberal Democrat coalition agreement promised to introduce a statutory register of lobbyists.[67] The Political and Constitutional Reform Committee (PCRC) recommended in 2012 that in-house lobbyists should be regulated as well as consultants.[68] Nevertheless, part 1 of the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014 (hereafter the Lobbying Act 2014) introduced a new registration system applicable only to consultant lobbyists working for public affairs consultancies, law firms and the like. It came into operation in March 2015.

2.35 The underlying rationale of the legislation is that lobbying can make an important contribution to public policy, but it should be transparent. The main duty of the Registrar is to maintain a public register of consultant lobbyists which anyone can search. Lobbyists must include their client information on the register, the names of any clients paying for lobbying activity in the previous quarter, and names of clients for whom consultant lobbying was done. In the event of non-compliance, the Registrar can undertake enforcement action, including imposing civil penalties up to £7,500.[69] In 2022-23 the Registrar concluded 15 formal investigations and issued 18 notices to impose civil penalties, the bulk of which resulted in a penalty being issued.[70] The Registrar's formal notices can be appealed to the First-tier Tribunal (General Regulatory Chamber).[71]

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[64] Civil Service Commission annual report and accounts 2022-23, p75.
[65] Armstrong H., and C. Rhodes, *The Business Appointment Rules*, Commons Library Research Briefing 03745, July 2023, p.10.
[66] Lord Pickles' pre-appointment hearing was in March 2020.
[67] Public Administration Select Committee, *Lobbying: Access and influence in Whitehall*, January 2009, HC 36 2008-09.
[68] Political and Constitutional Reform Committee, *Introducing a statutory register of lobbyists*, July 2012, HC 153 2012-13, p16.
[69] Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014, s.16.
[70] Registrar of Consultant Lobbyists, Statement of Accounts 2022-23.
[71] Lobbying Act 2014, s.17.

2.36 The Registrar is appointed by the Minister for the Cabinet Office, for a maximum term of four years, renewable for a second or third term of three years. The cost of running the office in 2022-23 was £326k, and the Registrar collected £206k in registration fees. The Registrar is supported by staff and servicing costs paid by the Cabinet Office. The Registrar has a very well laid out and informative website, giving details of all investigations and conclusions, as well as enforcement actions and penalties imposed. The current Registrar is Harry Rich, a non-practising solicitor who is also chair of the Valuation Tribunal Service.

2.37 In evidence to PACAC in 2022, the Registrar identified serious weaknesses in the regulatory regime for lobbying. In particular, the quarterly returns from consultant lobbyists declared only the names of their clients, but gave no indication of who had been lobbied, nor the subject of the lobbying activity.[72] This could be changed by Regulations. In the same evidence session, representatives from the industry suggested that only 4 per cent of lobbying activity was captured by the Act, and argued that in-house lobbying should also be covered to ensure a level playing field.[73]

The Cabinet Office

2.38 This chapter would not be complete without mentioning the role of the Cabinet Secretary and the Propriety and Ethics team in the Cabinet Office. The Cabinet Secretary remains the Prime Minister's principal adviser on matters of propriety and ethics. The Ministerial Code provides in para 1.4 that:

> If there is an allegation about a breach of the Code, and the Prime Minister, having consulted the Cabinet Secretary, feels that it warrants further investigation, the Prime Minister may ask the Cabinet Office to investigate the facts of the case and/or refer the matter to the Independent Adviser on Ministers' Interests.

2.39 Until 2006, the Cabinet Office was the only body which could investigate allegations of misbehaviour by ministers. It was awkward for the Cabinet Secretary and his officials to investigate the behaviour of their political masters, and the results of their investigations were liable to be condemned as a whitewash. That is why the office of the Independent Adviser was created in 2006, to give the post holder more independence than is available to serving civil servants. But the Cabinet Office remains the first port of call whenever a new scandal breaks. A recent example is partygate. When allegations emerged that staff in No 10 had held parties in breach of the Covid lockdown regulations, in December 2021 the Prime Minister Boris Johnson asked the Cabinet Secretary to investigate. He in turn asked the Second Permanent Secretary in the Cabinet Office, Sue Gray, to conduct the investigation. Sue Gray's report was highly critical of the political and civil service leadership which had

[72] Harry Rich, Written Evidence from the Registrar of Consultant Lobbyists, Sept 2022; Oral Evidence to PACAC, 15 November 2022, Q114; further Written Evidence, September 2023.
[73] John Gerlis, Chartered Institute of Public Relations, Oral Evidence to PACAC, 15 November 2022, Q59. See also the CIPR's policy proposal to regulate all lobbying.

allowed breaches of the lockdown rules.[74] But there was a widespread sense that both then and in earlier inquiries – for example, into Damian Green, then Deputy Prime Minister – Sue Gray had been put in an invidious position.[75]

2.40 Sue Gray was formerly the longstanding head of the Propriety and Ethics team in Cabinet Office, which employs some 15 civil servants. Their role is to offer advice to all government departments on standards and ethics issues; to keep all the different Codes of conduct up to date; to conduct investigations when required into breaches of the Codes; and to sponsor the seven constitutional watchdogs listed in this chapter.

Parliament's Watchdogs

2.41 This chapter would also not be complete without a brief mention of the constitutional watchdogs which regulate the behaviour of parliamentarians. There are five parliamentary watchdogs:

- The Electoral Commission
- The Parliamentary Boundary Commissions
- The Independent Parliamentary Standards Authority (IPSA)
- The Parliamentary Commissioner for Standards
- The Lords Commissioner for Standards.

2.42 These watchdogs are worth mentioning for two reasons. First, ministers may find the same conduct subject to overlapping regulatory regimes. Second, their governance arrangements are of interest, and may offer lessons for some of the watchdogs regulating the executive. The governance arrangements are summarised in the following table, and then expanded upon in the following paragraphs.

Table 2.2: Governance arrangements for five parliamentary watchdogs

Watchdog	Status	Remit	Composition	Budget and Staffing
Boundary Commissions (for England, Wales, Scotland, and Northern Ireland)	Statutory Bodies PCA 1986 s.2(1)	Review the distribution of parliamentary constituencies	4 members each, including Speaker of the House of Commons and a serving High Court/Court of Session judge	BC for England has 18 staff during peak workload; 1.4 during troughs

[74] Cabinet Office, Findings of Second Permanent Secretary's investigation into alleged gatherings on government premises during Covid restrictions, May 2022.
[75] Syal R., 'Sue Gray: head of No 10 party inquiry is an uncompromising operator', *The Guardian*, 13 January 2022.

Electoral Commission	Statutory Body PPERA 2000 s.1(1)	Oversees UK elections & referendums Registers political parties Regulates parties and election finance Has investigatory powers	9/10 commissioners appointed on recommendation from the Speaker's Committee Mix of political and apolitical members Renewable term, maximum 10 years	£22m 150 staff
Independent Parliamentary Standards Authority	Statutory Body PSA 2009	Develops and regulates rules regarding MPs' pay, pensions, business costs, and expenses	5 board members serving 5 year terms, renewable for up to 3 years 10 members incl. MPs and lay members serving 5 year non-renewable terms	£230m; operating cost £9.7m 83 staff
Parliamentary Commissioner for Standards	Non-Statutory Standing Order 150	Maintains the Register of Members' Financial Interests Investigates & reports on alleged breaches of the MPs' Code of Conduct	Single office holder Non-renewable 5 year term	£930k 4 staff
Lords Commissioner for Standards	Non-statutory Lords debate 30 Nov 2009	Investigates breaches of House of Lords Code of Conduct	Single office holder, currently job shared by two people Non-renewable 5 year term	£220k 2.6 staff

The Electoral Commission

2.43 The Electoral Commission is a statutory body established by the Political Parties, Elections and Referendums Act (PPERA) 2000. It has ten members, appointed by the Speaker's Committee on the Electoral Commission (SCEC); the chair is John Pullinger. Four Commissioners are nominated by the party leaders, who also need to consent to the appointment of the independent members. It supervises elections and referendums, and regulates party and election finance. It is a big organisation, with a budget in 2022-23 of £25m and around 150 staff.

The Parliamentary Boundary Commissions

2.44 The Boundary Commissions are of interest for their unique governance structure. There are four separate Commissions, for England, Wales, Scotland, and Northern Ireland. The chair in each case is the Speaker of the House of Commons, *ex officio*, but by convention the Speaker does not participate in meetings; these are instead led by the deputy chair, who is a senior judge (for England and for Wales, a serving High Court judge appointed by the Lord

Chancellor).[76] The remaining two members are appointed by the Minister for the Cabinet Office following an open competition. Their independence has recently been augmented by the Parliamentary Constituencies Act 2020: their recommendations may not now be revised by ministers or by parliament once their periodical reports have been issued – they are automatically implemented.[77]

The Independent Parliamentary Standards Authority (IPSA)

2.45 IPSA was created by the Parliamentary Standards Act 2009 as a statutory body, with a remit to provide independent regulation and administration of MPs' pay, pensions, business costs and expenses. In conjunction with its Compliance Officer, IPSA may enforce the allowances regime by means of repayment directions, backed up by powers to impose civil monetary penalties on non-compliant MPs. IPSA's board of five members is appointed by the Speaker's Committee on IPSA (SCIPSA), chaired by the Speaker, with seven other MPs and three lay members; the chair of IPSA is Richard Lloyd. The Speaker's Committee is also responsible for approving and supervising the annual budget of IPSA. The budget is very large because most of it goes on MPs' pay and allowances (£208m in 2021-22); IPSA's own operating costs were £9.7m.

The Parliamentary Commissioner for Standards (PCS)

2.46 Under Standing Order 150 the PCS is an officer of the House of Commons, appointed from outside the House. The principal duties include maintaining the Register of Members' Financial Interests, investigating alleged breaches of the MPs' Code of Conduct, and reporting to the Commons Standards Committee. Since 2018, the PCS has also investigated complaints about bullying, harassment or sexual misconduct under the Independent Complaints and Grievance Scheme (ICGS).[78] The current Commissioner is Daniel Greenberg. Unlike the Independent Adviser on Ministers' Interests, the PCS has independent powers of investigation.[79] Where their regimes overlap is in the register of interests: ministers must declare their interests in the Register of Members' Financial Interests as well as in the List of Ministers' Interests.

2.47 What was essentially a system of self-regulation has evolved into a system with strong independent elements. Important amongst those is the introduction of lay members onto the Standards Committee, first recommended in 2009 by CSPL. The seven lay members are

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[76] Sch 1, para 3(a) PCA 1986. As noted by the Home Affairs Committee, *Redistribution of Seats (Second Report of Session 1986–87)*, HC 97-I 1986–87, '[t]he purpose of these arrangements is to ensure that the Boundary Commissions are independent of political allegiances. We regard this independence as essential to their functioning:' para 4.

[77] s 2 Parliamentary Constituencies Act 2020.

[78] SO 150(2)(f).

[79] Under SO 150(2)(e), the PCS may 'investigate, if he thinks fit, specific matters which have come to his attention relating to the conduct of Members ...'. Prior to SO 150's amendment in December 2010, the PCS could only '*receive* and, if he thinks fit, investigate specific complaints from Members and from members of the public ...' (emphasis added). Further, as of 7 January 2019, the PCS is no longer 'expect[ed] ... to consult [the Committee on Standards] before exceptionally initiating an inquiry into a former Member or in respect of a matter which goes back more than seven years': compare the 2019 edition of *The Guide to the Rules relating to the Conduct of Members*, HC 1882 with the 2015 edition, HC 1076, Chapter 4, para 11.

selected following fair and open competition, and serve a non-renewable term of up to six years. The second innovation is the extension of a right of appeal. A 2022 review conducted by Sir Ernest Ryder recommended that the PCS should not be the first decision maker. The Standards Committee should be first decision maker, adjudicating on the basis of reports from the PCS, but there should be a right of appeal from the Committee to an Independent Expert Panel with judicial expertise. The panel would thus hear appeals against decisions by the Standards Committee that an MP had breached the Code of Conduct, as well as appeals in ICGS cases under the Behaviour Code.

The Lords Commissioner for Standards

2.48 There are currently two Commissioners sharing the role, Martin Jelley and Akbar Khan, who are responsible for the independent investigation of alleged breaches of the House of Lords Code of Conduct. The Code requires members to declare all relevant interests in the Lords' Register of Interests. Ministers in the Lords therefore have to declare their interests in the Lords' Register as well as in the List of Ministers' Interests. Alleged breaches of the Ministerial Code are outside the Commissioner's remit.[80] When such complaints have been received, they have been dismissed for that reason. However, where an allegation against a minister might engage both the Ministerial Code and the Lords Code, or just the Lords Code, the Commissioners can investigate.[81]

Lessons from Parliament's Watchdogs

2.49 In conclusion, it is worth mentioning some possible lessons for the watchdogs regulating the executive. The first is the stronger powers of the parliamentary watchdogs. The Parliamentary Commissioner for Standards can initiate their own investigations, unlike the Independent Adviser. IPSA has power to impose financial penalties, unlike ACOBA and the Independent Adviser. The recommendations of the Parliamentary Boundary Commissions are now implemented automatically. The second lesson is that parliament has introduced some interesting innovations in the governance of its watchdogs. The most important has been the introduction of lay members onto the Commons Standards Committee and the Speaker's Committee on IPSA.[82] More recently, there has been the introduction of a right of appeal by MPs against decisions of the Standards Committee to an Independent Expert Panel of eight legal experts (para 2.47). And in the Lords there has been the innovation of a job share, to enable the job of Lords Commissioner for Standards to be shared by two people both working part time.

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[80] Paragraph 138 of the Guide to the Lords Code of Conduct.
[81] See the ruling on Baroness Warsi, and on Lord Bates .
[82] The seven lay members on the Standards Committee have been effective, while the three lay members on SCIPSA feel marginalised: Hazell R., M. Boo and Z. Pullar, *Parliament's Watchdogs: Independence and Accountability of Five Constitutional Regulators*, The Constitution Unit, July 2022, paras 6.40-45.

