



House of Commons
Public Administration Select
Committee

Ethics and Standards: The Regulation of Conduct in Public Life

Fourth Report of Session 2006–07

Volume I



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*Report and Appendices, together with formal
minutes*

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The Public Administration Select Committee

The Public Administration Select Committee is appointed by the House of Commons to examine the reports of the Parliamentary Commissioner for Administration, of the Health Service Commissioners for England, Scotland and Wales and of the Parliamentary Ombudsman for Northern Ireland, which are laid before this House, and matters in connection therewith, and to consider matters relating to the quality and standards of administration provided by civil service departments, and other matters relating to the civil service.

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Summary

There is now an extensive network of bodies concerned with the regulation of standards of conduct in public life. Some are long established; but many have been set up more recently.

These constitutional watchdogs have different functions, and are organised in a variety of different ways. They cover the essential ground and generally work well in safeguarding high standards of conduct; but they have often been set up in response to particular problems and insufficient attention has been paid to their design features and the need for coherence in the system as a whole.

The time has come to recognise that the machinery of ethical regulation is now an integral and permanent part of the constitutional landscape. This makes it necessary to ensure that it is sensibly organised and securely based. It should not be assumed that this will solve the problem of political trust, which is affected by a range of factors; but it will recognise that the protection of standards is an important objective in its own right. However, a rule-based system should never substitute for a culture of high standards.

This report identifies the principles of ethical regulation and what their application means for practice. It explores the balance between independence and accountability, and discusses possible organisational models. There should be no imposed reorganisation, but there should be arrangements that promote the security and coherence of the regulatory system as a whole.

Crucially there needs to be a new relationship to both Parliament and government for the key regulators, especially those currently sponsored by the Cabinet Office. The report recommends a new Public Standards Commission, established by statute, to take on this sponsoring role. This would reflect and encourage the collegiate character of the constitutional watchdogs, and provide a framework in which there could be coherent development of the regulatory system. Above all it would recognise the centrality and permanence of the arrangements for the regulation of conduct in public life.

1 Introduction

1. The British system of public administration contains a range of bodies at arm's length from government which are intended to ensure that government is properly carried out. Their functions vary widely. Some, like the National Audit Office or the Audit Commission, are concerned with the propriety and efficiency of expenditure. Some deal with administrative propriety, such as the Parliamentary Commissioner for Administration (the Parliamentary Ombudsman) and the Civil Service Commissioners. Others deal with wider ethical matters. Indeed, it is sometimes hard, or even impossible, to identify the distinction between the ethical and the administrative. For example, the Information Commissioner and the Electoral Commission deal largely with administrative matters, but they have been given their tasks because it is felt to be ethically important that decisions about the release of information, or about the regulation of political parties, should be taken at a distance from the government of the day. Some bodies have both regulatory and advisory roles. Some have an advisory function only, and this too may vary widely from body to body. The Advisory Committee on Business Appointments advises on specific cases; the Committee on Standards in Public Life advises on the ethical health of public life as a whole. There is no easy way to capture what is meant by "ethics" in government; we use the term to mean the qualities of good governance, such as integrity, legitimacy, accountability, and adherence to a commonly understood standard of behaviour. Similarly, there is no single term to encompass these bodies; in this Report we use the term "ethical auditors" to encompass the whole range of ethical advice and regulation. The term "ethical regulators" most naturally covers those bodies with power to make determinations, but is sometimes used more widely.

2. This inquiry has been a review of the regulation of conduct in government and public life, with a focus on the bodies set up by government itself for this purpose. We have asked a range of these ethical auditors for information about their offices, and this is summarised in Appendix 2 to this report. We have concentrated on the bodies most closely concerned with ensuring the integrity of the executive, namely the Committee on Standards in Public Life (CSPL), the Civil Service Commissioners (CSC), the Commissioner for Public Appointments (CPA/OCPA), the House of Lords Appointments Commission (HoLAC) and the Advisory Committee on Business Appointments (ACoBA). The information supplied by other regulators gave us a valuable basis for comparison and our views about the proper relationship of regulators and regulated, articulated in terms of principles, are likely to have wider application. We also examined the question of what trust in public life means in practice and how well it could be measured. We have been greatly assisted in this report by our Specialist Advisers, Professor Robert Hazell and Barry Winetrobe and by Oonagh Gay of the House of Commons Library. Their mapping of the bodies with broad responsibility for ethical or administrative regulation is reproduced at Appendix 1 of this report.

3. As that Appendix shows, there are a very large number of bodies exercising some form of regulation over standards in public life. It also shows that there is no uniformity in their structure. Some have a high degree of independence, others little or none. Only half of them have a statutory basis; the rest, being non-statutory, could be abolished at any time. No fewer than half these bodies have been created in the last five years, many to address

particular problems. Perhaps inevitably in a system that has grown so rapidly, there now seems little coherence. We were concerned that this might have reduced the effectiveness of individual bodies, or even of the system as a whole.

4. The Committee on Standards in Public Life, originally chaired by Lord Nolan, was established in response to the climate of “sleaze” of the 1990s, and its early work was directed toward developing a series of regulators to ensure probity, such as the Commissioner for Public Appointments and the Parliamentary Commissioner for Standards. Other bodies, such as the House of Lords Appointments Commission or the Electoral Commission, were set up as a result of constitutional changes.¹ As a consequence more thought was given to the tasks they should perform than to the nature of the institutional design they should follow. Ethical regulation and audit is now conducted by an illogical and unplanned patchwork of unconnected bodies, of various institutional designs, with budgets which vary from £164,000 to over £65 million.²

5. It is noteworthy that our witnesses were convinced that public life in the early twenty-first century was cleaner than it had been before.³ International studies of standards in government show that, in general, the United Kingdom ranks highly for its lack of corruption, and for its regulation of public life. In its First Report, the Committee on Standards in Public Life said “we believe that the great majority of men and women in public life are honest and hard working, and observe high ethical standards”.⁴ Sir Hayden Phillips, in his *Review of the Funding of Political Parties*, recently noted that “when compared to other jurisdictions, the British political system, taken as a whole, has been remarkably free of abuse”.⁵ Nonetheless, public trust in political institutions is low,⁶ and the new institutional arrangements introduced since 1994 do not appear to have improved matters. Indeed, Professor Dawn Oliver of UCL thought they might even have reduced trust and lowered standards:

The existence or creation of watchdogs signals the collapse of a trust based system and also a loss of belief in the trustworthiness of civil servants etc. If trust and trustworthiness have broken down watchdogs may be able to counteract unethical selfish activity by those providing public services, but in doing so will generate even more mistrust and possibly unethical behaviour and legalism—focus on the letter rather than the spirit of the rules—if the person thinks they can get away with it.⁷

6. Some commentators point to a contemporary culture of mistrust or even of contempt for politics and politicians, reflected in much of the media, that shapes public perceptions irrespective of the objective evidence; while others identify tendencies in contemporary

1 The creation of the Electoral Commission was also prompted by the recommendations in the Fifth Report of the Committee on Standards in Public Life, *The Funding of Political Parties in the United Kingdom*, Cm 4057-I, October 1998.

2 House of Lords Appointments Commission and NAO respectively.

3 Q 7, Q 142, Q 166, Qq 246-7

4 First Report of the Committee of Standards in Public Life, CM2850-I, May 1995, para 2.

5 *The Review of the Funding of Political Parties: An Interim Assessment*, October 2006, p 13.

6 See Chapter 3 below

7 Ev 142

political behaviour that contribute to diminished trust.⁸ This inquiry has been conducted against the background of a police investigation into honours, donations and loans, which has fuelled the belief that British public life is riddled with sleaze and corruption. Given all this, it seemed timely to examine the current machinery of ethical regulation in government: to look at the accountability, independence and contribution to public administration of the bodies which are central to our inquiry, to consider whether there are ways to make the system more coherent and effective, and to recognize its permanence. Even if standards are generally high, this does not mean that complacency is justified or that there is no room for improvement. While the present arrangements are haphazard, they do provide most, if not all, of the oversight necessary. Wholesale and immediate change is unlikely. But there need to be coherent principles underlying the system. Proposals for new bodies or changes in the system, which are bound to arise in the future, should be tested against those principles so that, over time, a more coherent, logical and effective system can emerge.

7. During the course of the inquiry two related issues arose: matters of propriety surrounding the honours system and further concerns about the policing of the Ministerial Code. This illustrates the continuing significance of issues of ethical regulation. As a result we have recently produced two separate reports: *Propriety and Honours: Interim Findings*⁹ and the *Ministerial Code: the case for independent investigation*¹⁰, and have discussed HoLAC and matters affecting the Ministerial Code in these reports. On the initiative of the Prime Minister, the business appointment rules for civil servants and the armed forces were recently reviewed by Sir Patrick Brown, and on publication of his review the Government asked this Committee to reflect on the implications of the Brown recommendations.¹¹ These involved the transfer of supervision to the Civil Service Commission.¹² We deal with these proposals in a separate report to be published shortly.

8. Alongside this inquiry we have also been examining the relationship between politics and administration. Many of the questions in these two inquiries are interrelated. This report deals with the regulatory structure, rather than with the details of the relationship between the political and administrative worlds. We consider the detailed rules covering political involvement in appointments in our report on Ministers and Civil Servants.¹³ We conclude that, although political patronage should not determine appointment or promotion within the civil service, politicians have a legitimate role in the administration of the state and regulatory systems need to recognise this.

9. We undertook nine oral evidence sessions and received 11 memoranda in response to our Issues and Questions Paper. We visited Edinburgh on 24-25 April 2006 and met informally the Scottish Commissioners, many MSPs and officials of the Parliament, as well as the Scottish Executive's Minister for Finance and Public Service Reform. It will be

8 John Lloyd, *What the Media do to our Politics* (London, 2004) Peter Osborne, *The Rise of Political Lying*, (London, 2005).

9 Fourth Report of Session 2005-06, HC 1119

10 Seventh Report of Session 2005-06, HC 1457

11 HC Deb, 20 December 2005, c202WS

12 *Review of the Business Appointment Rules* Dep 05/1677 25 February 2005. The report was not published until December 2005.

13 Third Report of Session 2006-07, *Politics and Administration: Ministers and Civil Servants*, HC 122-I

evident from this report that we found this extremely illuminating. We have also had the advantage of the Report from the Finance Committee of the Scottish Parliament, which has greatly informed our thinking.¹⁴

2 A brief history of ethical regulation

10. Dr David Hine, lecturer in Politics at the University of Oxford, told us in his written evidence that:

It is tempting to argue, in relation to liberal democracies against which reasonable comparisons can be made, that the UK's system of ethics-management lies at the far end of a scale that runs from rule-based and detection/repression-systems at one end, to integrity-management, flexibility, and trust on the other.¹⁵

However, as he went on to say, the distinctions are not really as tidy as that. For example, the propriety of the honours system is regulated in part by the law, in the form of the Honours (Prevention of Abuses) Act 1925, and in part by committees set up on the Prime Minister's authority. The honours example illustrates how systems to regulate public ethics are older than is sometimes recognised, and based on a mixture of statute and prerogative authority.

11. This chapter will indicate the haphazard way in which a system of ethical regulation has been established in the past century and will offer some context before we consider the design principles which seem most appropriate for ethical regulators. This chapter does not cover every body with responsibilities in this field, but gives an overview of developments in ethical regulation at United Kingdom level. Appendix 1 to this report lists the regulatory bodies currently in existence in the United Kingdom and in devolved Scotland. It also provides an overview of features designed to promote their independence and accountability, themes discussed later in the report.

12. The first wave of regulation came into existence in the Victorian era. The Civil Service Commissioners were established in 1855 to administer the open, competitive examination recommended in the Northcote Trevelyan report to counter patronage in the public service. Financial regulation is also long established. The Comptroller and Auditor General (C&AG) and his office, the National Audit Office (NAO), were established in 1866 as an attempt to bring order to the system of parliamentary control over public money. Both offices have been subject to evolution in role and structure.

13. By the mid-twentieth century the Civil Service Commissioners had become responsible for the appointment of most civil servants.¹⁶ Their role changed from direct responsibility for appointment to an auditing duty following the delegation and privatisation of the recruitment function during the 1980s and 1990s. In 1996 the Commissioners were given a new role as an independent appeal body for civil servants under the Civil Service Code. Most recently, our predecessor committee recommended their transformation into a

14 Finance Committee, 7th report, 2006, Inquiry into Accountability and Governance (SP 631)

15 Ev 114

16 A brief history is offered at www.civilservicecommissioners.gov.uk/about_us/index.asp

statutory body, accountable to Parliament, as part of civil service legislation, with additional powers to initiate investigations.¹⁷ This has not so far been achieved. In 1937 the Government introduced the requirement for departing senior Crown servants to seek permission to take up business appointments. The task of considering applications for permission to take up business appointments was passed from ministers to a committee of Privy Counsellors in 1975, and in 1995 these provisions were extended to include advice to former ministers of the Crown, and the Committee became the Advisory Committee on Business Appointments (ACoBA).

14. In 1983 the C&AG was made an Officer of the House, presenting the reports of the NAO to the Public Accounts Committee (PAC), but maintaining operational independence. A new statutory Public Accounts Commission was established, to offer strategic oversight over the business plan and finances of the NAO. The C&AG's staff are independent of the civil service and the Public Accounts Commission is chaired by a back bench Member of this House (by convention of the official opposition), not by a minister, although ministers are on the Commission.¹⁸ The reshaping came about through a Private Member's Bill following a long parliamentary campaign. Government on its own would have been very unlikely to have established the new model.

15. The Office of the Parliamentary Commissioner for Administration (Parliamentary Ombudsman) was created in 1967 as a response to growing concerns about abuse of bureaucratic power. Its primary role is to deal with complaints of maladministration made by citizens about Government departments and agencies. The Health Service Commissioners were established in 1977–78 (now consolidated in the Health Service Commissioners Act 1993), and the two posts of Parliamentary Ombudsman and Health Service Ombudsman for England have always been held by the same person.

16. There has been a regulator to ensure that personal data is not misused since the creation of the post of Data Protection Registrar in 1984. Originally, access to official information was dealt with separately, with the Parliamentary Ombudsman given power to monitor adherence to the Code of Practice on Access to Government Information in 1994. The Freedom of Information Act 2000 merged the two functions and the Information Commissioner, a statutory officer, became responsible for the oversight of both data protection and freedom of information.

17. The separate evolution of these regulators illustrates the pragmatic approach taken to design issues in the United Kingdom. Another almost universal factor is the tendency of governments to react to scandal by establishing a new regulatory body. For example, in 1925 the Political Honours Scrutiny Committee was set up in response to the systematic abuse of the honours system by David Lloyd George.

18. Following media and parliamentary concern about a number of instances of alleged impropriety by individual Ministers and Members, in October 1994 the then Prime Minister, John Major,¹⁹ set up the Committee on Standards in Public Life (CSPL).

17 Public Administration Select Committee, First Report of Session 2003-04, *A Draft Civil Service Bill: Completing the Reform*, HC 128-I

18 A Cabinet Minister, the Leader of the House, is an *ex officio* member. The Public Accounts Committee is similarly chaired by a member of the opposition.

19 Now Sir John.

Constituted as a standing body, able to keep the overall “ethical framework” under continuing review, the CSPL has been responsible for a wave of new ethical regulators, which has considerably broadened the areas of public life subject to oversight. It also enunciated the Seven Principles of Public Life which have become the key operational values, adopted to a greater or lesser extent by other bodies. The CSPL reports to the Prime Minister, and both Conservative and Labour administrations have acted in partnership in the creation of this new ethical landscape.

19. The design aspects of the different bodies set up as a result of the work of the CSPL are interesting.²⁰ The House’s creation of a Parliamentary Commissioner for Standards through Standing Orders (the Scottish Parliament’s Standards Commissioner is a statutory creation) was in response to the CSPL’s First Report. It took the model of an individual regulator responsible to a parliamentary committee with less operational independence than that afforded to the C&AG. The Parliamentary Commissioner for Standards’ reports are published by the authority of the Standards and Privileges Committee and his finances are established by the House administration. The principle behind this model was that the House itself was ultimately responsible for the discipline of Members.