2.50 There are also lessons about the risks to independence from the experience of parliament's watchdogs. It is sometimes supposed that parliament must be a better guardian of their independence than the executive. This has not always been the experience in practice. In 2020 the re-appointment of Sir John Holmes as chair of the Electoral Commission was not approved by the Speaker's Committee; this may have been partly motivated by Brexiteer anger at the enforcement action taken by the Electoral Commission against Vote Leave.[83] A similar spirit of retaliation may have lain behind the House of Commons' refusal to appoint Sir Ian Kennedy as a member of the Electoral Commission, because of his leadership as the first chair of IPSA.[84] Another occasion when a recruitment process was overturned by a vote on the floor was the selection of Melanie Carter to be a lay member of the Standards Committee.[85] Whether appointment is made by a vote on the floor, or in a parliamentary committee, extraneous considerations may always come into play.

[83] Courea, E. 'Tories force out watchdogs election chief Sir John Holmes', *The Times*, 5 October 2020. The minutes of the 16 July 2020 meeting of the Speaker's Committee on the Electoral Commission record (para 7): 'The Committee considered whether to recommend Sir John Holmes for re-appointment as Chair of the Electoral Commission. It noted feedback gathered by Mr Speaker from serving Commissioners, former Commissioners, the Chief Executive and a key stakeholder. Mr Speaker asked each member in turn whether they were content to recommend Sir John for reappointment'. The four Conservative members of the Committee voted No; the two Labour and one SNP MP abstained.

[84] House of Commons Hansard, 23 January 2018, columns 232-36.

[85] House of Commons Hansard, 10 November 2020, columns 843-64.

Chapter 3. Balance between ministers, regulators and parliament

3.1 This chapter is brief, as a restatement of the basic constitutional relationships between ministers, regulators and parliament. It is descriptive, not prescriptive. The Prime Minister plays the leading role in the whole machinery for setting, monitoring and enforcing standards, supported by the Minister for the Cabinet Office (Jeremy Quin from October 2022, succeeded by John Glen in November 2023). The Prime Minister is directly responsible for issuing the Ministerial Code and the Cabinet Manual, and is consulted about all the other Codes. The Prime Minister appoints six out of the seven watchdogs (the one exception being the Registrar of Consultant Lobbyists). Although (again with one exception, the Adviser on Ministers' Interests) these posts are openly advertised, and a shortlist compiled by the assessment panel, there is complete discretion for the Prime Minister to choose from amongst those deemed appointable. The Prime Minister is also the ultimate arbiter of breaches of the Ministerial Code: once the Adviser has presented their report, it is the Prime Minister who determines if the Code has been breached, and what sanction (if any) to impose.

3.2 Ministers are responsible for producing all the different Codes of Conduct. The Prime Minister is responsible for the Ministerial Code; the Minister for the Civil Service must publish the Civil Service Code, and the Code of Conduct for Special Advisers; the Minister for the Cabinet Office produces the Governance Code for Public Appointments, and the Business Appointment Rules. Ministers therefore set the rules by which they and their officials are judged. There are few checks to ensure the Codes are sufficient, with almost no requirements for consultation; the main check is the potential for scrutiny by parliament, but here too the scrutiny can be minimal or non-existent.

3.3 Regulators police the Codes. So for example, the Governance Code for Public Appointments states that 'The regulation of public appointments against the requirements of this Code is carried out by the Commissioner for Public Appointments'. But the powers of the different regulators vary. Several of the regulators are little more than advisory: ACOBA and HOLAC have no enforcement powers if their advice is ignored. The Civil Service Commissioners chair selection panels, and the Commission produces its own Recruitment Principles; while the Commissioner for Public Appointments operates at one remove, monitoring selection processes run by ministers and their departments under a Governance Code produced by the government. There is also variation in the power of regulators to initiate their own investigations. The weakest is the Independent Adviser on Ministers' Interests: the Adviser is there to advise on potential breaches of the Ministerial Code, but can be blocked from doing so by the Prime Minister.

3.4 The role of parliament is to scrutinise both ministers and regulators, and to hold both to account. The scrutiny is carried out mainly by select committees in the Commons; the Lords Constitution Committee has shown little interest in constitutional watchdogs. The main Commons committee is PACAC, the committee which monitors the work of the Cabinet

Office. PACAC has regular sessions with Cabinet Office ministers, and holds pre-appointment scrutiny hearings with new watchdogs before they are appointed (post-appointment in the case of the Independent Adviser); the committee can express concerns about a new appointment, but has no power of veto. The committee also has regular sessions with the watchdogs themselves: since January 2022 it has received evidence from all seven of the watchdogs in this study, detailed in Table 5.1 below.

Table 3.1: PACAC evidence sessions with constitutional watchdogs in 2022 and 2023

Date	Title of Session	Witnesses
11 January 2022	Propriety of Governance in light of Greensill	Lord (Jonathan) Evans, chair of CSPL
3 February 2022	Pre-Appointment Scrutiny Hearing: First Civil Service Commissioner	Baroness (Gisela) Stuart, First Civil Service Commissioner designate
15 March 2022	Propriety of Governance in light of Greensill	Sir Alex Allan & Sir Philip Mawer (former Independent Advisers)
20 April 2022	House of Lords Appointments Commission	Lord (Paul) Bew, chair of HOLAC
17 May 2022	Propriety of Governance in light of Greensill	Sir Peter Riddell, former Commissioner for Public Appointments
9 June 2022	Propriety of Governance in light of Greensill	Lord (Eric) Pickles, chair of ACOBA
14 June 2022	Independent Adviser on Ministers' Interests	Lord (Christopher) Geidt, the Independent Adviser
15 Nov 2022	Lobbying and Influence: Post-Legislative Scrutiny of Lobbying Act 2014	Harry Rich, Registrar of Consultant Lobbyists
23 Feb 2023	Independent Adviser on Ministers' Interests	Sir Laurie Magnus, the new Independent Adviser
18 April 2023	Work of the Civil Service Commission	Baroness (Gisela) Stuart, First Civil Service Commissioner
4 July 2023	Commissioner for Public Appointments	Sir William Shawcross, Commissioner for Public Appointments
25 Sept 2023	Lobbying and Influence: Post-Legislative Scrutiny of Lobbying Act 2014	Harry Rich, Registrar of Consultant Lobbyists

3.5 PACAC has also shown interest in the content of the Codes. It was very interested in the 2016 Grimstone review of public appointments, and published a report which was highly critical of the review and the government's response.[86] It was also highly critical of the Business Appointment Rules and the weaknesses of ACOBA in two reports on the Greensill affair.[87] The second report recommended strengthening both the regulation of public appointments and the role of the Independent Adviser in policing the Ministerial Code. The Lords Constitution Committee has also played its part, with an inquiry into the Cabinet Manual, explaining the need for its urgent revision and suggesting possible changes;[88] and an inquiry into the appointment and dismissal of Permanent Secretaries, which included the role of the Civil Service Commission.[89]

[86] PACAC, *Better Public Appointments? The Grimstone review on public appointments*, July 2016.
[87] PACAC, *Propriety of Governance in Light of Greensill: An Interim Report*, HC 59, July 2021; *Propriety of Governance in Light of Greensill*, HC 888, December 2022.
[88] Lords Constitution Committee, *Revision of the Cabinet Manual*, HL 34, July 2021.
[89] Lords Constitution Committee, *Permanent Secretaries: their Appointment and Removal*, HL 258, October 2023.

Chapter 4. Political background

4.1 Ethical regulation of government remains high on the political agenda. In terms of inquiries and recent reports, in the last couple of years:

- CSPL has published *Upholding Standards in Public Life*, on the need for stronger rules and more effective regulation; and *Leading in Practice* on how to promote ethical values[90]
- Sir Nigel Boardman published the report of his review into the collapse of Greensill Capital, and its close relationship with government and Whitehall, including lobbying on its behalf by former Prime Minister David Cameron[91]
- PACAC has recommended that all ethical regulators be placed on a statutory footing[92]
- The Institute for Government has published a series of reports on improving ethical standards in government, and reforming public appointments[93]
- The Brown Commission has recommended wide ranging reforms to restore trust in the political system[94]
- The Governance Project chaired by Dominic Grieve has recommended reforms to the principles and structures of government[95]
- The government published its response to CSPL, PACAC and the Boardman report in July 2023.[96]

The recommendations of these different reports are summarised in Annex C; the government's response is summarised at paras 4.9-10 below.

4.2 And in terms of other recent developments:

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[90] Committee on Standards in Public Life, *Upholding Standards in Public Life*, November 2021. *Leading in Practice*, January 2023.
[91] Nigel Boardman, *A Review into the development and use of Supply Chain Finance in government*, Cabinet Office, July 2021.
[92] Public Administration and Constitutional Affairs Committee (2022), *Propriety of Governance in light of Greensill* (Fourth Report 2022-23).
[93] Durrant T., C. Haddon, *Reinforcing Ethical Standards in Government*, March 2022.
Gill M., G. Dalton, *Reforming Public Appointments*, Institute for Government, August 2022. Thimont Jack M., J. Pannell, *Constitutional Guardians*, Institute for Government, November 2022.
[94] Commission on the UK's Future, *A New Britain: Renewing our Democracy and Rebuilding our Economy*, The Labour Party, December 2022.
[95] Governance Project *Final Report*, January 2024.
[96] Cabinet Office, *Strengthening Ethics and Integrity in Central Government*, CP 900, July 2023.

- Rishi Sunak has promised a government of 'integrity, professionalism and accountability'[97]
- Lord (David) Anderson introduced a Public Service (Integrity and Ethics) Bill to give effect to the CSPL recommendations[98]
- Lord (Philip) Norton's House of Lords (Peerage Nominations) Bill received its second reading in November 2022, but the government showed no interest in supporting it[99]
- Labour has proposed a single Ethics and Integrity Commission[100]
- Sir Alex Allan and Lord (Christopher) Geidt both resigned as Independent Adviser on Minister's Interests[101]
- Investigation by the new Independent Adviser on Minister's Interests, Sir Laurie Magnus, led to Nadhim Zahawi's dismissal as Conservative party chairman[102]
- The report by Adam Tolley KC into complaints about bullying by Dominic Raab led to his resignation as Justice Secretary and Deputy Prime Minister[103]
- The investigation by Adam Heppinstall KC into the appointment of Richard Sharp led to his resignation as BBC chairman[104]
- Boris Johnson resigned as MP for Uxbridge when the Commons Privileges Committee concluded that he had intentionally misled parliament.[105]

4.3 There is also evidence of growing public concern. The World Values Survey published in March 2023 showed that the UK had low levels of public confidence in our political institutions by comparison with 23 other countries. Confidence in the UK parliament has halved in the last three decades, falling from 46% in 1990 to 23% in 2022. Confidence in the government has also gone down, from 33% in 2005 to 24% in 2022. These are much lower levels than in other advanced democracies: in Norway, for example, 70% of respondents expressed confidence in their parliament, and 59% in the government. The UK also ranks

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[97] Prime Minister's Office, *Rishi Sunak's First Speech as Prime Minister*, October 2022.
[98] UK Parliament (2022), Public Service (Integrity and Ethics) Bill [HL].
[99] House of Lords Hansard, 18 November 2022, cols 1091-1129.
[100] Angela Rayner MP, Speech to the Institute for Government, 13 July 2023.
[101] Cabinet Office, *Statement from Sir Alex Allan*, 20 November 2020. Prime Minister's Office, *Correspondence from Lord Geidt and the Prime Minister's response*, 16 June 2022.
[102] Prime Minister's Office, *Letter from Sir Laurie Magnus to the Prime Minister*, 29 January 2023.
[103] Adam Tolley KC, *Investigation Report to the Prime Minister*, April 2023.
[104] Commissioner for Public Appointments, *Decision Notice: The Appointment of the Chair of the BBC 2020/21*.
[105] Commons Committee of Privileges, *Matter referred on 21 April 2022 (Conduct of Rt Hon Boris Johnson): Final Report* (Fifth Report of Session 2022-23), HC 564, June 2023.

behind other European countries in the survey, namely Sweden, Germany, France, Spain and Italy: only Greece and Poland came below the UK.[106]

4.4 The UK has also slipped down the league table published annually by Transparency International, falling from eleventh place in 2021 to twentieth in 2023 in their Corruption Perceptions Index.[107] These findings were replicated in the YouGov survey conducted in August/September 2022 as part of the Constitution Unit's project on democracy in the UK after Brexit. Respondents indicated low trust in politicians, even lower than in summer 2021: only 18% felt they could trust the Prime Minister to act in the best interests of people in the UK. There was overwhelming public support for stronger mechanisms to uphold integrity among politicians, including more powerful independent regulators: 79% agreed that reform is needed, so that politicians who do not act with integrity are punished. The vast majority of respondents wanted political leaders to be held accountable through a system of checks and balances; and most wanted the checks and balances to be tighter.[108] The final report of the Constitution Unit study in November 2023 underlined the strong priority given to maintaining standards over other policy objectives: honesty, owning up to mistakes, and following the rules all ranked higher with the public than getting things done.[109]

4.5 The situation was starkly summarised by one former senior civil servant responding to our consultation paper in April 2023:

> Standards in public life have been badly eroded in recent years; the current machinery for upholding standards has proved to be inadequate; and a major reset is needed.