20. The Office of the Commissioner for Public Appointments (OCPA) was also set up following the first CSPL report, but as a non-statutory officer reporting to the Crown, appointed, like the Civil Service Commission, by Order in Council.²¹ The Commissioner’s role is to regulate, monitor, report and advise on appointments made by UK Ministers to public bodies. The first report from the CSPL also transformed the role of the Business Appointments Committee (now ACoBA) to include self-referrals from ministers and helped formalise rules for civil servants. ACoBA remains a Non Departmental Public Body, serviced by the Cabinet Office.

21. Not all the bodies created in response to CSPL recommendation were non-statutory. The third CSPL report led to the creation of the statutory Standards Board for England and its fifth report, on party funding, underpinned the Political Parties and Referendums Act 2000, which established the Electoral Commission. The CSPL has recently produced a major report on the operation of the Electoral Commission which, in assessing its independence and accountability, and making substantive recommendations for greater transparency and clarity in these arrangements, grappled with many of the issues our inquiry has had to examine in the wider context.

22. The existence of some offices has prompted the creation of others, especially in the area of public appointments. For example, following a report from the Public Appointments Commissioner, a NHS Appointments Commission was established, which has just undergone further statutory revision. A Judicial Appointments Commission came into existence following an independent scrutiny report by Sir Leonard Peach, former Commissioner for Public Appointments, in December 1999. This was remodelled in the Constitutional Reform Act 2005.

20 For more detail see Appendix 1.

21 The Scottish equivalent is a statutory creation.

23. Government responses to the growing demand for the regulation of public life began before the establishment of the CSPL and the regulatory structure has evolved alongside it, often influenced by its reports. In 1992 the then Prime Minister, John Major, published the Questions of Procedures for Ministers (QPM) for the first time. In 1994 the Treasury and Civil Service Committee first proposed a Civil Service Code defining the constitutional duties of civil servants. In January 1996 the Government introduced such a Code, and it was revised in 2006 (with separate Codes by the Scottish and Welsh devolved administrations for their civil servants). In 1997 QPM became a fully fledged Ministerial Code, which has since been regularly revised and strengthened, incorporating some recommendations made by this Committee. Following a recommendation from CSPL in 2000, the Government agreed to introduce a separate code of conduct for special advisers.²² Ministers, civil servants and special advisers are now therefore subject to their own separate codes, which have been the subject of a series of reports from this Committee.

24. Following the initial stage of House of Lords reform, a non-statutory House of Lords Appointments Commission was established in May 2000, as a NDPB, funded and serviced from the Cabinet Office. The Government has published a series of White Papers proposing a statutory basis for the Commission, as yet unimplemented. At the initiative of Government in response to a recommendation from this Committee, the Political Honours Scrutiny Committee was merged into the Commission in June 2005, which took on a new role in vetting peerage nominations for propriety. Honours regulation is the subject of a separate report from this Committee.²³

25. For local government, in addition to the Standards Board mentioned above, the Audit Commission has had responsibility for a number of different functions relating to the inspection and audit of local authority and health services in England and its functions have evolved since it was first established by the Local Government Finance Act 1982. The Commission for Local Government provides the local government ombudsman service.

26. There are also a number of bodies responsible for ensuring that functions which have a certain distance from government operate with proper independence. For example, the integrity of government statistics is currently overseen by the Statistics Commission, but legislation currently before Parliament is intended to make the statistical system still more independent of government.

Regulation: effects and side-effects

27. It will be seen from even this brief outline that Britain has developed a wide range of ethical regulators and independent scrutineers. Dr Hine was concerned that “we have charged ahead with a lot of institutions without thinking quite how much we are changing the system”.²⁴

28. Our system of regulation may have evolved, rather than being the product of design, but it has nevertheless been effective, not least in providing the scrutiny and transparency

22 Government response to Sixth Report of the Committee on Standards in Public Life, Cm 4817, 26 July 2000

23 Fourth Report of Session 2005-06, HC 1119

24 Q 408

that has brought attention to matters such as the funding of political parties, and the alleged links between donations and peerage. This is a demonstration of the increased effectiveness of regulation, through such bodies as the Electoral Commission and the House of Lords Appointments Commission. Even Simon Jenkins, who believed that the public appointments system had now become disproportionate, considered that the need to appoint on merit, and to think about the range of experience required on a public body, had improved the quality of appointments.²⁵ More generally, as Peter Riddell said, “it is very useful to have grit in the machine”²⁶, and “the whole thing is shedding light”.²⁷ Existing regulatory bodies perform an important and necessary task.

29. However, although the regulatory system has brought major benefits, there are also concerns about its coherence and proportionality. We do not explore here the complaints about overregulation or excessive inspection, which have been made about some regulatory structures. But in our inquiry witnesses expressed concern about the confusion and overlap between regulators, the extent to which regulators were properly embedded in the constitutional system, and the effect of regulation on public trust.²⁸ There were also concerns that there was little informed awareness of the system by the public, and little information about the system itself given by the media, so the distinct roles of these bodies are not appreciated.²⁹

30. Moreover, the increase in regulatory activity, both in the bodies which we scrutinise, and in the wider public service, may have had unintended effects. Although the developments in the 1990s and the codification of ministerial and civil service responsibilities were a continuation of previous developments, they brought marked change in the regulatory structure. The crystallisation of broad understandings into formal codes of conduct, and the creation of a series of bodies to pronounce on standards, has served to shift the common understanding of the role of government, Parliament and the civil service with regard to the conduct of public life. The significance of this fashion for code making has been described variously as either a written-down form of what civil servants had always understood or “constitution-making by stealth”.³⁰ This was why Dr Hine was concerned about the recent growth in ethics management agencies:

because we have not, in such a short time as ten years, managed to embed new structures and procedures in our existing constitutional and political order, so that we understand what to expect from the new enforcement agencies, we respect, and from their behaviour learn to respect, their impartiality and neutrality, and we have an honest and open debate about what they can achieve, given the nature of political competition, communication, and debate in contemporary public life.³¹

25 Q 43

26 Q 7. The discomfort sometimes felt by some bodies and people, even including Members of this House, to the application of the FoI scheme to them is a good example of this.

27 Q 11

28 Q 378, Q 390, Ev 103

29 Q 380, Ev 114

30 Christopher Hood et al, *Regulation inside Government* (Oxford, 1999) p. 78 and Peter Hennessy, *The Hidden Wiring* (London, 1995), p 206

31 Ev 115

31. The Committee on Standards in Public Life first set out what have come to be known as the ‘Nolan’ Principles³²; standards of conduct for those in public office. These Seven Principles of Public Life are: Selflessness; Integrity; Objectivity; Accountability; Openness; Honesty and Leadership. While the principles themselves are generally accepted, there is room for argument about what they might mean in any particular circumstance. A wide range of bodies which have a legitimate role in considering this now exists. It is time to assess the shape and purpose of ethical regulation, to see whether a more considered and coherent structure can be produced so that Government, Parliament and the public can recognise and appreciate that ethical regulation is rightly a permanent part of the constitutional landscape.

3 Trust and regulation

32. One expressed aim of ethical regulation has been to increase public trust. When Sir John Major announced the establishment of the Committee on Standards in Public Life (CSPL) on 25 October 1994, he said:

This country has an international reputation for the integrity and honour of its public institutions. That reputation must be maintained and be seen to be maintained. I hope that the standing committee I have announced today will enjoy the support of the House and reassure the people of this country about our determination to maintain high standards of conduct in public life.³³

Yet although the CSPL was established to increase trust, Dr Hine warned that the increase in ethics based regulation:

may be a bad thing because it applies unevenly, and in particular it applies ineffectively and with deleterious consequences for trust, at the highest levels of the political world, and perhaps most notably in the application of some high-level rules—the ministerial code, party-funding, perhaps electoral law.³⁴

Thus, the extent to which we should judge the success of our regulatory system by its effect on trust is less straightforward than it might seem.