Labour's proposed Ethics and Integrity Commission

4.6 In response the Labour Party has developed a plan to restore standards in public life by creating a new, independent Ethics and Integrity Commission, outlined in a series of speeches by the Deputy Leader Angela Rayner, most recently on 13 July 2023.[110] Since Rayner was replaced as shadow Cabinet Office minister by Nick Thomas-Symonds in Starmer's September 2023 reshuffle, Labour has repeated the commitment but with no further details.[111] Under Rayner's proposals, ACOBA and the Independent Adviser on Ministers' Interests would be subsumed into the new Ethics and Integrity Commission, which would have stronger powers of enforcement, independent of political control. It would have power to initiate investigations into ministers without asking permission from the Prime Minister. The Commission would be able to determine breaches, and recommend

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[106] Duffy, B. 'How the UK lost confidence in its institutions', UK in the World Values Survey and King's Policy Institute.
[107] Transparency International, Corruption Perceptions Index 2021, and 2023.
[108] Renwick, A. and B. Lauderdale, M. Russell and J. Cleaver, *Public Preferences for Integrity and Accountability in Politics*, Third Report of the Democracy in the UK after Brexit Project, Constitution Unit, March 2023.
[109] Renwick, A. and B. Lauderdale, M. Russell, *The Future of Democracy in the UK*, Fourth Report of the Democracy in the UK after Brexit Project, Constitution Unit, November 2023, Fig 3.1.
[110] Angela Rayner MP, Speech to the Institute for Government, 13 July 2023.
[111] Norris, E. et al, 'Six key takeaways from the Labour conference in Liverpool', Institute for Government, 13 October 2023.

sanctions, including financial penalties for those who break the lobbying rules, or the rules on taking up new appointments.

4.7 Labour would also consider whether the Public Appointments Commissioner and Civil Service Commission should be brought under the new Commission's umbrella; but other watchdogs would be left in place. This includes CSPL, which would continue to play a crucial role at the centre of the standards landscape. To reinforce its independence, the Prime Minister would not be involved in the appointment of the new Commission, which would be appointed through a robust appointments process involving a nominated parliamentary committee. And finally, the Commission would be put on a statutory footing, to remove the risk of political capture or interference in the Commission's work.

Government policy paper *Strengthening Ethics and Integrity in Central Government*

4.8 Legislation is one of the key differences between Labour and the government's plans, published a week later on 20 July 2023. CSPL and PACAC had both recommended that ACOBA, the Independent Adviser and OCPA should all be given a statutory foundation, together with their associated Codes. In its long awaited response the government rejected that key recommendation, arguing that 'placing scrutiny bodies into primary legislation risks drawing the Courts into political matters that are the sole purview of the Government'. But the government left open the possibility of legislation in the next parliament: 'The Government will allow this reform package to take effect before any further consideration of statutory change, in the next Parliament'.[112]

4.9 The government's reform package has four main elements.[113] The biggest change is to ACOBA and the Business Appointment Rules. Civil servants' contracts will be tightened to make compliance with the Rules mandatory, and a 'deed of undertaking' will be developed to make compliance mandatory for ministers. But no timetable has been set, and it is unclear who will be responsible for monitoring or enforcing compliance in the case of breaches. The next biggest change is to transparency around lobbying. Instead of releases being scattered around government departments, the Cabinet Office is developing a single database where all departmental transparency returns covering meetings, gifts, hospitality and travel will be published. The government will then look to introduce monthly rather than quarterly reporting. It will also set stricter minimum standards to make clear that meeting descriptions contain relevant and useful information. The reporting requirement will be extended to Directors General and Finance and Commercial Directors, but not to Special Advisers.

4.10 There is much less change in the next two elements. On public appointments, the government has accepted that the appointment of Non-Executive Directors (NEDs) to Whitehall boards should be subject to the Governance Code on Public Appointments. The

[112] Cabinet Office, *Strengthening Ethics and Integrity in Central Government*, CP 900, 20 July 2023, p26.
[113] For analysis of the government's proposals, see CSPL, *Upholding Standards in Public Life recommendation tracker*, 20 July 2023; Institute for Government, *The Government's Response to the Committee on Standards in Public Life*, 21 July 2023; Spotlight on Corruption, *Integrity-lite: how the government's reforms stack up*, 27 July 2023.

government also accepts that ministers should write to the relevant select committee, and appear before it if requested, when they wish to appoint a candidate judged unappointable by an advisory interview panel. On direct ministerial appointments (such as Czars), the Cabinet Office will publish guidance, which will include requiring departments to publish annually a list of those direct ministerial appointments under their remit. Finally, on the fourth element, the Independent Adviser and the Ministerial Code, there is no further development. Since December 2022 the Code has contained graduated sanctions; the Adviser must now be consulted on any revisions to the Code; and the Adviser's reports will be published in a timely manner.

4.11 The Labour Party's proposals, which are still short on detail but are now subject to consultation, are discussed further in Chapter 6. The government's proposals were roundly criticised by informed commentators at the time of publication for their lack of ambition.[114] Particularly unconvincing was the government's argument against giving the watchdogs a statutory foundation, that it would increase the risk of judicial review. This is not borne out by comparing the experience of the existing watchdogs. The non-statutory bodies are already liable to claims for judicial review, as can be seen from a legal challenge brought against HOLAC in 2015.[115] The risk does not appear to be enhanced by being put on a statutory basis. Since it was put into statute in 2010 the Civil Service Commission has not been the subject of a single action for judicial review; nor has the statutory Registrar of Consultant Lobbyists.

4.12 The real reason for the government's reluctance to legislate seems more likely to be unwillingness to surrender executive control. This reflects a traditional Whitehall reluctance to give up its powers, especially if it involves giving parliament and its committees a greater role. That has been shown by the firm resistance of the Cabinet Office to agree to any replication of the Treasury Select Committee having the formal power of veto over the appointment, and reappointment, of the head of the Office of Budget Responsibility. The Johnson administration in particular took a presidential view of the Prime Minister as having a direct mandate from the electorate, and therefore being unchallengeable either by unelected regulators or, in an extreme version, by parliament. Almost half the recommendations from CSPL and PACAC were rejected, including all those which would strengthen the watchdogs' independence, or give them more effective powers. The one possible exception is ACOBA; but it remains to be seen whether ACOBA can be given effective powers of enforcement without statutory backing. ACOBA's chair Lord (Eric) Pickles has warned that any non-statutory approach, in order to be taken seriously, will need

[114] Ibid. See also Institute for Government Inside Briefing podcast on 'Sunak's Ethics Plan', 26 July 2023.
[115] *Ranger v. House of Lords Appointment Commission* [2015] EWHC 45 (QB). For discussion, see Kirton-Darling E., 'Expertise, Transparency and the Appointment of Lords' U.K. Const. L. Blog, 13 February 2015.

a meaningful sanctions regime including the ability to impose financial penalties in the most serious cases.[116]

4.13 On public appointments, the changes are mainly less than they appear. The government had already accepted in January 2023 that the appointment of NEDs should be subject to the Governance Code.[117] The proposal to report to select committees on appointing candidates judged to be unappointable is less than it appears, because at present ministers have to consult the Commissioner, who would notify the relevant select committee if, after consultations, a minister went ahead and appointed an unappointable candidate rather than hold a fresh competition. More significantly, the Cabinet Office has rejected all the suggested ways of making the appointment of watchdogs more independent. This included rejection of proposals that the Independent Adviser should be appointed by open competition; that all watchdogs should be appointed through the process of significant public appointments; that in such cases the assessment panel should have a majority of independent members; and that senior independent panel members should have a specific duty to report to the Commissioner on the conduct of significant competitions.

4.14 A final criticism of the government's response is that it was not only minimalist, but failed to address the weaknesses in the system as a whole. Those are analysed in the next chapter.

[116] ACOBA's Response to the Deputy Prime Minister regarding government response to CSPL, Boardman and PACAC reports, 20 July 2023.
[117] Letter from William Shawcross, Commissioner for Public Appointments, to Lord Evans, Chair of CSPL, 6 January 2023.

Chapter 5. Problems with the existing system

Fuzziness and informality

5.1 The system of constitutional watchdogs regulating the executive has grown up in an ad hoc and incremental way. With the exception of the Civil Service Commission (established in 1855) and ACOBA (which dates from 1975), all have been created in the past 30 years by the executive in response to scandals and claims of abuse, notably following the first report of the Committee on Standards in Public Life and the creation of the Nolan principles. Most are products of the prerogative, which is an insecure legal basis, discussed in para 5.3 below. But this degree of informality leaves their powers and functions inadequately defined. This is partly inherent in their existence as largely advisory bodies created by the executive, which retains the final say on all key decisions. The varying Codes under which the watchdogs operate give them limited powers to determine outcomes.

Fragmented landscape

5.2 As we saw in Chapter 2, there are seven different bodies advising and regulating the conduct of the executive. This patchwork makes the system hard to understand. It is exacerbated by the bodies having a varied legal basis (some being statutory, others created by Order in Council, others under the prerogative). They also have varying degrees of independence, different methods of appointment, and different lines of accountability.

Fragile legal basis, inadequate independence

5.3 HOLAC, ACOBA, the Independent Adviser and CSPL are all created under prerogative powers, and could be abolished by ministerial fiat. There is scarcely more protection for the Commissioner of Public Appointments, created by Order in Council. The powers of these watchdogs are inadequately defined, and the underlying insecurity makes it harder for them to speak out. CSPL concluded:

> It is clear to the Committee that the degree of independence in the regulation of the Ministerial Code, public appointments, business appointments, and appointments to the House of Lords falls below what is necessary to ensure effective regulation and maintain public credibility.[118]

5.4 There is also an imbalance of power in relation to the Codes of Conduct. The Ministerial Code, Civil Service Code, and Governance Code for Public Appointments can all be

[118] Committee on Standards in Public Life, *Upholding Standards in Public Life*, November 2021, para 2.25.

changed by the executive (and have been) without parliamentary approval or debate. The Codes are discussed further in Chapter 7.

Inadequate investigatory and enforcement powers

5.5 CSPL identified eight factors which help to underpin a watchdog's independence.[119] Four of them relate to the watchdog's powers: the ability to initiate investigations, determine breaches, publish findings, and impose sanctions. Specifically,

- ACOBA needs enforcement powers
- HOLAC lacks a power of veto in propriety cases
- The Independent Adviser lacks power publicly to state whether there has been a breach of the Ministerial Code
- OCPA's powers were changed following the Grimstone review in 2016 to limit its direct involvement in the appointments process.[120]

Gaps (and overlaps) in the regulatory framework

5.6 The patchwork of Codes and regulators leads to gaps, but also to overlapping jurisdiction:

- Non-Execs on Whitehall departmental boards, and 'Czars' and other one-off appointments have not been regulated by OCPA or any other body[121]
- The lobbying regime applies only to consultant lobbyists, and not to in-house lobbying
- The lobbying regime does not apply to Special Advisers, nor to Director grades: both are often subject to lobbying
- There are overlaps between the Parliamentary Commissioner for Standards and the Independent Adviser in registering and defining interests.[122]

Slender resources

5.7 Being creatures of the executive, the watchdogs are dependent on the executive for their budgets and staffing. Most are tiny organisations, housed in the Cabinet Office and reliant primarily, but not exclusively, on civil service secondments for their staffing. In practice this has rarely been a problem since staff regard their primary loyalty as being to the watchdog

[119] Ibid para 2.20.
[120] Grimstone, G. *Better Public Appointments: A Review of the Public Appointments Process*, Cabinet Office, March 2016.
[121] The government said in July 2023 that the appointments process for Non-Executive Directors should in future be regulated under the Governance Code for Public Appointments: Cabinet Office, *Strengthening Ethics and Integrity in Central Government*, p16.
[122] Sir Laurie Magnus, oral evidence to Commons Standards Committee, 18 July 2023, QQ25-26.

they serve. Budgets are fixed by the Cabinet Office and regulators have learned to live within increasingly tight spending limits over the past decade. This has meant a focus on core regulatory tasks. Basics like having a clear and accessible website have in some cases been sorely neglected: see para 7.37. It is not a secure foundation, nor is it conducive to long term planning: if the government of the day wished further to undermine these institutions (see below), it could easily do so by further squeezing their budgets in real terms and their staffing.

Lack of respect by politicians for constitutional watchdogs

5.8 The Johnson government repeatedly undermined constitutional watchdogs by belittling them, failing to fill vacancies, ignoring their advice, threatening their abolition. It also failed to implement recommendations from CSPL, and from PACAC, to strengthen watchdogs' powers and give them a stronger legal foundation. Rishi Sunak initially signalled a new approach, promising a government of 'integrity, professionalism and accountability'; but the record has been patchy. It took almost 21 months after publication of CSPL's landmark report *Upholding Standards in Public Life* (November 2021) before the government published its response. This appeared with minimum publicity on 20 July 2023, the last day before the parliamentary recess. It could have been an occasion for the government to re-affirm its belief in high standards and its support for the watchdogs who uphold them. But this did not happen. Less an opportunity missed than one never considered.

Chapter 6. An Ethics and Integrity Commission

6.1 The biggest question is whether to go beyond strengthening the independence of the existing constitutional watchdogs to introducing far-reaching organisational changes to the regulation of standards in public life. After the controversies and scandals of the last few years there is a strong case for a fresh start, like the one initiated 30 years ago by the first wide-ranging report of the Committee on Standards in Public Life.[123] That would signal to the public that ministers mean what they say about maintaining high standards and are willing to back up words with action. The challenge is to get beyond appealing slogans to devising a system which both claims public support and works in practice. What would organisational changes achieve beyond what can be done by strengthening the existing regulators? There are dangers of duplication and undermining the effectiveness of regulation. Our conclusion is both that the existing regulators should be strengthened and that overall oversight and co-ordination needs to be improved.