33. Trust matters in public life. As Sir Alistair Graham, the Chairman of CSPL, told us, “a lack of trust, a lack of confidence, leads to cynicism which leads to disengagement”.³⁵ However, it is important to be careful in making connections. It is, by definition, very hard to gain accurate comparative measures of the level of corruption in different countries. Transparency International, the leader in this field, publishes an annual *Corruption Perceptions Index* [our emphasis], based on surveys and expert opinion. The United Kingdom has consistently ranked at number 11 in this index (the 2006 index included 163 countries), indicating that its standards are considered relatively high.³⁶ This perception is

32 Named after the first Chairman of the CSPL.

33 HC Deb, 25 October 1994, c 759

34 Ev 115

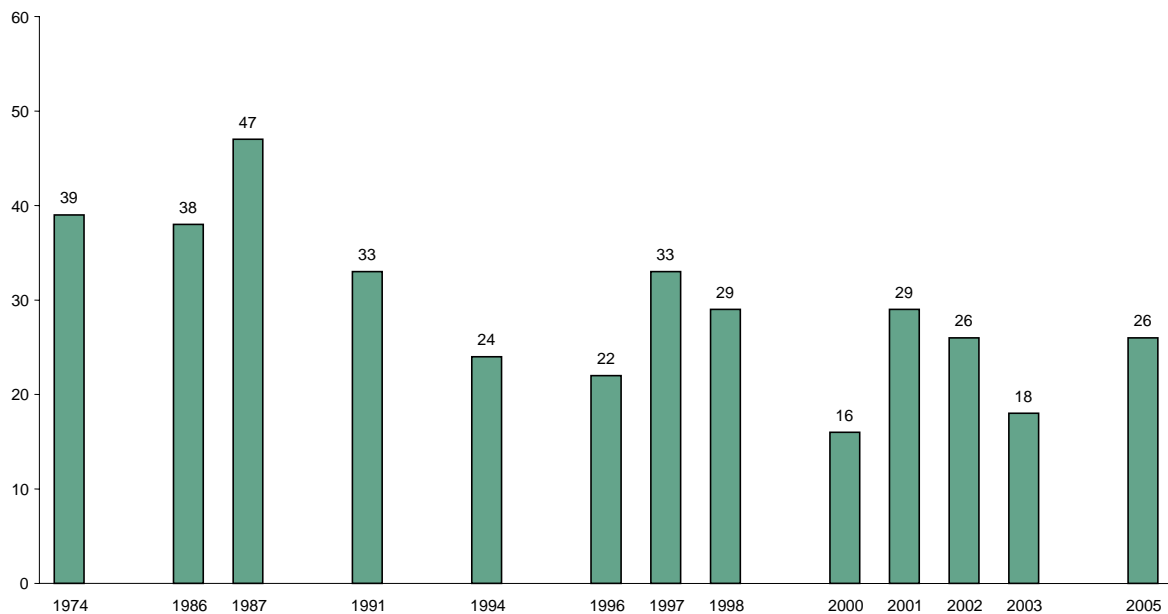
35 Q 198

36 See Q 407

confirmed by the latest survey of public attitudes towards conduct in public life from the CSPL, which found that 31% of respondents considered standards in the United Kingdom were higher than in Europe, and 43% considered them average. Yet despite this recognition of Britain's *comparative* standing, the public has little trust in government. In 2005 only 26% of those polled would always or mostly trust government.³⁷ The level of trust ebbs and flows, although the long term trend is down. The 2005 figure was a recovery from the lows of 16% in 2000 and 18% in 2003, but a significant decline from the peaks of 47% in 1987 and 33% in 1997. It is clear that there has been a steady decline in political trust. This trend is evident not just in the United Kingdom, but it may seem paradoxical that it has coincided with a period when the machinery of ethical regulation in government has been extended and strengthened.

Percentage who always/mostly trust Government

[Note: reference years are those where figures are available]



Source: Ev 142

34. The evidence suggests that the public does care greatly about standards of conduct in public life, but that trust is not a matter of standards alone, but of the wider political and cultural context.³⁸ The party political battle over 'sleaze' has undoubtedly contributed to the sharp decrease in political trust. Although there was a temporary recovery in 1997, the likelihood of trust in government returning to earlier levels seems remote. Part of this decline can be attributed to the general (and welcome) collapse of deference, but also to a media culture that trades in denigration and cynicism about public life. Political events and behaviour, notably but not exclusively around the Iraq war, have played their part. It is

37 Ev 142

38 Q 15

clear that ethical regulation is far from the only determinant of trust, and the connection between the two is less straightforward than it might at first seem.

How much should ethical regulation concentrate on trust?

35. If the link between levels of regulation and levels of public trust is complex, that leads inevitably to questions about whether it is realistic or desirable to make increased trust a goal of ethical regulation. Some witnesses posed the question whether a system of ethical regulation is designed to promote trust or ensure high standards. Public trust might be higher under an inadequate regulatory system, because fewer problems would come to light. The journalist John Lloyd considered that “a real reduction [in corruption] is much more important than an apparent one”; and Simon Jenkins noted that “the more you reveal [corruption] for its suppression the more you publicise it”.³⁹

36. The working of the regulatory system requires adherence not only to a set of rules, but to high ethical standards of behaviour. As Lord King pointed out “The difficulty about rules is that unless there is a determination all round to observe them people will always hunt for ways to avoid them”.⁴⁰ He reminded the Committee of what he called the “Willie Whitelaw syndrome”, when William Whitelaw instantly offered his resignation as Home Secretary when an intruder broke into the Queen’s bedroom. He saw it as a matter of honour, irrespective of his lack of direct responsibility for what had occurred.⁴¹ Finland consistently ranks as the least corrupt of countries. As we saw on our visit there, cultural expectations that people in public life will act ethically can be even more effective in securing high standards of behaviour than a rule based system. Professor Oliver’s fears that an excessive emphasis on regulation could produce the erosion of standards it was designed to protect appear, so far, unfulfilled. But it remains a danger. Failure to distinguish between minor breaches of the rules and actions which seriously undermine the ethical basis for public life could have damaging consequences for ethical regulation as a whole, and for public trust. This can be exacerbated by the media’s tendency to regard everything, however minor, as a scandal. If everything is presented as a scandal, there is inevitably a loss of perspective and proportion. **A rule based system should never substitute for a culture of high standards, rooted in the traditions of public life and shared by all those who participate in it.**

37. **Ethical regulation should not be driven by a desire to respond to every allegation that is ventilated. Such a response will lead to precisely the rule-based system which several of our witnesses suggested would lower standards. Moreover, there is a danger that it will perversely undermine the trust it attempts to build, as the public asks why the system requires the addition of even more safeguards. If standards are high, and properly safeguarded, then the hope is that public perception may, eventually, follow.**

39 Q 18

40 Q 146

41 Q 147

Transparency

38. Would greater provision of information improve matters? This is not just a modern concern. As Professor Christopher Hood notes in *Transparency: the key to better governance?*, Jeremy Bentham was the first to popularise the virtues of transparency in his famous essay on publicity: “the more strictly we are watched, the better we behave”.⁴² But overall levels of trust have not improved despite the fact that many of the regulators themselves take their responsibility to inform the public about their work extremely seriously, and despite the fact that transparency has been the watchword of key reforms in ethical regulation (for example, in relation to party funding or freedom of information).

39. Moreover, the development of new auditing techniques may not succeed in strengthening trust in public institutions. The distinguished philosopher, Baroness O’Neill of Bengarve, considered this point:

Our current managerial and regulatory culture, underpinned by use of electronic data processing, seeks to provide more evidence that is more uniform, more detailed and more standardised.