6.2 The debate so far has focused on two linked questions – whether to merge some of the existing regulators and/or to create a new over-arching body. All sorts of permutations have been suggested, with no obvious favourite. Later in the chapter we will explore the main alternative approaches and the principles which should influence the choice. The Labour Party has given a clear commitment to legislate for a new Ethics and Integrity Commission, though the details remain uncertain. Angela Rayner, the party's deputy leader, has said that Labour would replace ACOBA with a more robust system with clear sanctions. The Independent Adviser would be able to initiate investigations, determine breaches, and recommend sanctions. The statutory Ethics and Integrity Commission would subsume ACOBA and the Independent Adviser under its umbrella, and possibly OCPA and the Civil Service Commission. But the Commission would be complementary to existing bodies, so that CSPL would continue to play a crucial role. There would be a robust appointment process, removing power to appoint from the Prime Minister, and involving a nominated parliamentary committee. To establish the next steps, Labour would carry out a consultation including CSPL and existing public standards regulators, as well as governance experts.[124]

6.3 One reason for proposing mergers is the fragmentation of the existing system, with half a dozen different watchdogs regulating the conduct of the executive. The Brown Commission has similarly proposed that instead of the Independent Adviser there should be an independent Integrity and Ethics Commission to investigate breaches of the Ministerial Code. The Brown Commission also recommended that the Civil Service Commission and the Commissioner for Public Appointments should be merged into a single and more

[123] Committee on Standards in Public Life, *Standards in Public Life*, Cm 2850-1, May 1995.
[124] Angela Rayner MP, Speech to the Institute for Government, 13 July 2023.

powerful appointments regulator. It would ensure that all appointments, including appointments to public bodies, are made solely on merit. Others have recommended in response to our initial consultation paper that the Civil Service Commission should instead be merged with ACOBA: this would provide clear and predictable rules on entry and exit from the civil service at the time of first joining. An alternative proposal would be to merge ACOBA with the lobbying Registrar, since they regulate opposite sides of the same coin. The different options for merger are considered further in paras 6.5 to 6.13 below, though from our consultations, the overwhelming view of those involved in regulation is that none of the merger proposals make much practical sense compared with the other proposals we have made for strengthening them.

6.4 A single commission replacing the other watchdogs was proposed in evidence to CSPL during their Standards Matter 2 inquiry. It was argued this would simplify the standards landscape, with its patchwork of Codes and regulators. A single commission should make compliance easier, ensuring ministers and officials need deal with only one regulatory authority. But in their final report CSPL came down against the idea; as did PACAC a year later.[125] A single commission would not necessarily resolve the issue of complexity: there would still need to be separate Codes for ministers and officials, and for public appointments, business appointments, lobbying etc. The concentration of power in a single unelected body would be high risk, making it more vulnerable to political attack: there was less risk in a pluralist approach to ethics regulation. As one of the respondents to our consultation put it, 'The untidiness of the standards landscape is part of its strength… reforms should be small scale and piecemeal'. The Labour Party seem to have accepted this, since Angela Rayner and other Labour leaders ceased talking of a single Ethics Commission subsuming all the existing watchdogs.

Different models for an Ethics and Integrity Commission

6.5 There are broadly three models for an Ethics and Integrity Commission:-

- First, as a regulator subsuming some or all of the existing watchdogs
- Second, as an umbrella body, alongside CSPL
- Third, as an umbrella body taking over from CSPL.

A regulatory body

6.6 In the first model, the new Commission would itself become a regulatory body, taking over ACOBA and the Independent Adviser. The reason given for picking these two bodies is that both have been described as toothless watchdogs which have failed.[126] This is an unfair verdict since both ACOBA and successive Independent Advisers have sought

[125] CSPL, *Upholding Standards in Public Life*, November 2021. Public Administration and Constitutional Affairs Committee (2022), *Propriety of Governance in light of Greensill* (Fourth Report of Session 2022-23), HC 888, paras 103-4.
[126] Spotlight on Corruption, *What could a UK Integrity and Ethics Commission look like?*, October 2022, p9.

conscientiously to make unsatisfactory systems work and have proposed improvements, only partially accepted by the government. The real remedy could be first to give them teeth: to enable the Adviser to have full powers to initiate investigations and publicly to announce breaches of the Ministerial Code; and to enable ACOBA to impose meaningful sanctions. But the model is worth exploring further. Would the new Commission collectively investigate breaches of the Ministerial Code, or would one of their number perform the role of Independent Adviser? The task of conducting investigations is best left to a single individual, who would need to be a senior member of the Commission, perhaps its chair. This would retain the personal role of the Independent Adviser in relation to the Prime Minister, reducing the risk of the Commission being seen by the Prime Minister as an adversary rather than an adviser.

6.7 A further complication is that the Business Appointment Rules currently regulated by ACOBA cover both ministers and civil servants. If the Commission is to focus solely on the conduct of ministers, the regulation of civil servants could pass to the Civil Service Commission, which would be charged with defending the merit principle on entry, and ensuring no conflicts of interest on exit. But there would be a risk of regulatory divergence if two different regulators were responsible for enforcing the Business Appointment Rules, with potentially looser application of the rules for ministers than civil servants, or vice versa. There would need to be stringent measures to guard against this, perhaps with overlapping membership between the two commissions, and a common secretariat supporting them.

6.8 Stepping back from the detail, a general warning should be sounded: the record of organisational changes within Whitehall is mixed at best, so the bar for mergers should be high. It might seem attractive on paper to amalgamate bodies performing similar functions: for example, the different watchdogs regulating appointments (Civil Service Commission, OCPA, HOLAC, ACOBA). For five years there was a partial merger, when Sir David Normington as First Civil Service Commissioner served also as Commissioner for Public Appointments from 2011 to 2016. It was not regarded as a success, including by Sir David. The two roles have very different powers and responsibilities, and no one has since revived the idea. Mergers which are supported by the bodies concerned could be worth exploring: coalitions of the willing are more likely to succeed than shotgun arrangements. But it is clear from our consultations with current and past regulators that there is no support for mergers as such. They would not produce significant savings and would create operational and accountability problems, while almost certainly disappointing expectations of strengthening regulation.

A convening and coordinating body alongside CSPL

6.9 In the second model, the new Commission would become an umbrella body alongside CSPL. In this role it would take over the sponsorship of the current watchdogs and regulators from the Cabinet Office. That would clearly demonstrate the independence of the bodies concerned. But the Cabinet Office would resist losing control of their funding; and it would risk creating new fault lines over the implementation of policies where the Cabinet Office has had a central co-ordinating role. Under this model, the Commission would not itself be a regulator, but would convene meetings of the other watchdogs, share information and best practice, address gaps and overlaps, provide more information to the

public and seek to raise the profile of standards issues. In its outward facing role, the Commission could provide a website portal outlining what the watchdogs do, how they relate to each other and how they can be contacted. In short, the Commission could become both the public face and the champion of the regulators, defending them when they come under attack, as Lord (Jonathan) Evans did when chair of CSPL.

6.10 A key decision would be whether the Commission should be run on a collegiate basis by a body consisting of the other watchdogs, or whether it should be separately constituted to maintain a distance from the watchdogs. There are also important questions of relations with the various parliamentary standards bodies. At present, both the executive and the parliamentary bodies meet informally from time to time at the invitation of the chair of CSPL. Any formal involvement of the parliamentary watchdogs would raise questions of parliamentary privilege and prerogatives. That points to a more informal involvement of the parliamentary standards bodies.

6.11 This model would preserve CSPL as a separate body, as now, not being part of the system but standing at one remove in order to look at the overall standards scene and make recommendations to government and more broadly. Somebody certainly needs to have an overview of the whole system, and keep it under review. At present, CSPL looks at aspects of the standards landscape, though only seldom, as in its 2021 report, at the constitutional regulators as a whole. It does not see its role as being one of structured oversight of the entire standards landscape or of reviewing how the whole system works. It does not seek to challenge the constitutional regulators, and its informal convening role of arranging occasional meetings of regulators is essentially to improve understanding. Its longstanding policy of not getting involved in individual cases has been a major advantage over the life of CSPL. Such a body cannot incorporate – as opposed to consult – individual regulators or watchdogs, since this would blur the distinction between the two roles. This model creates the risk of overlap, and partial duplication, between the new Commission and CSPL and the danger that over time CSPL might wither away as the main focus of attention is the new Commission.

A convening and coordinating body subsuming CSPL

6.12 In the third model, the Commission as an umbrella body could subsume CSPL. This would be much more than a rebranding of CSPL, since its role would change to more of an oversight function. It would not only be on a statutory basis but it would also have the various convening and co-ordinating functions described above. These go much further than its current responsibilities. It would also conduct regular – perhaps five yearly – reviews of the governance, independence and accountability of the individual regulators. The main advantage of such a solution would be to avoid duplication and to provide a clear focus and higher profile for oversight of the regulation of standards in public life. The main disadvantage is of blurring the lines between a detached oversight of standards issues, as currently provided by CSPL, and a more structured oversight role with responsibilities for strengthening operational co-ordination.

6.13 While the government, and in particular the Prime Minister, should set the tone for standards in public life – in practice as well as aspiration – the new Commission should have the

specific role of participating in, and at times leading, public debate on these issues. This is, of course, what CSPL has done from time to time, though successive chairs have generally been cautious in their public pronouncements. CSPL has performed a very valuable role and its well-researched and balanced reports have led to important changes in, and improvements to, the standards landscape. But in recent years its reports – for instance, on local government, and transparency in party funding – have been brushed aside and, at best, only partially implemented. That again is a case for strengthening CSPL's authority and resources in whatever structure it has. But that would be much clearer if there was not duplication with a new Commission.

Conclusions

6.14 Before committing to mergers of existing bodies and/or an Ethics and Integrity Commission, it is necessary to be clear about the question to which it is the answer. The core problem, on which all commentators are agreed, is that many of the existing watchdogs are too weak. The remedy for that weakness is to strengthen them: by bolstering their independence, giving them more effective powers, and putting them on a statutory basis. That could be done without any mergers. So the case for merger must be separate, that it adds value beyond strengthening the existing watchdogs. The added value might come from:

- Greater effectiveness or clout from a larger organisation
- Sharing of expertise, at board and staff level
- Shared resources, leading to efficiency savings
- The need to make fewer appointments, if some boards are merged
- Less fragmentation leading to greater public understanding.

6.15 All of these points are contentious. Take just one, the argument that mergers would lead to economies of scale. The Independent Adviser, ACOBA, HOLAC, OCPA and CSPL are all tiny operations, with combined budgets of around £1m (see Table 2.1). They are mainly staffed by civil servants on secondment, and housed by the Cabinet Office. But the staff already help each other out during peaks and troughs, so it is hard to argue that merger would achieve significant savings or economies of scale.

6.16 The key argument against merger is that the constitutional watchdogs perform very different roles and functions which would be blurred by being subsumed into a single Commission. Labour seem to have accepted that, since they no longer talk of a single Commission subsuming all the watchdogs. The choice therefore is between the three models outlined above: a regulator subsuming the Independent Adviser and the ministerial side of ACOBA; or an umbrella body, which could exist alongside, or itself subsume CSPL.

6.17 The difficulty with merging the Independent Adviser with ACOBA is that they do perform different functions; it is awkward to marry a single office holder with a committee; plus the risk of regulatory divergence if the Business Appointment Rules are policed by two different bodies. For these reasons, our own preference is that an Ethics Commission should

primarily be an oversight and convening body separate from the individual regulators, which would continue as separate bodies.

6.18 Whatever else is done, there is a case both for strengthening the CSPL and for raising its profile. We do not, however, believe there is room for two umbrella bodies. To avoid duplication, CSPL could emerge as the new Commission. That would not be just changing the name. While its primary role should remain as oversight and not involve investigation of specific complaints, the new Commission should have greater authority not only by having statutory backing but also by being given a more specific goal of leading debate on standards issues. The CSPL's current informal meetings of the regulators should also be explicitly recognised in a convening role, though this should not be over-formalised or affect their individual operations and accountabilities. Moreover, there are advantages in continuing to involve the parliamentary regulators, though on an informal basis. This change would also mean a review of how members of CSPL/the Commission are appointed: Labour envisages transferring the initiative for appointments to parliament from the executive, and it would need some modest increase in resources and staffing. More generally, both the existing regulators and the new Commission should have a closer and more regular engagement with parliament in reporting and being held to account.

6.19 This package offers a large element of continuity – in maintaining the separate roles of the existing regulators – but also offers a fresh start in strengthening their independence and powers, and in creating a new Commission to provide leadership on standards matters. CSPL could swiftly be given a stronger role and functions by being issued with new terms of reference by the Prime Minister, asking the committee to provide a single portal explaining the role of the other watchdogs, to convene regular meetings, conduct regular reviews, be their collective voice, and generally lead the debate on standards issues. The PM could signal the intent to rename CSPL as the Ethics and Integrity Commission when it is given a statutory foundation; or it could be renamed at this early stage, by administrative means.

6.20 These proposals would significantly strengthen scrutiny of the executive on standards issues, and be more transparent and accountable than the present system.

Chapter 7. Strengthening the existing constitutional watchdogs

7.1 There is general agreement in all the recent reports (CSPL, PACAC, Boardman, Brown, Grieve, IfG) that the constitutional watchdogs who regulate the executive need strengthening. Chapter 6 concluded that there is a strong case for a body that oversees and coordinates the system of watchdogs, but that the existing regulators should remain independent. This chapter therefore focuses on ways in which those existing regulators could be strengthened: in terms of their legal basis, powers of initiative, enforcement powers, resources, staffing and budgets, and method of appointment.