But anybody who thinks this sort of evidence will restore public trust must have their head in the sand —on the contrary it looks as if the present ways of providing evidence to achieve accountability corrode trust.⁴³

John Lloyd of the *Financial Times* considered that it was “a perfectly reasonable supposition to think that the public figures and politicians are now more open, less corrupt, less open to corruption than they have ever been, but the perception of this is the opposite because of the transparency, and also, I would add, because of the way in which the media covers transparency”.⁴⁴ He was concerned to ask about “the effect of a media culture which constantly emphasizes sleaze. Is it because there is more sleaze or simply that that has become a ... soft news area”. Peter Kellner, Chairman of the polling company YouGov, went so far as to say that “transparency has been a significant component of the decline in trust”.⁴⁵

40. As Professor John Curtice of Strathclyde University pointed out, trust in public life has never been particularly high. It is also hard to make a direct connection between levels of trust and engagement in the political process.⁴⁶ Transparency is important, but it is not a panacea. People may not like what they see, and trust may be further eroded, at least in the short term. The implication of this for our inquiry is that ethical regulation has to be argued for on its own terms, as a component of good government. We should not confuse it with other objectives. **We believe that the primary purpose of the ethical regulatory system is to ensure that standards of public conduct remain high, rather than to seek to promote trust in public life as a whole. Trust is a slippery concept, and will often depend on the general cultural and political environment.**

42 Christopher Hood and David Heald eds, *Transparency: The key to better governance?* (Oxford, 2006).

43 Q 9

44 Q 17

45 Q 339

46 Qq 341-2

Awareness of regulation

41. Although the motive for ethical audit and regulation should be to ensure high standards, rather than to promote trust, trust might well be increased if there was more public awareness of the existence of the independent regulators. As Baroness Fritchie, the former Commissioner for Public Appointments, told us, members of the public had little awareness of the Commissioner’s role in scrutinising appointments; once that was explained, they had more confidence in the system.⁴⁷ In the course of this inquiry, comments were made about the propriety of some ministerial appointments to NDPBs. We were surprised to find that it was the Department concerned which gave an account of the OCPA system to the press, rather than the Commissioner for Public Appointments. When we asked about this, the Commissioner explained that a complaint had been made, and that she could not prejudge that complaint.⁴⁸ We entirely understand that difficulty. Nonetheless, we think it would be better if regulators could adopt a higher profile. If part of the function of ethical regulation is to provide public reassurance about standards, then it is obviously important that there should be public awareness of the regulators and their work.

42. The plethora of regulators may also make it harder for the public to understand the extent to which public life is subject to ethical regulation, since there is no single body clearly “in charge”. The one high profile body with a broad “ethical audit” remit, the CSPL, is advisory and its advice is not always taken. The quickest way for a regulator to come to public notice is through a dispute with those it regulates. The relatively low profile of the Cabinet Office regulators may be a testament to their effectiveness. Nonetheless, it would be beneficial if the bodies with a more direct regulatory role were better known.

4 Principles and practice

43. Chapter 2 established that ethical regulation is now a permanent feature of our constitutional landscape, but that more coherence is required. This chapter discusses the principles of ethical regulation and how they can be applied in practice. It draws on the design features of a range of constitutional watchdogs set out in the Appendices to this report to examine how the twin demands of independence and accountability faced by existing ethical watchdogs might most effectively be met.

44. Ethical regulation fulfils several vital purposes. It:

- ensures standards are high, and is necessary even when there are no present ethical problems;
- restores and preserves standards, at times when they are under threat;
- polices standards, by creating, administering, enforcing, investigating and reviewing processes, rules and administrative actions;

47 HC (2005-06) 660-I; Q 39

48 Ev 143

- and, as a consequence of the standards it enforces, creates, restores and maintains public trust, confidence and legitimacy in public life.

45. In 2005 Philip Hampton produced a review of regulatory inspection and enforcement. He elucidated a set of principles which should underlie the work of regulators.⁴⁹ If the relevant “Hampton principles” were applied to ethical regulators they would stipulate that:

- regulators should be accountable for the efficiency and effectiveness of their activities, while remaining independent in the decisions they take;
- all regulations should be written so that they are easily understood, easily implemented, and easily enforced, and all interested parties should be consulted when they are being drafted;
- regulators should provide authoritative, accessible advice easily and cheaply;
- when new policies are being developed, explicit consideration should be given to how they can be enforced using existing systems and data to minimise the administrative burden imposed;
- regulators should be of the right size and scope, and no new regulator should be created where an existing one can do the work.

In our view, applying these principles to ethical regulation would mean that the machinery of ethical regulation should be:

- appropriate for its purpose—especially in a regulator’s institutional design and relationship to the executive, taking account of its function (eg oversight, executive, advisory);
- fit for purpose—able to achieve its given functions with due efficiency, economy and openness; and
- consistent with constitutional principle and practice—there should be due balance between independence and accountability, in relation to Government, Parliament and other parts of the governance system.

46. Though the underlying principles of an ethical system must be consistent and uniform, their practical application in any particular area of public life will inevitably reflect the unique features of that area. A regulator or watchdog which acts on behalf of central government requires a different relationship to government than one concerned with matters within central government itself. A body which investigates individual complaints may have a different relationship with a department than one which conducts audits. Advisory bodies perform a different function from those which investigate and make findings of fact. Not every function carried out with some independence from government should be elevated to the position of a “constitutional watchdog”. For example, the independent complaint examiners established by some Government departments do

⁴⁹ Philip Hampton, *Reducing administrative burdens: effective inspection and enforcement*, HM Treasury, March 2005, p 7

worthwhile jobs, but we would not regard them as “constitutional watchdogs” in the way that the Parliamentary Ombudsman is.

47. Moreover, within the range of bodies we would consider to be engaged in ethical audit—there is no ‘one size fits all’ solution. Differences in institutional design should not be regarded as denoting any hierarchy of body or distinction in status or importance of a body or its functions, but simply as reflecting appropriate and necessary variation. This involves judgements about the appropriate balance, in particular cases, between the various criteria and principles listed above. In general, however, the more closely regulators or watchdogs are concerned with supervising or monitoring core activities of central government, the more they need governance structures which ensure their independence. **To command public confidence, ethical regulators need to be robustly and conspicuously independent, and the system of regulation needs to be proportionate and coherent.**

48. Appendix 2 to this report presents the results of a questionnaire to ethical and constitutional watchdogs which attempted to probe the basic indicators of design set out in Appendix 1. The responses have helped this Committee assess how the more robust design features of some constitutional watchdogs could be applied in a more coherent way.

Independence and accountability

49. We consider the following as key design principles for constitutional watchdogs. They are based mainly, but not exclusively, on the arrangements put in place for the C&AG in the National Audit Act 1983. The core concern for any such watchdog is the balance between independence (especially from the Executive) and accountability (especially to Parliament) appropriate to its particular role and function. The design principles are as follows:

To achieve a high degree of independence, constitutional watchdogs should:

- have secure legal foundations, so they cannot easily be abolished or their governance arrangements inappropriately amended;
- be appointed by resolution of one or both Houses, ideally for a single non-renewable term;
- be removable only on address from both Houses;
- have secure funding arrangements, beyond the sole or direct control of the Executive;
- have their own staffing, accommodation and access to the other services and facilities they require;
- have operational autonomy, with freedom to initiate their own inquiries.

To achieve sufficient accountability, constitutional watchdogs should:

- report regularly to Parliament and the public on their activities;
- be regularly scrutinised by parliamentary committees;
- be scrutinised by bodies responsible for providing their resources, in particular in relation to their budgets and corporate plans and performance;
- be subject to audit arrangements supervised by the NAO;
- be subject to the supervision of the courts through judicial review;
- be transparent and subject to the Freedom of Information Act;
- be subject to the appropriate statutory Ombudsman scheme;
- be subject to the OCPA Code in relation to their own appointments;
- create and maintain a comprehensive and accessible public website.⁵⁰

50. There is a real tension between independence and accountability. Ethical auditors will not be able to function without independence, but if regulators do not share some values with the regulated they are unlikely to be effective. An independent regulator may not be democratically accountable for its decisions. This is not an argument against such independence; the judiciary is similarly not democratically accountable (although Parliament ultimately has the option of changing the law itself), but it means that other accountability arrangements must be in place. Parliament is the key body for holding both the regulated and the regulators democratically to account, but there can be tensions in its relationships with other regulators. A regulator needs to ensure that its resources are protected from inappropriate reduction, but scrutiny mechanisms must ensure that increases in resources are fully justified and effectively used. An effective regulatory system needs to balance these factors.