Firmer legal basis

7.2 The Civil Service Commission and the Registrar of Consultant Lobbyists are the only watchdogs based in statute. The Commissioner for Public Appointments comes under an Order in Council; while the Independent Adviser, ACOBA, HOLAC, and CSPL are all creatures of the prerogative. As such, they are vulnerable to having their wings clipped. The possibility of abolition of one or other of them has been occasionally floated: David Cameron was tempted to abolish CSPL, and Boris Johnson showed no interest in filling the vacancy left by the resignation of Lord Geidt as Independent Adviser.[127] The firmest legal protection against abolition would be to base the watchdogs in statute, like the Civil Service Commission. Putting them into legislation would help to define more clearly their role, functions and powers; appointment; funding; and accountability. Legislation to put the Independent Adviser, OCPA and ACOBA into statute was contained in Lord (David) Anderson's Public Service (Integrity and Ethics) Bill, introduced in September 2022, and re-introduced in December 2023.[128] Legislation to put HOLAC on a statutory basis was contained in Lord (Philip) Norton's House of Lords (Peerage Nominations) Bill, but it too made no further progress after its second reading in November 2022, after a distinctly cool reception from ministers, despite overwhelming support from peers in the debate.[129]

Powers

7.3 As for powers, the most important are for watchdogs to have power to initiate inquiries of their own motion, to obtain information, to publish reports in their own time, to say whether Codes have been broken, and to recommend appropriate sanctions, or state how serious

[127] Liz Truss also wavered on the issue during her leadership campaign: Murray J., 'Liz Truss refuses to commit to appointing ethics adviser', *The Guardian*, 23 August 2022.
[128] See https://bills.parliament.uk/bills/3332.
[129] House of Lords Hansard, 18 November 2022, cols 1091-1129.

was the breach. But each watchdog performs different functions, so they need to be considered one by one in terms of the adequacy of the powers to fulfil their functions.

Stronger powers for the Independent Adviser

7.4 The powers of the Independent Adviser on Ministers' Interests were strengthened in 2022 in three respects (see para 2.24). The Adviser does now have power to initiate inquiries after consulting the Prime Minister; if the Prime Minister decides to veto an inquiry, the Adviser can require the reasons for the veto to be made public. That already gives the Adviser a strong hand; but on balance we believe they should have power to initiate their own inquiries without the need for the Prime Minister's consent. That unrestricted power would potentially expose the Adviser to vexatious or partisan complaints;[130] but the Parliamentary Commissioner for Standards is in the same position, and manages to resist pressures to open investigations deemed to be frivolous or vexatious. The Independent Adviser should also have power to publish their own reports, to say whether the Code has been broken, and to advise whether the breach was serious. Again, that is the role performed by the Parliamentary Commissioner for Standards, who in advising on the seriousness of the breach, summarises the aggravating and mitigating factors in reports to the Standards Committee. And it was the practice followed by Sir Laurie Magnus in his investigation into Nadhim Zahawi's tax affairs, when he concluded that Zahawi's failure to make a full declaration 'constituted a serious failure to meet the standards set out in the Ministerial Code'.[131] That would still leave the final decision on a minister's fate, whether justifying dismissal or a lesser sanction, with the Prime Minister as the ultimate guardian of the Ministerial Code.

Stronger powers for HOLAC

7.5 There is widespread agreement that HOLAC needs strengthening, but less agreement about how far that should go, because it plays into wider questions about Lords reform. HOLAC currently performs two functions: it advises the Prime Minister on the propriety of candidates nominated by the parties; and it vets its own nominees for Crossbench peerages on the basis of the contribution they could make to the Lords – in short, their suitability. After Boris Johnson ignored previous convention and HOLAC's advice about the propriety of appointing the Conservative donor Peter Cruddas to the Lords, there is a strong case for giving HOLAC a power of veto over party nominations.

7.6 If a new Prime Minister agrees to follow HOLAC's advice, they would in effect be granting HOLAC a power of veto. That could be a first stage before HOLAC is put on a statutory basis, including defining its powers of veto, and a stronger and more independent system for appointing its members.

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[130] Yi Zhu, Yuan 'Upholding Standards; Unsettling Conventions', Policy Exchange January 2024.
[131] Letter from Sir Laurie Magnus to the Prime Minister, 23 January 2023, para 15.

7.7 There is also growing support for HOLAC to advise more widely on the suitability of such party nominees, based upon their likely contribution to the Lords. In her pre-appointment scrutiny hearing, Baroness (Ruth) Deech emphasised that membership of the Lords is not just an honour, but a working job.[132] And to demonstrate suitability for the role, she suggested that the party leaders should provide a statement in support of their nominations, together with a statement from the nominee.[133]

7.8 Another dimension of suitability is ensuring diversity in the Lords (not just gender or ethnic minority, but geographic diversity, diversity of professional experience, etc). It may be difficult for the parties, particularly smaller ones, to offer diverse lists on their own, but to provide a spur, HOLAC could be required to monitor diversity in the Lords and include an analysis in its annual report. A model could be the analysis of diversity in OCPA's annual reports.

7.9 A further role for HOLAC could be to monitor the number of new creations to the Lords, which have undermined any hope of reducing the size of the chamber. This depends on there being political will to reduce the numbers, with the Prime Minister stating that there is to be a maximum size for the chamber, or this being set down in legislation. Once that instruction is given, HOLAC could monitor it, and call for nominations as vacancies occur. That would have to be managed either through the Burns Committee's 'two-out-one-in' formula, or through there being an agreed (between the parties) reduction in numbers before the process began.[134] An essential part of a sustainable appointment system is also for there to be a formula for sharing out seats between the parties (and Crossbenchers).[135] Again, if a formula is agreed (or just proclaimed) HOLAC could be given responsibility to police it. These proposals would transform HOLAC from being essentially an advisory vetting body into a more active role.

Stronger powers for ACOBA

7.10 There is also widespread agreement that ACOBA needs strengthening: because of its lack of enforcement powers, its own chair Lord Pickles has described it as toothless.[136] In June 2022 he expressed frustration at the lack of progress in the previous 12 months; over 12 months later, not much further progress appears to have been made. The Rules remain those published in 2017, despite ACOBA urging basic changes 'which can be implemented in a matter of weeks'.[137] The government remains committed to phasing in an employment law

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[132] PACAC Pre-Appointment Hearing for Chair of HOLAC, HC 1906, 24 October 2023, Q 13.
[133] Ibid, Q 22.
[134] House of Lords, *Report of Lord Speaker's Committee on Size of the House*, October 2017. Russell M., *House of Lords reform: navigating the obstacles*, Constitution Unit, November 2022.
[135] Russell M., ibid, pp 27-30. The formula should also take account of people initially appointed to the Lords as ministers, who serve for relatively short periods, and then retire to the government back benches.
[136] Cabinet Office, Correspondence between Lord Pickles, chair of ACOBA, and Lord True, Minister of State, Cabinet Office, June 2022.
[137] Ibid.

solution, through amending civil service contracts, and introducing a 'deed of undertaking' with ministers, rather than legislation.[138] But no timetable has been set, and it remains unclear whether any enforcement action will be taken, or by whom. Not surprisingly, Lord Pickles has warned that any non-statutory approach, in order to be taken seriously, will need a meaningful sanctions regime including the ability to impose financial penalties.[139]

7.11 In the next parliament giving ACOBA statutory status will be back on the agenda. Legislation could provide ACOBA with power to impose financial penalties, and to seek injunctions; its enforcement powers could extend to employers as well as prospective employees. It will not be straightforward: the enforcement provisions in the Lobbying Act 2014 run to nine detailed sections. But they show that a statutory enforcement regime is perfectly feasible, and enables the lobbying Registrar to take effective enforcement action when required.[140]

7.12 Legislation could also consider closer integration of the work of ACOBA with that of the lobbying Registrar: ACOBA exists to prevent former ministers and senior officials from profiting from their contacts in Whitehall, including by lobbying. Nigel Boardman recommended extending the regulation of lobbying to include former ministers and civil servants, and the PCRC recommended extending the regulatory regime to include in-house lobbyists as well as consultants and PR firms.[141] At the least, the lobbying register could be expanded to include former senior Crown servants and former ministers who take on in house lobbying for a set period.

7.13 Stronger powers will need to be accompanied by adequate resources. The current system is cumbersome, with all appointments, even unpaid and honorary ones having to go through ACOBA. That places a big burden on an organisation with a tiny staff. It has no spare resources for enforcement, even if it had the necessary powers. It has no capacity for systematic follow up.[142] Nor does ACOBA have the capacity to monitor compliance by departments in relation to appointments below the level of ministers and top civil servants. One way to increase the resources for ACOBA would be to charge fees, as happens with the lobbying Registrar.

7.14 A further way of making ACOBA's workload more manageable would be to turn around the Business Appointment Rules and re-write them as a series of presumptions applying for (say) two years to all ex-ministers and ex-senior officials. They could automatically be enrolled on the lobbying Register for two years after their departure. The presumptions in the re-written Business Appointment Rules could include prohibitions against employment with an actual or prospective departmental contractor; no uninvited contact with the former department(s); no lobbying of government or arms length bodies; no use of privileged

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[138] Cabinet Office, *Strengthening Ethics and Integrity in Central Government*, CP 900, July 2023, pp 7-11.
[139] ACOBA's Response to the Deputy Prime Minister regarding government response to CSPL, Boardman and PACAC reports, 20 July 2023.
[140] In 2021-22 the Registrar issued nine notices to impose civil penalties, under his powers in Part 1 of the 2014 Act.
[141] Nigel Boardman, *Review into the Development and Use of Supply Chain Finance, Part 2: Recommendations and Suggestions*, August 2021, Recommendation 16. Political and Constitutional Reform Committee, *Introducing a statutory register of lobbyists*, July 2012, HC 153 2012-13, p16.
[142] But ACOBA will follow up if breaches are brought to its attention: see for example its letter about Rupert McNeil, former Chief People Officer in the civil service.

information; no engagement on a policy or issue where there had been specific involvement or responsibility; no involvement with any bids or contracts. Application to ACOBA would only be needed where an individual sought relaxation from one or more of the presumptive prohibitions. Individuals would have to enter details of all appointments and consultancies on the register, with a requirement to certify that conditions had been complied with; and ACOBA would have power to call in an appointment for closer scrutiny and possible stronger prohibitions.

Stronger powers for OCPA

7.15 In the case of OCPA, the key to strengthening oversight is to ensure greater independence on the advisory interview panels. The Commissioner should be involved in choosing the Senior Independent Panel Member for all significant appointments, rather than, as now, just being consulted and having an effective veto over a SIPM chosen by a department whom the Commissioner regards as insufficiently independent. The latter should have the duty, not just the option, of reporting to the Commissioner on the conduct of the appointments processes. In addition, a majority or all members of advisory interview panels (apart from the civil service member) for the appointment of constitutional watchdogs should be independent of party and departmental links.

Stronger powers for the Lobbying Registrar

7.16 The current Registrar, Harry Rich, has made clear in evidence to PACAC's post-legislative review of the Lobbying Act 2014 that the regulatory regime badly needs strengthening.[143] The most important change would be to require those lobbyists who are currently covered by the regime to record whom they have lobbied, when, and on what subject; and to extend the reporting requirements to communications with Special Advisers. That could be done simply by amending the Regulations made under the Act. Other changes would require primary legislation: to remove the exemption for those below the registration threshold for VAT; to extend the reporting requirements to contacts with Directors General, or Directors; to remove the exemption for 'incidental lobbying' (as recommended by Nigel Boardman). A much bigger change would be to extend the regulatory regime to in-house lobbyists, as recommended by industry representatives of the Chartered Institute of Public Relations, and the Public Relations and Communications Association.[144] David Cameron's activities on behalf of Greensill did not count as registrable consultant lobbying because he was an in-house lobbyist as an employee of Greensill.

7.17 An even bigger change would be to enlarge the role of the Registrar so that ORCL supervised both sides of the lobbying divide: empowering them to monitor departments' data releases of meetings with ministers and senior officials, as well as the activities of consultant lobbyists. All the evidence to PACAC's post-legislative review of the Lobbying Act 2014 (including from the Registrar) shows that the biggest obstacle to full transparency is the inadequacy of departments' quarterly returns, which are often incomplete, late or non-

[143] PACAC Post-Legislative Scrutiny of Lobbying Act 2014, oral evidence 15 November 2022, QQ 114-15.
[144] Ibid Q 60.

existent. The Cabinet Office have undertaken to bring all departmental data releases into a single, centralised return. One way to incentivise Whitehall and Cabinet Office to raise their game would be to empower the Registrar to monitor their performance, and investigate complaints about inadequate returns. If this was felt unsuitable for the Registrar, the task could be given to the Information Commissioner, as part of their wider responsibility for promoting greater transparency.

Summary of possible changes

7.18 In conclusion, we have put into a summary table all the changes suggested so far to strengthen the powers of the constitutional watchdogs. Table 7.1 below lists the changes under two headings, minimum strengthening, and further strengthening, depending on how far the government and parliament want to go. The minimum changes can be achieved without legislation; but so can many of the further changes. The distinction between the two columns is inevitably arbitrary; they are displayed in this way to show the range of options available. Each case must be considered on its individual merits: the government may decide that some watchdogs need strengthening more than others.

Table 7.1: Strengthening the powers of constitutional watchdogs

Constitutional Watchdog	Minimum strengthening	Further strengthening
Independent Adviser	Power to initiate own inquiries. Power to publish own reports	Power to state if Ministerial Code has been broken. Power to recommend appropriate sanctions
HOLAC	Parties to provide reasons why their nominees are suitable. Power to monitor diversity in the Lords	Power to veto party nominees on grounds of propriety. Power to monitor numbers in the Lords
ACOBA	Amend Rules to enable ACOBA to focus on most serious risks. Power to impose financial penalties	Power to seek injunctions. Power to impose penalties on employers.
OCPA	Power to appoint SIPM for significant appointments. Majority of interview panel for constitutional watchdogs to be independent members	
Lobbying Registrar	Require lobbyists to record who was lobbied, about what, and when. Make communications with Special Advisers registrable.	Make communications with DGs and Directors registrable. Remove exemption for those not registered for VAT. Extend regulatory regime to in-house lobbyists. Empower Registrar to supervise data releases by Whitehall

Staffing and resources

7.19 A further factor affecting the independence of constitutional watchdogs is the allocation of resources: who determines their budgets and their staffing. At present this is determined by the Cabinet Office, which is the sponsoring department for all the regulators considered in this report. The regulators are housed by the Cabinet Office; their staff are provided by the Cabinet Office; their budgets are approved by the Minister for the Cabinet Office. For organisations with very small staff numbers it makes sense for staff to be shared (as they are, for example, between the Civil Service Commission, OCPA and ACOBA), so that they can help each other out during peaks and troughs, and also provide common administrative services. But they are clearly vulnerable to arbitrary or excessive cuts in their staffing and their budgets. To protect them against such cuts a more independent process may be required. This could involve an external check, without removing budgetary control from the Cabinet Office: for example, consulting the chair of PACAC after an estimate has been published covering the specific budgets of the watchdogs and explaining any changes from previous plans and budgets. The adverse publicity from exposing attempts to reduce what are already tiny budgets could help to protect them.