51. In the UK constitutional system, the only real national ‘fund-holders’ ‘sponsoring bodies’ are Parliament and government. If it is accepted that government and Parliament are, and must remain, the key players in the ethical regulation system, then partnership between the two, where appropriate, can not only be efficient, but constitutionally proper. If both Parliament and government are involved in sponsoring the watchdog, the dangers

50 For background, see Oonagh Gay “Parliament’s relationship with constitutional watchdogs- time for coherence” in *Future of Parliament: Issues for a New Century*, ed Philip Giddings for the Study of Parliament Group, Palgrave 2005.

of too close a relationship between the regulator and its sponsor can be reduced, while democratic accountability is increased.

52. The notion of such a partnership has to be handled with care, since in the Westminster system government has the leading role in Parliament itself. Institutions need to be designed to ensure that, while the Executive's interests are taken into account, as far as is proper, they cannot dominate any Parliamentary institution established to sponsor a regulatory body or bodies. But careful design can, in principle, resolve these potential problems.

Independence

53. There is no single way to ensure the independence of those who regulate ethical behaviour, and international comparisons are difficult. However, it was pointed out to us that there is a broad category of National Human Rights Institutions (NHRIs), which can be seen as having some parallels with ethical regulators and watchdogs. Dr Rachel Murray of the University of Bristol explained that the evaluation of the effectiveness, accountability and independence of NHRIs is usually benchmarked against the "Paris Principles", criteria adopted by the UN General Assembly in 1993. These provide that:

the national institution shall have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding. The purpose of this funding should be to enable it to have its own staff and premises, in order to be independent of the government and not be subject to financial control which might affect this independence.⁵¹

54. Dr Murray notes that the Paris Principles are restricted to the circumstances in which the bodies are established. They are of limited value in determining how the body actually performs and is perceived. Dr Murray argues for a "more nuanced and honest approach to the concept of independence" which recognises the complexity of the relationship which such official bodies inevitably have with government.⁵² In reality, institutions such as these and, by analogy, ethical regulators require both independence and a link into the system, otherwise they have no more influence or legitimacy than non-governmental organisations.

Accountability

55. The question is whether it is possible to reduce these bodies' dependence on the executive and yet retain accountability. All watchdogs, however independent, also need lines of accountability to tie them into the political system, or their recommendations may not seem feasible or legitimate to those being regulated. The concept of accountability is not straightforward. The Constitution Committee of the House of Lords has rightly noted that "accountability is a generic term, the precise definition of which depends on the

51 Ev 139

52 Ev 134

circumstances, including the relationship between the interested parties to the regulator. In practice there are multiple accountabilities”.⁵³

Officers of Parliament

56. One way of resolving the tension between independence and accountability, and recognizing that both Parliament and government have legitimate interest in the way ethical regulators conduct their business, would be to extend the use of “Officer of the House” status. Both the United Kingdom and other Commonwealth jurisdictions have developed the concept of “Officer of Parliament” for some key officials who are not directly part of the House administration. The main characteristics of this model are:

- parliamentary involvement in appointment and dismissal;
- a statutory committee responsible for budget approval and oversight;
- a *separate* select committee to which the officer is obliged to report; and
- staff independent of the civil service.⁵⁴

57. There is no agreed list of office holders to which the term is currently applied across the Commonwealth and there is currently a lively debate about the extent to which the model is appropriate for regulators who cannot be said to be carrying out functions on behalf of Parliament.

58. Even in Westminster, there is no single template for the bodies which are responsible to the House rather than the Government. The NAO is funded by a parliamentary vote, set and laid by the Public Accounts Commission, a statutory body, so that its budget is protected from government interference. By contrast, the Ombudsman negotiates grant in aid from the Treasury. The Electoral Commission is the responsibility of the statutory Speaker’s Committee, which sets its overall budget, on a similar model to the PAC. Reporting lines also differ. The Ombudsman reports to the House as a whole, and it is only through Standing Orders that there is any special role for this Committee. The CSPL has called for the development of more structured occasions for the Electoral Commission to explain its work to the House, and more resources for the Speaker’s Committee in order for it to carry out its overview role more effectively.

59. Both the C&AG and the Ombudsman have managed their working relationship with Government and their status as Officers of the House and operate very effectively without compromising their independence. Moreover, their work gains impact when it is endorsed by select Committees, and their legitimacy is enhanced by this relationship. The work of these offices also equips Parliament with the evidence on which political judgments can be made, thereby strengthening accountability rather than weakening it. But it is unsatisfactory that there is such a wide variance of institutional design, even among bodies which account to the House, rather than the Government.

53 House of Lords Select Committee on the Constitution, Sixth Report of Session 2003-04, *The Regulatory State: Ensuring its Accountability*, HL 68, 6 May 2006, p 48.

54 Oonagh Gay, op cit.

60. We can draw a broad distinction between the *sponsoring* role, which determines budgeting, resources and, possibly, appointments, and the *scrutiny* role, traditional for select committees, in which committees engage with the reports from regulators, examine their policies, and have power to make observations about the level and use of funds. We believe the relationship between the Public Accounts Commission, the Committee of Public Accounts and the National Audit Office offers a useful model for ensuring both operational independence, and proper accountability for a regulator. Responsibility for authorising funding has been given to a body with representatives of both government and Parliament and which is separate from the committee which scrutinises the outputs of the NAO. The Leader of the House has an *ex officio* position on the Public Accounts Commission, ensuring government representation but not control. If this model develops, then the existence of a select committee charged with examination of the independent body's reports makes it likely there will be a Parliamentary body to champion the regulator, as well as one to challenge it.

61. It is clear there is an appetite for strengthening the relationship between the ethical regulators and Parliament. For example, our predecessor committee in its inquiry into the public appointments system, recommended that:

If the Commissioner's Office is to be independent of the Executive it should be rooted in Parliament. The Commissioner should therefore be an Officer of Parliament as one of the key constitutional watchdogs. The appointment should be approved by Parliament and it is to Parliament that the Commissioner should report.⁵⁵

62. The House of Lords Select Committee on the Constitution suggested Parliamentary accountability for National Human Rights Institutions.⁵⁶ Similarly, the Joint Committee on Human Rights has regularly concluded that the appropriate model for a human rights commission is that of Officer of the House.⁵⁷ Most recently the Constitutional Affairs Committee recommended that the Information Commissioner should be responsible to and funded by the House.⁵⁸

63. As Professor Oliver reminded us in her evidence, Parliament remains "the principal watchdog".⁵⁹ The Government is responsible for its own actions and accountable to Parliament; and it is the ability of ministers and governments to retain the confidence of the House which determines political careers. Ultimately, the electorate can pass judgement on both the House and the Government. Professor King was persuasive in his evidence that democratic politics would, in the end, prove decisive in the matter of standards.⁶⁰ There needs to be a system in which regulators have sufficient independence to

55 Public Administration Select Committee, Fourth Report of Session 2002-03, *Government by Appointment: Opening Up the Patronage State*, HC 165.

56 Ev 136

57 Joint Committee on Human Rights, Sixth Report of Session 2002-03, *The case for a Human Rights Commission*, HL Paper 67/HC 489 and *Commission for Equality and Human Rights: Structure, Functions and Powers*, Sixth Report of Session 2002-03, HL Paper 78/HC 536.

58 Constitutional Affairs Committee, Seventh Report of Session 2005-06, *Freedom of Information—one year on*, HC 991, para 108.

59 Ev 140

60 Q 377

command trust, and in which evidence and investigation allows political judgments to be made. The evidence is that Parliament is strengthened in its accountability and scrutiny role if it can draw on the work of independent regulators to which it is closely connected.

64. It is unsatisfactory for the ethical regulators created to regulate government to be appointed by government, and funded by government. On the other hand, we have no desire to establish endless committees of the great and the good, lacking any link to the democratic process. Consequently, we believe that the bodies whose core business is the ethical regulation of government should be established by statute, and report to Parliament rather than government.

We consider that the arrangements for funding and scrutiny of the Comptroller and Auditor General and the National Audit Office provide a model for those regulators who are accountable to the House. This means that:

- ***Funding* and operational challenge should be provided by a body independent of government, yet with government representation, like the Public Accounts Commission. Separate committees should engage with reports. This would protect both accountability and independence;**
- ***Appointment* should be by Resolution of the House, and the names proposed should be agreed by consultation among the parties. Appointments processes could still follow OCPA principles;**
- ***Staffing*: the Officers should appoint their own staff, who would not be civil servants (although secondments from the civil service would be possible and often desirable).**

Lessons from Scotland?