Stronger political support

7.20 We close the first part of this chapter with two final comments. First, independent regulators need to be supported with words as well as effective policy frameworks. When there is a political firestorm they can come under attack, with no one to defend them or explain their role. They need mutual support, and public support, of the kind which the chair of CSPL (Lord Evans) gave during the Owen Paterson affair by publicly defending the system of regulating standards in parliament.[145] But second, they also need support from the top of government. The clearest signal which a Prime Minister could give of his determination to lead a government of integrity and accountability would be to devote a speech explaining how the government plans to do that. It would need to consist of actions, not just words, with commitments to support constitutional watchdogs; uphold their independence; follow their advice; and comply with their rulings. That would signal a clear recognition of the importance of constitutional watchdogs, and determination to break from previous lapses in standards.

Methods of appointment and dismissal

7.21 One of the most important ways of strengthening the independence of constitutional watchdogs is to ensure that the people appointed have the right skills and experience and approach to the role: that they are competent, non-partisan and independent-minded. Appointment is by ministers, for most watchdogs the Prime Minister; but there is a range of

[145] Lord Evans, Keynote speech to Institute for Government, 4 November 2021.

measures to ensure the selection and short listing of candidates is based on merit, and the competition is properly regulated, with parliament providing a final check.

Appointment by open competition

7.22 The first and most important requirement to achieve this is appointment by open competition: which is the norm for all the watchdogs except the Independent Adviser on Ministers' Interests. The statutory requirement for the First Civil Service Commissioner is that 'A person's selection for recommendation must be on merit on the basis of fair and open competition'.[146] Open competition does not preclude the use of head hunters, which is commonplace for senior roles; nor does it preclude ministers proposing their own candidates; but such people must then compete alongside everyone else. The reason the government gives for maintaining that the Independent Adviser should continue to be a direct ministerial appointment is 'the close relationship of trust that must exist between the Independent Adviser and the Prime Minister'.[147] This is not particularly convincing: trust should come from the knowledge that a person has been selected on merit, with the ultimate choice being made (or signed off) by the Prime Minister, as it is for all the other watchdogs.

Political activity

7.23 The second requirement, to ensure that those appointed are non-partisan, is that they have not engaged in political activity. This is not straightforward, but there is a statutory definition in the requirements for the non-political members of the Electoral Commission: that within the last five years they have not been members, donors, officers, employees or candidates of a registered political party, nor held elective office.[148] To this the Governance Code on Public Appointments adds having publicly spoken on behalf of a political party.[149] Such definitions would still not preclude the appointment of allies and tacit supporters who are not formally disqualified, but who are known to be sympathetic to one political party. There is no legally watertight way of screening out such people; but it is an issue which can be probed at the pre-appointment scrutiny hearing, discussed at paras 7.30-31 below.

Cross-party consultation

7.24 Some appointments, such as the First Civil Service Commissioner, are subject to consultation with the opposition party leaders in parliament, and the First Ministers for Scotland and Wales.[150] Consultation with the opposition parties is particularly desirable in the run up to an election: appointments made in the last year of a parliament can endure through the whole of the next parliament.

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[146] CRAG 2010, Sch 1, para 2(3).
[147] Cabinet Office, *Strengthening Ethics and Integrity in Central Government*, CP 900, July 2023, p14.
[148] PPERA 2000 Sch 1 para 3(3).
[149] Cabinet Office, *Governance Code on Public Appointments*, December 2016, para 6.1 n4.
[150] CRAG 2010, Sch 1, para 2(4) and (8).

Regulation by OCPA

7.25 The fourth requirement is that the recruitment exercise is subject to regulation by the Commissioner for Public Appointments. In recent years, recruitment of all the watchdogs except the Independent Adviser has followed the principles of the Governance Code for Public Appointments, even if the Commissioner has not been involved to provide oversight. A formal role for OCPA could be made a mandatory requirement.

Senior Independent Panel Members

7.26 Fifth, the government has accepted that these appointments should count as significant public appointments, requiring a non-partisan Senior Independent Panel Member (SIPM).[151] But the government has not accepted further recommendations that the Commissioner should be consulted on the composition of the panel, which should have a majority of independent members; nor that the SIPM should be required to report to the Commissioner on all such appointments.[152]

Chairs of collegiate watchdogs

7.27 The government has agreed that where watchdogs are committees (ACOBA, CSPL, HOLAC), the chair of the watchdog should chair the assessment panel for the recruitment of the other members (save for those nominated by the political parties). A further requirement could be that the chair has a veto over such appointments. This is the case for the Civil Service Commission, and it has enabled the First Civil Service Commissioner to resist the appointment of government supporters to the Commission.

Compiling the shortlist

7.28 There has been a tendency in some cases for assessment panels to include borderline candidates on the shortlist, especially if they are likely to be favoured by the minister. To guard against this tendency, one suggestion has been to require panels to list candidates deemed appointable in order of merit, to make it clear which candidate the panel considers to be the most suitable. But if ministers are not bound by the ranking, the exercise seems pointless. The important thing is for panels to be more robust in not including borderline candidates as being above the line, simply to please ministers. That is why panels should include a majority of independent members; and why the SIPM should report any concerns back to the Commissioner. It would be a step too far for the panel to submit a single name, save in cases where only one candidate is deemed appointable: ministers must be presented with a choice for them to have a stake in the outcome.

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[151] Cabinet Office, *Strengthening Ethics and Integrity in Central Government*, CP 900, July 2023, p14.
[152] Ibid p13.

Appointment to be non-renewable

7.29 To strengthen watchdogs' resistance to pressure whilst in office, appointment should be for a single, non-renewable term. This has become the norm for almost all the constitutional watchdogs, including the Independent Adviser, with the non-renewable term being for five years. The one exception is the lobbying Registrar, who can be re-appointed for two further terms of three years. Since that appointment is less politically sensitive, it raises fewer concerns. But if the role were enlarged to include regulating Whitehall, as proposed in para 7.17, it would become more sensitive, and should be made non-renewable.

Pre-appointment scrutiny hearings

7.30 A final check against political patronage is provided by pre-appointment scrutiny hearings by PACAC. At present, ministers send a letter to the committee before the hearing recommending the candidate, with details of their CV and the recruitment exercise. The committee also sends a written questionnaire to the candidate to complete. After the hearing the committee can express concerns and be minded to issue a negative report. In such cases there should be a pause for reflection of seven days, to allow the government and candidate to consider whether to withdraw in light of the committee's reservations.[153] If the government is determined to proceed, PACAC suggested granting a power for committees to require ministers to defend their decision in a short debate on the floor of the House.[154] A lesser alternative would be to require the appointing minister to appear in person before the committee to justify their decision: it seems wrong that the onus for justifying an appointment is placed upon the candidate at their pre-appointment hearing, and not the minister. If there is controversy about the candidate even before the pre-appointment hearing, the minister could be required to appear with the candidate at that hearing.

7.31 A stronger check, if one was desired, could be to follow the process of appointment for the Parliamentary Ombudsman. Although the appointment is made by the King on the advice of the Prime Minister, since 2011 the practice has been for parliament to take the lead in the appointment process. In 2016 and in 2023 the recruitment exercise was run by the House of Commons, in close cooperation with the Cabinet Office, and with the help of head hunters. The selection panel was chaired by a senior parliamentary official, but included the chair of PACAC and a Whitehall Permanent Secretary, and reported to the Prime Minister.[155]

Methods of dismissal

7.32 Watchdogs who are appointed under the prerogative can be dismissed at will. This includes the Commissioner for Public Appointments: the 2019 Order in Council is silent about the appointment and dismissal of the Commissioner. This is covered by the Commissioner's contract specifying the terms of appointment. Constitutional watchdogs need better protection against arbitrary or wrongful dismissal. A precedent is available in the provisions

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[153] PACAC, *Pre-Appointment Hearings: Promoting Best Practice*, September 2018, HC 909, para 46.
[154] Ibid.
[155] Details of the 2023 recruitment exercise are here.

for the removal from office of the Civil Service Commissioners: they can be removed only if they

- have missed three successive meetings without permission
- have been convicted of a criminal offence
- have been declared bankrupt
- or are unfit or unable to carry out the functions of their office.156

7.33 The power to remove the Commissioners rests with the King on the recommendation of the minister. If stronger safeguards were required, removal from office could also require the consent of parliament. This could simply take the form of requiring the consent of PACAC, mirroring its role in pre-appointment scrutiny; or it could require an Address from the whole House of Commons (the procedure for removing an Electoral Commissioner); or following a resolution passed by both Houses of Parliament (the procedure for removing the Information Commissioner, and High Court judges).[157]

Strengthening watchdogs' accountability

7.34 The stronger the independence of constitutional watchdogs, the stronger their accountability needs to be. Their main line of accountability is to parliament; but they are also accountable to the public, via their websites and presence on social media. Furthermore, they are accountable to the courts, through judicial review; to the NAO for their expenditure and value for money; to the Information Commissioner for their openness and transparency; and to the Parliamentary Ombudsman for maladministration. The watchdogs vary greatly in their transparency: most are very good, but some have web pages hosted by the Cabinet Office which are fragmented and hard to navigate.

Accountability to parliament

7.35 Accountability to parliament is very uneven, depending on the attitudes of chairs of select committees, and of the regulators themselves. The House of Lords has shown relatively little interest in constitutional watchdogs. In the Commons, pre-appointment scrutiny hearings can be poorly attended by MPs; but the blame for that often lies with the government, which is frequently slow in conducting recruitment exercises, but then demands an urgent pre-appointment hearing.[158] This can be difficult for select committees to arrange at short notice outside their normal meeting cycle.[159]

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156 CRAG 2010, Sch 1 para 5.
157 PPERA 2000, Sch 1 para 3(4). Supreme Court Act 1981, s 11(3). Data Protection Act 2018, Sch 12 para 3.
158 See e.g. the criticism from PACAC over the delays in the appointment of Harry Rich, leading to a rushed pre-appointment hearing in September 2018, paras 12-14.
159 PACAC repeated its criticism over delays in the appointment process in the report on its September 2022 pre-appointment hearing with William Shawcross, para 10.

7.36 The best way to improve attendance would therefore be for the government to give more notice. A further way could be to strengthen the powers of select committees in pre-appointment hearings: members would be more likely to attend if a negative report forced ministers to reconsider (see para 7.30). Another way to increase their engagement would be a requirement on the government to consult the relevant select committee every time the Codes are revised and updated: see para 7.45 below. But select committees like PACAC cover a wide range of subjects, with seven inquiries under way in February 2024; so it also requires active engagement on the part of the watchdogs to maintain the interest of MPs. Regulators send their annual reports to the committee, and can, and should, supplement this by keeping in touch with the chair or the committee's senior staff about urgent matters. This could be in their own interest, as well as strengthening their accountability: when they come under fire the committee is more likely to come to their aid if it has a good understanding of their role and their work.

Accountability to the public

7.37 Regulators are also accountable to the public, via their websites, publishing annual reports and minutes of monthly meetings, and their presence on social media. Their websites vary greatly. Four of them have their own websites, with the web address ending in independent.gov.uk. These websites (of the Civil Service Commission, HOLAC, OCPA and the Registrar of Consultant Lobbyists) are clearly laid out, with their latest publications, annual reports, and Commissioner biographies easy to find. The remainder (ACOBA, CSPL and the Independent Adviser) rely on the Cabinet Office for their web pages, with the result that their information is much harder to find. CSPL does the best, within the rigid confines of GOV.UK web pages, and its chair has published an occasional blog.[160] ACOBA and the Independent Adviser are much worse, with home pages which are hard to navigate; ACOBA publishes all its correspondence, but little else. It does not publish regular annual reports, the latest (not accessible from its home page) being for the two years 2018-19 and 2019-20.[161] All the watchdogs would benefit from having their own independent websites, which would enable them to publish information in a much clearer and more accessible way.

Accountability to the courts, and the Ombudsman

7.38 The watchdogs are also accountable to the courts for the legality of their policies and their decisions, but in practice very few actions for judicial review have been taken against them. HOLAC was sued by the businessman Raminder Ranger in 2015 for disclosure of correspondence relating to his application to be a Crossbench peer; his claim was dismissed.[162] A more direct way of ensuring legality could be to provide for a right of appeal to the First-tier Tribunal (General Regulatory Chamber), as applies to decisions of bodies like the Information Commissioner and the lobbying Registrar; but that could only be provided in statute. Appeals could only be made against decisions, not advice – in many

[160] The blogs are listed in CSPL's annual report 2022-23, p11.
[161] ACOBA Twentieth Annual Report 2018-19 and 2019-20.
[162] *Ranger v House of Lords Appointments Commission* [2015] EWHC 45 (QB) (20 January 2015). Ranger became a Conservative donor, and was appointed a Conservative peer in Theresa May's 2019 resignation Honours.

cases the watchdog advises, but it is ministers who decide. For non-statutory bodies, it might be possible to create a right of appeal to an Independent Expert Panel like the one recently established by the House of Commons to hear appeals against decisions by the Standards Committee, as well as appeals in ICGS cases (see para 2.47).