65. However, designating a function as one to be carried out by an Officer of Parliament is not without problems, as is evident from the Scottish experience. Since devolution, Scotland has developed a system of ‘Parliamentary Commissioners’ (akin to ‘Officers of Parliament’).⁶¹ The Commissioners have prompted much debate, including a major inquiry by the Scottish Parliament’s Finance Committee into their accountability and governance.

66. Seven ‘Parliamentary Commissioners’ have been created with devolution. Since each was created in response to a particular perceived public policy need, there is no uniform template for this model. However, several key principles can be identified, including:

- appointment, re-appointment and removal being a matter for the Parliament, not the Executive;
- funding by or through the Parliament, rather than the Executive;

61 Auditor General for Scotland; Scottish Public Services Ombudsman; Parliamentary Standards, Information, Public Appointments and Children Commissioners, and Commission for Human Rights in Scotland. This last body has not yet been established, though the relevant legislation was passed late last year. Many other regulators discussed in this Report will also be relevant to Scotland, as they cover non-devolved matters.

- statutory guarantees of operational independence from both the Parliament and the Executive;
- reporting to the Parliament, rather than to the Executive.

67. These principles reflect the strong focus in their institutional design on the independence of these posts from the Executive. However, it became clear that too little attention had been given to their consequential ‘dependence’ on the Parliament (in practice, mainly through the Scottish Parliament Corporate Body (SPCB), the ‘equivalent’ of the House of Commons Commission), and on their accountability arrangements.⁶²

68. These fundamental governance issues were examined in the inquiry by the Finance Committee.⁶³ Its report contains much that is specific to the Scottish situation, but explores some of the general problems that can arise if the relationship between accountability and independence is not carefully considered. It is noteworthy that there is no dissent from the central tenet that these bodies should be accountable to the Scottish Parliament rather than the Scottish Executive. Although the Finance Committee acknowledged that the Commissioners were apprehensive about their independence, and that there was tension between the operational independence of the Commissioners and their accountability to Parliament for budget setting and strategic planning, it recommended greater oversight. In particular, the Committee was concerned that there should be:

- greater Parliamentary powers over Commissioners’ budgets;
- greater clarity in strategic planning;
- clear criteria for the establishment of additional commissioners and ombudsmen so that “no new officeholders should be proposed unless it can be clearly demonstrated that the function cannot be carried out by an existing body.”; and
- greater engagement with Parliament through reports and scrutiny.

69. It will be for the Scots to decide how to structure their system. However, we have been impressed both by the system of Commissioners, and by the rigour with which the Finance Committee has examined it. We draw the following lessons from the Scottish experience thus far:

- only those functions which should be properly separate from government are suitable for establishment by this model;

62 The ‘parliamentary commissioner’ model has also become part of a wider Scottish debate on the reform of devolved public services (including ‘watchdog’/regulatory bodies which are not Commissioners).

63 The detailed parliamentary scrutiny of what became the Scottish Commission for Human Rights Act 2006 also explored many of the relevant issues in some depth. See www.scottish.parliament.uk/business/bills/48-scottishCommissioner/index.htm and www.scottish.parliament.uk/business/bills/48-CommissionHumanRightspassage.pdf.

- tension between independence and accountability is unavoidable, but not insurmountable;
- Officers of Parliament should be funded through the Parliament, but not directly from Parliamentary funds;
- The effectiveness of both regulators and Parliament would be enhanced by clear reporting lines from a regulator to a particular committee.

5 Current arrangements

70. In Chapter 4 we set out the key design principles of ethical regulation. If those principles are accepted, it will be seen that current arrangements fall short of them. In relation to accountability, Appendix 1 identifies the main components. These comprise a body's accountability to the Executive; to Parliament; to the courts through judicial review; to the National Audit Office for audit; to the Information Commissioner for freedom of information; complaints procedures; scrutiny of its appointments process by the Commissioner for Public Appointments; oversight by the CSPL; and accountability to the public through its website and public relations. The extent to which constitutional watchdogs face regulation from each other is notable.

71. Appendix 1 details the forms of accountability required of the constitutional watchdogs. All have to justify their budgets through performance measures. Their budgets and corporate plans are subject to scrutiny by the bodies supplying their funding, and most are assessed for efficiency and value for money by their funders and auditors. Almost all have a link to a particular parliamentary committee and, according to their responses to the questionnaire set out in Appendix 2, several would like closer parliamentary involvement in their work.

72. All bodies issue an annual report and publish details of their work on their websites, with the larger bodies receiving significant numbers of 'hits'. Almost all the bodies are subject to supervision by the courts and so cannot stray beyond their competence or powers without risk of judicial review. All are subject to the Freedom of Information Act, with several having significant numbers of requests in the first year of its operation. (For example, there were 100 freedom of information requests to the C&AG.) Finally, the Committee on Standards in Public Life has a general responsibility to consider standards of conduct in public life, which has resulted in examination of individual organisations.

73. However, although there are a range of mechanisms for ensuring the accountability of these bodies, their independence is less assured, and their links to Parliament can be haphazard. Of the dozen bodies listed in Appendices 1 and 2, six are creatures of statute, the rest being non-statutory. Statutory bodies are likely to have more independent design features established through parliamentary scrutiny; while non-statutory bodies have a more fragile existence, as demonstrated by the demise of the Political Honours Scrutiny Committee, which was wound up with little public notice in 2005.

74. In the oral evidence for this inquiry, we concentrated upon the regulators placed within the Cabinet Office whose activities fall squarely within our remit, and whom we have scrutinised in the past. Although many of the issues we explore here about dependence on the executive may apply to other ethical regulators, the fact that the ‘independent offices’ lack any statutory basis has meant that the tensions between independence and accountability are particularly strong in their case. They provide a particularly forceful case study, although the lessons from that study can be drawn more widely. The bodies in question are:

- The Civil Service Commissioners: a collegiate body established by Order in Council to control recruitment into the Civil Service, and now with a wider responsibility for safeguarding civil service impartiality;
- The Commissioner for Public Appointments: a single Commissioner charged by Order in Council with ensuring that public appointments within her remit are made on merit, who is also *ex officio* a Civil Service Commissioner;
- The Advisory Committee on Business Appointments: a Committee established by, and accountable to, the Prime Minister, designed to ensure that ministers and civil servants who move to the private sector do so without impropriety;
- The Committee on Standards in Public Life: an advisory committee appointed by and reporting to the Prime Minister not on particular issues, but on “the current concerns about standards of conduct of all holders of public office” and expected to “make recommendations as to any changes in present arrangements which might be required to ensure the highest standards of propriety in public life”; and
- The House of Lords Appointments Commission: a non-statutory collegiate body of seven members established as a non-departmental public body sponsored by the Cabinet Office, responsible for “recommend[ing] people for appointment as non-party political peers and [vetting] all nominations for membership of the House of Lords—including those put forward by the political parties—to ensure the highest standards of propriety”.⁶⁴

75. There is no doubt that these bodies, set up on a non-statutory and pragmatic basis, have had significant positive effects. The CSPL has reshaped the regulatory landscape; the Civil Service Commissioners have ensured a civil service free from political patronage; and the Commissioner for Public Appointments has brought transparency into the appointments system. They are also good value. The budgets of those Cabinet Office-related bodies are set out in the **Table 1** overleaf:

64 In our Fourth Report of Session 2005–05, *Propriety and Honours: Interim Findings*, HC 1119, we recommended that the Appointments Commission be placed on a statutory footing. The Government’s White Paper on *The House of Lords: Reform* (Cm 7027, February 2007) also proposes a statutory commission.

Table 1: Costs of watchdogs sponsored by the Cabinet Office

Body	Budget 2005-06 £
CSPL	573,600
OCPA	557,000
CSC	1,111,000
ACoBA	184,000
HoLAC	164,000
Overheads	154,000
Total Cost (excluding accommodation and IT)	2,640,000
Total Cost (including accommodation and IT)	3,300,000

Source. Ev 109 ff: figures (including totals) as given by Cabinet Office

For comparison, the costs of the National Audit Office and the Office of the Parliamentary and Health Service Ombudsman, bodies which monitor the financial and administrative probity of government, are shown in **Table 2**.