7.39 The watchdogs also have formal complaints procedures, in compliance with the Cabinet Office complaints procedure. Two of the watchdogs (CSPL, and the lobbying Registrar) come under the jurisdiction of the Parliamentary Ombudsman, but the remainder do not.[163] The logic of a purely advisory, policy body like CSPL coming under the Ombudsman is hard to understand; but caseworking bodies which handle appointments (like ACOBA, the Civil Service Commission, HOLAC and OCPA) should come within the purview of the Ombudsman, to be a check against maladministration, including delay.

Audit and freedom of information

7.40 For the economy, efficiency and effectiveness of their expenditure, the watchdogs are audited by the NAO. ACOBA and OCPA are included within the audited accounts of the Civil Service Commission. As equally small operations, HOLAC and the Independent Adviser do not publish separate accounts: the HOLAC secretariat is provided by the Honours and Appointments Secretariat of the Cabinet Office, while the Independent Adviser is supported by the Cabinet Office Propriety and Ethics team. All the regulators are subject to FOI, and they all publish information on how to make FOI requests. But they vary in the publication of their responses. CSPL publishes all its responses to FOI requests; the Civil Service Commission publishes none; bodies like ACOBA and OCPA have published a few, now out of date, the most recent being from 2018. A model the others could follow is HOLAC, which publishes all its responses on a separate page: it received 52 FOI requests in the five years from 2018 to 2022.[164]

External reviews

7.41 There is one further potential layer of accountability for the individual regulators, in that they could be made subject to periodic external reviews. All arms length bodies are meant to be subject to regular external review, but in practice such reviews are patchy, with only one third of planned reviews of arms length bodies being undertaken between 2016 and 2020. For some bodies, external review is a statutory requirement: the OBR must undergo such a review at least once every five years.[165] For the small bodies considered in this report, that would seem excessively heavy handed. But there is a further possibility, in that they all come under the overall remit of CSPL. CSPL has conducted occasional reviews of other constitutional watchdogs, such as the Electoral Commission.[166] It could, if it wished or upon request from the government, conduct an external review of any of the other regulators. CSPL could review a regulator's governance, and make recommendations on how to

[163] Bodies within the Ombudsman's jurisdiction are listed here.
[164] HOLAC lists all its FOI requests here.
[165] Budget Responsibility and National Audit Act 2011, Sch 1 para 16.
[166] CSPL, *Review of the Electoral Commission*, January 2007.

strengthen its independence, its accountability, and its general effectiveness in upholding standards in public life.

Ownership and approval of Codes of Conduct

7.42 There are multiple Codes of Conduct produced by the executive to guide the behaviour of ministers and officials:

- The Ministerial Code
- The Civil Service Code
- The Diplomatic Service Code
- The Code of Conduct for Special Advisers
- The Governance Code for Public Appointments
- The Business Appointment Rules.

7.43 At present only the Civil Service Code, Diplomatic Service Code and Code of Conduct for Special Advisers have statutory authority. CRAG 2010 requires ministers to publish these Codes and lay them before parliament; and it prescribes minimum requirements for the Codes, for example that civil servants must carry out their duties with integrity and honesty, objectivity and impartiality. For the Governance Code for Public Appointments, the Order in Council requires the minister to prepare, publish and keep under review a Governance Code which sets out the principles of public appointments, and the practices to be followed. Before changing and publishing the Governance Code the minister must consult the Commissioner for Public Appointments.

7.44 Some Codes are kept under review more regularly than others. The Ministerial Code has been revised and re-issued nine times since it was first published in 1997. The changes were mainly substantive, responding to difficulties which had arisen, rather than reflecting the changing whims of different Prime Ministers.[167] By contrast the Cabinet Manual has remained unchanged since its first edition in 2011, although a substantial revision is now under way.[168] And the Business Appointment Rules have remained unchanged since 2016, despite frequent calls by the chair of ACOBA, Lord Pickles, to update them.[169]

7.45 When the Cabinet Manual was first published in draft in 2010 there was some confusion whether it should be 'owned' by the government or by parliament. It has since become accepted that the Cabinet Manual and the other Codes are the responsibility of the executive,

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[167] Armstrong H., and C. Rhodes, *The Ministerial Code and the Independent Adviser on Ministerial Interests*, House of Commons Library Briefing 03750, March 2023, Chapter 5, pp 40-59.
[168] Letter from Simon Case on Cabinet Manual Update to Lords Constitution Committee and PACAC, 13 June 2023.
[169] Armstrong H., and C. Rhodes, *The Business Appointment Rules* , House of Commons Library Research Briefing 03745, July 2023, Annex 2, pp 31-40.

which has the expertise and drafting resources to produce them. But before publishing or revising the Codes, the executive should be required

- To consult the relevant regulator (Civil Service Commission for the Civil Service Code; ACOBA for the Business Appointment Rules; etc)
- To consult the relevant select committee
- To lay the Code before parliament.

7.46 That will provide parliament with the opportunity to scrutinise the Code or any changes to it, and if there are concerns to question the minister or hold a debate. A further check could be to require formal parliamentary approval of the Codes or any revisions to them; but that might seem excessive, given that many revisions will be relatively minor. The select committee will already have been consulted; it could be given a sifting role. For parliament then to be given a formal power of approval would require legislation, for reasons explained below.

7.47 The nearest precedent for parliamentary approval of a Code is the House of Commons resolution on ministerial accountability in March 1997.[170] It was that very resolution which led to the termination of Boris Johnson's parliamentary career 26 years later, for misleading the House of Commons.[171] The resolution is about the conduct of ministers as MPs in relation to parliament. Parliament can bind its own members by resolution in relation to what they do in parliament, but it cannot bind them in relation to what they do in government. The curiosity about the 1997 resolution is that it was incorporated word for word in the Ministerial Code. This led to some misunderstanding around the Privileges Committee inquiry. Johnson was not being investigated by the committee for a breach of the Ministerial Code (over which it had no jurisdiction), but for a breach of a rule of the House; they just happened to be framed identically.

7.48 So a resolution approving a Code of Conduct applying to things that happened outside parliament's exclusive cognisance would have political effect but nothing more. It would be an expression of opinion, and a potentially powerful one, but it would not bind anyone. To entrench this power of formal approval would require a statutory basis. There are many statutory provisions where Codes or similar are approved – essentially a form of delegated quasi-legislation. The best known example is the Highway Code, but a closer precedent would be the Codes of Practice issued under the Data Protection Act 2018. This requires the Information Commissioner to prepare four separate Codes, and then to consult the Secretary of State, trade associations, and those representing data subjects. The Secretary of State must lay the final version of the Codes before parliament, where they are subject to the negative resolution procedure.[172]

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[170] Ministerial Accountability to Parliament, Hansard 19 March 1997 col 1046.
[171] House of Commons Privileges Committee, *Conduct of Rt Hon Boris Johnson: Final Report*, HC 564, June 2023.
[172] Data Protection Act 2018 ss 121-128.

Chapter 8. Action in the next parliament

8.1 It now appears clear that no further changes to the system of watchdogs will happen in the current parliament beyond the limited set of measures announced in the government's July 2023 response to the CSPL, PACAC and Boardman reports. But the government left open the possibility of legislation in the next parliament;[173] and the Labour Party has announced its own plans for legislation, in a series of speeches by the Deputy Leader, Angela Rayner, though without much further detail.[174] The first part of this chapter is about what strengthening measures can be implemented at the start of the parliament without legislation. The second part is about the options for legislation, as well as the legislative timetable.

Non-legislative measures

8.2 Because so many of the watchdogs are creatures of the prerogative, their role, functions and powers can be altered at the stroke of a pen. So the first part of this chapter sets out a list of changes which could be introduced relatively quickly by a government with the political will to do so. They could be a precursor to the legislative measures discussed in the second part. Indeed there is merit in making these changes while the legislation is being prepared. It will enable the government to test how the watchdogs will operate when given stronger powers; it will reduce the pressure to legislate in haste; it will give the government more time to consult; it will help to ensure that the legislation when introduced is soundly based, and reflects the realities of the changes outlined below. These changes inevitably repeat the strengthening measures listed in paras 7.1 to 7.20. A possible timetable for making the changes and preparing legislation is set out in Annex B.

8.3 The immediate action plan could include:

- The Prime Minister to make an early post-election speech or statement to the House pledging support for upholding the independence of the constitutional watchdogs, following their advice and complying with their rulings. This speech would outline the following non-legislative changes, together with a timetable for consulting on further proposals requiring legislation.

- The Independent Adviser would be strengthened by removing the Prime Minister's residual power to block investigations, and enabling the Adviser to publish their own reports and state whether the Ministerial Code had been breached; while leaving any decision on sanctions with the Prime Minister. This could be done by a simple

[173] 'The Government will allow this reform package to take effect before any further consideration of statutory change, in the next Parliament': Cabinet Office, *Strengthening Ethics and Integrity in Central Government*, CP 900, 20 July 2023, p26.
[174] Angela Rayner MP, Speech to the Institute for Government, 13 July 2023.

statement or letter, which would also promise that future Advisers would be recruited by open competition, regulated by OCPA.

- HOLAC could be given the power to vet nominations from the political parties for suitability, as well as on grounds of propriety. The Prime Minister could also commit to accepting HOLAC's advice, in effect giving it a veto. The PM could also announce a programme for reducing the overall size of the Lords, which ideally would be agreed with the other parties. HOLAC could be charged with monitoring progress in reducing the numbers, and on the scale, nature and diversity of new creations. All this could be done by a parliamentary statement.

- OCPA could be strengthened by ensuring a larger independent element on interview panels for the appointment of constitutional watchdogs. The Public Appointments Commissioner should be involved, rather than just consulted, in the choice of Senior Independent Panel Members needed for such appointments. SIPMs would be required each time to report back to the Appointments Commissioner. This could be done by clarifying or amending the 2016 Governance Code on Public Appointments.

- In addition to strengthening the independence of interview panels, the Prime Minister could announce that in future chairs of collegiate bodies (HOLAC, ACOBA, CSPL) would have to approve the appointment of other board members, as happens with the Civil Service Commission. For some watchdogs the PM could go further, inviting parliament to be involved in the recruitment process alongside the Cabinet Office, as in the appointment of the Parliamentary Ombudsman.

- The Registrar of Consultant Lobbyists could be strengthened by requiring lobbyists to report not just their clients but who was lobbied, when, on what subject, and by what means; and by extending the reporting requirement to Special Advisers. This could be done by amending the regulations by statutory instrument under the Lobbying Act 2014. The PM could also commit to greater transparency through monthly publication of meetings with outside interests by ministers, Special Advisers and Directors General.

- ACOBA is more complicated since an employment law solution would involve rewriting all civil service contracts, and resolving who could bring an action for breach of contract, and breach of ministers' new 'deed of undertaking'. If that does not prove possible legislation will be necessary to give ACOBA enforcement powers. Meanwhile, the Business Appointment Rules could be revised by the Cabinet Office to permit ACOBA to adopt a more selective and targeted approach.

- CSPL could be given revised terms of reference by the Prime Minister, asking the committee to provide a single portal explaining the role and functions of the other watchdogs, to convene regular meetings, conduct regular reviews, and be their collective voice. The PM could signal the intent to rename CSPL as the Ethics and Integrity Commission when it is given a statutory foundation; or it could be renamed at this stage, by administrative means.

The options for legislation

Legislation to create an Ethics and Integrity Commission

8.4 It will be apparent from Chapter 6 that a lot of further work would be required before a new government might be ready to legislate for an Ethics and Integrity Commission. In particular, the government will need to be clear about its objectives: what is the legislation intended to achieve? At its simplest, the objective might be stated as follows: to strengthen the system of ethical regulation, to ensure high standards of conduct by ministers and officials, in order to restore trust in the integrity of government. Expanding this a bit, the objectives might be defined as

- Strengthening the system of ethical regulation in government
- By ensuring that Codes of conduct are properly observed
- And regulators have sufficient powers and resources to monitor and enforce the Codes
- And the system of regulation is transparent and comprehensible, and seen to be effective
- In order to help restore trust in the integrity of government.

8.5 Labour will need to be able to explain what value will be added by a new Ethics and Integrity Commission, beyond what could be achieved simply by strengthening the existing watchdogs. To summarise from the list of different options in Chapter 6, before legislating a new government will first need to decide whether the proposed Ethics and Integrity Commission is to be a convening and coordinating body; or a regulatory body with enforcement powers. And then it will need to decide:

- If it is to be a coordinating body, how to avoid duplication with CSPL
- If it is to be a regulatory body, which of the current regulators it will absorb
- Will it be a complete takeover; a federated organisation; or a much looser structure in which the different watchdogs maintain separate identities?

8.6 Until these questions are answered, it is not possible to work out further policy details. The government may have only one shot at legislation, so it is worth taking time to get the details right. If the government is keen to legislate quickly, then the quickest solution is going to be the simplest. Chapter 6 concluded that the simplest solution which fulfils Labour's commitments would be to put CSPL on a statutory basis, strengthened and re-named as the Ethics and Integrity Commission; coupled with legislation to strengthen the other watchdogs. That is what is covered in the remainder of this chapter.

Legislation to put CSPL on a statutory basis

8.7 Legislation to put CSPL into statute and re-name it as the Ethics and Integrity Commission would need to define its role and functions. In addition to its current functions, it could be required to

- Provide a website portal that points to the different watchdogs, explaining what they do, and how they relate to each other, thus making it easier for citizens to navigate the system
- Convene regular meetings of the other watchdogs, to compare notes and share best practice: this already happens on an occasional and informal basis
- Conduct quinquennial reviews of their governance, independence and accountability
- Be the public voice for all the watchdogs, and lead the public debate on maintaining high standards in public life.

Legislation to strengthen the other watchdogs

8.8 Legislation to strengthen the other watchdogs could be done in the same bill, along the lines of that introduced by Lord Anderson in 2023.[175] The legislation would need to define their roles, powers and functions; methods of appointment and dismissal; lines of accountability; and their funding and staffing. What follows would put into statute the strengthening measures outlined in the first part of this chapter, but go further: some additional powers can only be conferred by statute. Statute would also require more precise definitions of their roles, powers and functions: the brief sketches below would not satisfy Parliamentary Counsel as a sufficiently detailed set of instructions.

- The Independent Adviser would be appointed following an open competition. Legislation would also give the Adviser power to initiate their own investigations; to publish their reports; and to state whether the Ministerial Code had been breached. Any decision on whether to impose sanctions or dismiss ministers would remain with the Prime Minister.
- HOLAC would have statutory power to vet all proposed peerages on suitability as well as propriety grounds, and political leaders would be required to give reasons for their nominations. Further provisions, including statutory limits on numbers, and widening HOLAC's role to monitor or regulate the numbers would depend on any wider decisions on reform of the second chamber.
- Primary legislation would be required to extend the requirement to register with the lobbying Registrar to in-house lobbyists; to extend reporting requirements below

[175] Public Service (Integrity and Ethics) Bill 2023 [HL].

Permanent Secretary level; to remove the VAT registration threshold; and to clarify the exemption for 'incidental lobbying' (under which David Cameron was found not to have breached the regulations when lobbying for Illumina).[176] Legislation would also be required if it were decided to bring Whitehall's reporting requirements within the statutory regime.

- For ACOBA, primary legislation would be a more effective way of giving it teeth than the government's proposed employment law solution. Enforcement powers could include the imposition of financial penalties on ministers and officials who do not follow ACOBA's advice (or do not seek it in the first place).
- Statute would require the appointment of all constitutional watchdogs by open competition regulated by OCPA. The chairs of the collegiate bodies (HOLAC, ACOBA and CSPL) would have a veto over the appointment of other board members.
- The Codes of Conduct would be underpinned by creating a statutory requirement to consult the relevant regulator and select committee. If a further check was required, parliament could be required to approve a Code, and any changes to it.

The legislative timetable

8.9 These are brief sketches; statute requires clearer and more precise definitions. Before legislating, detailed decisions would have to be made about the role; functions; powers; method of appointment, and dismissal; funding; staffing of each of the regulators; and about their accountability. Sch 1 of PPERA 2000 (Electoral Commission), and Sch 1 of CRAG 2010 (Civil Service Commission) provide examples of the matters which need to be defined: both are long and detailed schedules, running to 20-25 paragraphs.

8.10 Consultation and proper preparation of legislation takes time. But it need not be rushed: significant strengthening of the watchdogs can be achieved without legislation (see the first part of this chapter), giving the government time and space to consult and get the legislation right. Ideally there should be a green paper in the first year of a new parliament which forms the basis of the consultation, followed by a white paper announcing the government's legislative proposals. If time permits, the legislation should be published in draft, allowing for pre-legislative scrutiny. Because of its subject matter, the bill could be introduced in the Lords. That could be in the second year, leading to implementation in the third year. A more detailed legislative timetable is at Annex A.

[176] ORCL, Summary of Investigation – Rt Hon David Cameron, 19 October 2021.

Annex A

Legislative timetable

Year	Actions	Comments
Year 1	PM gives speech on standards, with clear commitments to strengthen constitutional watchdogs; uphold their independence; follow their advice; and comply with their rulings. PM sets out plan to review watchdogs' powers and functions, and create possible Ethics Commission. PM appoints Minister for Cabinet Office to lead this work. CO Minister publishes green paper on new regulatory framework, with consultation exercise to be led by CSPL CSPL conducts review of regulatory landscape, seeking to maximise efficiency and effectiveness; reduce complexity, gaps and overlaps; consider possible mergers CSPL publishes report with conclusions of review, and recommendations for legislation	This should happen as soon as possible after the election After 3 months Review will need minimum 6 months
Year 2	CO Minister publishes government response to CSPL review in white paper CO could publish draft bill, for pre-legislative scrutiny by PACAC Public Service (Ethical Regulation) Bill introduced: it could start in the Lords Bill passed by both Houses	With Foreword by PM Depending on how much consensus there is. Pre-legislative scrutiny can help to ease parliamentary passage of the bill If not passed in second session, bill carried over to Year 3
Year 3	Commencement Orders to implement legislation Independent Adviser, OCPA, ACOBA, HOLAC, and CSPL all established on statutory basis	CO might need to publish implementation timetable, so all regulators know where they stand. Transitional arrangements required. Existing post holders will need to be re-appointed

Annex B

Summary of recommendations by previous inquiries

CSPL report *Upholding Standards in Public Life*, November 2021

- The Independent Adviser, OCPA and ACOBA should be placed on a statutory basis, together with their Codes
- Placing HOLAC on a statutory basis should be considered as part of broader Lords reform
- The existing regulators should not be consolidated into a single ethics commission
- The Ministerial Code's provisions on ethics and standards should be separated from the processes of Cabinet governance
- The Ministerial Code should be owned and issued by the Prime Minister, rather than parliament
- The Business Appointment Rules should be enforced via employment contracts, with similar arrangements for Ministers
- Departments should publish lists of all regulated, and unregulated appointments
- If Ministers appoint someone deemed non-appointable, they should be required to justify their decision before the select committee
- Cabinet Office should collate departmental releases about lobbying and publish them in an accessible, centrally managed database.

CSPL report *Leading in Practice* January 2023

- Encouraging a strong ethical culture is just as important as rules and regulation
- Leaders must ensure that values are understood and embedded in their organisations, and encourage a 'speak up' culture.

Nigel Boardman, *Review into the Development and Use of Supply Chain Finance, Part 2: Recommendations and Suggestions*, August 2021

- ACOBA should be strengthened, issuing prompt advice, which is properly followed up
- The Ministerial Code should be given a statutory basis

- More regular, and more detailed publication recording ministers' meetings with outside interests
- Extend the regulation of lobbying to include former ministers and civil servants, and accountants, lawyers, consultants, PR firms etc who lobby on behalf of their clients
- A statutory Code of Conduct, and stronger criminal sanctions for lobbyists who break the rules.

PACAC report *Propriety of Governance in light of Greensill*, HC 888, December 2022

- The Independent Adviser, OCPA and ACOBA should be placed on a statutory basis
- Constitutional watchdogs should require select committee approval before appointment
- Appointment of the Independent Adviser should be subject to regulation by OCPA
- The Business Appointment Rules should be enforceable with legal sanctions
- The watchdogs should not be merged into a single entity because of their different roles.

Government response to CSPL, PACAC and Boardman reports, *Strengthening Ethics and Integrity in Central Government*, July 2023

- The Business Appointment Rules will be tightened to make compliance mandatory for ministers and senior civil servants
- Greater transparency around lobbying, with a single database to be published monthly, covering all departmental transparency returns covering meetings, gifts, hospitality and travel
- Reporting requirements extended to Directors General and Finance and Commercial Directors, but not to Special Advisers. Meeting descriptions to contain relevant and useful information
- Appointment of Non-Executive Directors to Whitehall boards to be subject to regulation by OCPA
- Departments to publish annually a list of direct ministerial appointments which are unregulated.

Angela Rayner, Deputy Leader of Labour Party, Speeches to Institute for Government, November 2021 and July 2023

- Labour would legislate to create a new Ethics and Integrity Commission, with stronger powers of enforcement, independent of political control
- ACOBA and the Independent Adviser on Ministers' Interests would be subsumed into the new Commission
- The Commission would have power to initiate investigations, determine breaches, and recommend sanctions, including financial penalties
- The Public Appointments Commissioner and Civil Service Commission could also be brought under the new Commission's umbrella
- Other watchdogs would be left in place, including CSPL
- The Prime Minister would not be involved in the appointment of the new Commission, which would be appointed through a robust appointments process involving a nominated parliamentary committee.

Lord Anderson's Public Service (Integrity and Ethics) Bill, September 2022

- Places the Independent Adviser, OCPA and ACOBA on a statutory basis
- Appointment subject to OCPA scrutiny for significant appointments, for non-renewable 5 year term
- Removal following address from House of Commons and select committee report
- Ministerial Code, Governance Code on Public Appointments and Business Appointment Rules must all be subject to consultation with relevant watchdog and laid before parliament.

Lord Norton's House of Lords (Peerage Nominations) Bill, November 2022

- Places HOLAC on a statutory basis; with 9 members, nominated jointly by both Speakers
- Requires nominees to be of conspicuous merit, and able to contribute to the Lords
- PM to have regard to three principles:
- 20% of the Lords to be independent Crossbenchers
- No single party to have an absolute majority
- House of Lords to be no larger than the Commons
- Incoming PM of different party could nominate up to 40 new peers.

Institute for Government, ***Improving Ethical Standards in Government*** **April 2021,** ***Reinforcing Ethical Standards in Government*** **March 2022,** ***Reforming Public Appointments*** **August 2022**

- Legislation should put the Independent Adviser, OCPA and ACOBA on a statutory basis
- The Ministerial (and other Codes) should also be given statutory backing
- The Independent Adviser should be able to initiate his own investigations, and publish his findings in full
- The Independent Adviser should be appointed by a 'significant appointment' process
- Ministers should be required to publish monthly information on all their meetings, hospitality and travel; as should Special Advisers and Senior Civil Servants
- OCPA should have power to regulate all appointments by ministers
- Candidates to be constitutional watchdogs should be excluded if politically active, and subject to veto by the Select Committee
- The Public Appointments Commissioner should have a right to be consulted over the entire assessment panel for significant appointments, and a power of veto over senior independent panel members (SIPMs).

Brown Commission on the UK's Future, ***A New Britain: Renewing our Democracy and Rebuilding our Economy*****, December 2022**

- The Ministerial Code and Cabinet Manual to be approved by parliament
- A new Integrity and Ethics Commission to investigate breaches of the Code
- Merge the Commissioner for Public Appointments and Civil Service Commission into a single more powerful regulator to ensure all appointments are made solely on merit
- Strengthen powers of the Electoral Commission to eliminate foreign money
- Make parliament responsible for sponsoring the Information Commissioner
- Put CSPL on a statutory basis
- A new Anti-Corruption Commissioner to cover national, devolved and local government
- Ban most second jobs for MPs

- An independent panel to decide whether rules have been breached, which would also recommend the appropriate sanction
- Annual audit of the operation of the system by a citizens' jury of ordinary people.

Grieve Commission, *Governance Project: Final Report*, January 2024

- Ministerial Code to be put on statutory footing; ministers should take oath to uphold the Code
- Independent Code Commissioner with statutory powers to investigate breaches of the Code. Final decision on sanctions to remain with Prime Minister; but PM required to publish reasons for departing from Commissioner's recommendation
- Code Commissioner to maintain register of potential conflicts of interest for ministers and Special Advisers, with Civil Service Commission doing the same for civil servants
- Reporting requirements on ministerial conflicts of interest to be aligned with those for MPs; with material sanctions for breach, including dismissal
- All nominations for peerages from whatever source (including the PM) subject to approval by HOLAC
- ACOBA to be given full independence in primary legislation, with power to change the Business Appointment Rules
- PM no longer able to make recommendations for honours: all nominations to go through independent committees, with merging of State and Political honours
- Definitive guide on standards in public life to be published, with mandatory training for all.

Correspondence between Sir William Shawcross, Commissioner for Public Appointments, and CSPL, January 2023

- Shawcross said that the government would bring Non-Executive Directors in government departments within the Commissioner's remit when next amending OCPA's Order in Council
- For short term appointments Shawcross felt regulation would not add significant value. But publication of a list of appointees to all roles would increase accountability: government departments should publish all unregulated as well as regulated appointments.
- Ministers had twice wanted to appoint someone judged to be non appointable: on both occasions they had back tracked after receiving advice from the Commissioner.

Correspondence between Lord Pickles (chair of ACOBA) and Lord True (Minister of State, Cabinet Office), June 2022

- Lord Pickles said that without proper sanctions the system lacked credibility
- Changes to the Rules could be made without legislation: setting a clearer risk profile; introducing clearer sanctions; providing more resources to ensure greater assurance about appointments below ACOBA level
- Lord True said that breaches of the Rules can now be considered in the award of Honours; with similar arrangements being considered in relation to public appointments, including appointments to the Lords
- The government remained committed to an employment law based solution as a general means of enforcement, rather than by legislation.

Policy Exchange, *Government Reimagined* 2021, *Reform of Public Appointments* 2022

- Public appointments should be streamlined and more flexible: those with distinguished records should be appointed on the basis of their experience, not their capacity to navigate the public appointments process
- The Civil Service Commission should oversee internal as well as external recruitment competitions
- Ministerial authorisation should be required before a closed recruitment competition is held at CSC level
- The Civil Service Commission should be better resourced, and the First Commissioner made a full time appointment.

This report concerns seven watchdogs which monitor and regulate the conduct of the executive. They are: the Advisory Committee on Business Appointments; Civil Service Commission; Commissioner for Public Appointments; Committee on Standards in Public Life; House of Lords Appointments Commission; Independent Adviser on Ministers' Interests; and the Registrar for Consultant Lobbyists.

A series of reviews, from official and non-governmental bodies, have called for the system of regulating standards to be strengthened. In 2023 the government announced a very limited set of reforms. Labour have gone further, proposing a statutory Ethics and Integrity Commission. This report sets out in detail how to define more clearly each watchdog's role, functions and powers; method of appointment; funding; and accountability. Most of the watchdogs could initially be strengthened using prerogative powers, but putting them in statute would give them a firmer legal foundation.

About the Constitution Unit

The Constitution Unit is a research centre based in the UCL Department of Political Science. We conduct timely, rigorous, independent research into constitutional change and the reform of political institutions. Since our foundation in 1995, the Unit's research has had significant real□world impact, informing policy-makers engaged in such changes – both in the United Kingdom and around the world.

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