Table 2: Costs of NAO and PCO

Body	Cash requirement 2005-06
NAO	65,043,000 ⁶⁵
PHSO	23,558,000 ⁶⁶

76. But all these non-statutory bodies are dependent on the Cabinet Office. Two (the CSC and OCPA) are established by Order in Council; the remainder lack even that basis. Although abolition is of course the greatest threat, their independence can also be threatened through cuts to their budgets or staffing, or too directive management, impeding operational autonomy. The Civil Service Commissioners have drawn attention to their inability to investigate concerns about the operation of the Civil Service Code, without a specific complaint, in their responses to our questionnaire. **We believe that all constitutional watchdogs should, in principle, have power to initiate their own inquiries into matters of specific or general concern. They should generally consult**

65 Source: NAO Annual Report 2006, p 37, figure given is for cash requirement.

66 Source: Parliamentary and Health Service Ombudsman; Resource Accounts 2005-06, HC(2005-06)1433

before doing so, as a matter of good practice, but the decision as to whether an inquiry is warranted should remain theirs alone.

Budgets

77. Over half the bodies in the Appendices are funded directly by the Government, with five falling directly on the Cabinet Office vote. The independence of these five is particularly vulnerable. In 2003–4 the initial budget allocation for the Civil Service Commissioners was about half the amount sought, although the bid was eventually met. As the Commissioners told us, “it remains the case that future funding is not guaranteed and there is potential for the Government to use funding cuts to restrict the way in which we discharge our responsibilities”.⁶⁷ Not only could reductions in funding be used to restrict the activities of these bodies; but regulatory responsibilities could also be extended without funding being increased. Such dangers could be reduced by making a non-government body responsible for resourcing, but then the funder would be forced either to respond to changes in a regulator’s remit by increasing funding or to take responsibility for reducing the organisation’s effectiveness.

78. The Committee on Standards in Public Life is also subject to executive influence. The Quinquennial Review of its activities led to an agreement to a reduced level of monitoring, which meant a 40% cut in its budget and although there are arrangements in place to ensure that extra resources are provided when necessary, these come in the form of extra people seconded from the civil service.⁶⁸

79. There is a further difficulty, which is that as a consequence (doubtless unintended) of Resource Accounting and Budgeting, the Estimates and Accounts presented to Parliament no longer clearly show the costs of these organisations. The Cabinet Office has, in fact, provided them for us, but there is no routine transparency. **We recommend that the cost of each Independent Office and the CSPL be clearly indicated in Estimates and Accounts.**

Appointments, staff and premises

80. All but three of the bodies listed in the Appendices are appointed by the Executive. It is notable that all appointments to the Cabinet Office-sponsored ethical watchdogs are made by the Prime Minister. Greater involvement of Parliament in these appointments could help to ensure that appointees are not only independent-minded, but also command the confidence of those they regulate.

81. But the greatest threat to independence here is in relation to reappointment, which can risk becoming, or be perceived as being, a factor influencing a watchdog’s decisions and actions. During the course of this inquiry there has been controversy over the failure to offer the current Chairman of the CSPL a further term. **The most effective safeguard against concerns that regulators’ independence may be influenced by a desire for reappointment is to provide for a reasonably lengthy single non-renewable term. In our**

67 Ev 124

68 Q 188

view this term should not be more than seven years (nor less than five years). This term has recently been established for the Parliamentary Commissioner for Administration;⁶⁹ and a similar single non-renewable term should apply to other constitutional and ethical watchdogs. When a body is composed of several members, it would clearly be sensible to ensure that appointments are staggered, so that continuity is maintained.

82. There is currently a wide range of powers of dismissal for the bodies listed in the Appendices. Four enjoy a high level of protection (similar to that for senior judges) and can be dismissed only following a resolution of both Houses of Parliament. The Cabinet Office five enjoy no protection and can be dismissed by the Prime Minister with no reason required. This is clearly unsatisfactory. Just as Parliament should have greater involvement in the appointment of key constitutional watchdogs, so Parliament should be a check against arbitrary or unfair dismissal. **The normal rule should be that chairs and board members of key constitutional watchdogs should only be dismissed following a resolution of both Houses.**

83. Half the bodies in Appendix 1 recruit their own staff, who are not civil servants. But the five ethical regulators sponsored by the Cabinet Office are staffed in the main from the civil service itself, sent on secondment. Even though we have no doubt they can adapt to their new roles, it is unsatisfactory that career civil servants staff the main regulators of government conduct. It is equally unsatisfactory that the organisations share Cabinet Office premises.

Overlapping jurisdictions

84. Currently appointments to the Civil Service are regulated by the Civil Service Commissioners, while appointments to public bodies are regulated by the Commissioner for Public Appointments. There is some overlap, in that the Commissioner for Public Appointments is *ex-officio* a Civil Service Commissioner, but at present they are structurally distinct, with the former a collegiate body and the latter a single Commissioner. CSPL has recommended that OCPA should be remodelled on the same lines as the CSC. Sir Alistair Graham told us:

There always is the danger of over-regulation or disproportionate regulation, which is why, when we looked at public appointments, for example, we suggested that we should get a closer alignment between the approach on public appointments and the approach on civil service appointments, which, over a period of time, we thought could lead to a common set of commissioners dealing with civil service appointments and dealing with public appointments.⁷⁰

85. We note that the First Civil Service Commissioner, Janet Paraskeva, and the Commissioner for Public Appointments, Janet Gaymer, defended their separate systems. Janet Paraskeva argued that:

We work with different people. ... there is a very real difference between the role I have in relation to a permanent, paid and impartial civil service and its [OCPA's]

69 The Employment Equality (Age) Regulations 2006, S.I. 1031.

70 Q 244

role in relation to government and non-executive—sometimes unpaid and part-time—boards the appointments to which my colleague audits.⁷¹

Janet Gaymer believed that:

At the moment, if you put the two of us together it would increase confusion, not reduce it or remove it. I also believe that the catchment areas are totally different, and that is very important. It can be very seductive to see the words “selection/recruitment” and think that we are doing the same thing. Clearly, we have a lot to learn from each other in terms of best practice in recruitment and selection. We both happen to have codes, but that is about it. We are different in virtually every other respect.⁷²

86. We recognise that policing entrance into the Civil Service differs from advising ministers on appointments to NDPBs. We also understand there is a real difference between appointment to a part-time advisory role and to a full-time post at the top of a particular organisation. However, we are not convinced that the argument that the variety of posts involved prevents consolidation will hold good for all time. The appointments covered by OCPA itself and by the National Health Service Appointments Commission, which works to OCPA, cover a very wide span, from the advisory to the executive. There are also variations in the degree of scrutiny which the Civil Service Commissioners give particular civil service posts. It seems to us there is at least a *prima facie* case for revisiting the arrangements for civil service and wider public service recruitment. We see no reason why the debate about the merits of the two systems of recruitment, and the extent to which they might be combined and in what way, has to be definitely resolved in advance of decisions about how they can be most effectively administered.

87. There are similar issues about business appointments and the status of ACoBA, which we examine in more detail in a separate report. As we state there, it seems strange that one body, the Civil Service Commissioners, should regulate entry into the civil service, while another regulates exit. We have no criticisms of the job ACoBA does, but we can see that, in principle, there would be merit in it having a closer relationship to the Civil Service Commissioners.

88. We do not want to make firm recommendations about rearrangement of the Cabinet Office regulators at this point, but we think this is worth considering in the longer term. However we do believe there is scope for a more collegiate model, which we discuss further below.

The strategic approach: the Committee on Standards in Public Life

89. The Committee on Standards in Public Life (CSPL) has been instrumental in encouraging the codification of most of the conventions and understandings under which the traditional framework for standards operated; and in successfully recommending a number of new bodies which should police them, in particular the Parliamentary Commissioner for Standards, the OCPA and the Electoral Commission.

71 Q 514 [Ms Paraskeva]

72 Q 514 [Ms Gaymer]

90. CSPL's standing basis has been perceived by many commentators as a significant constitutional innovation. Its First Report described its recommendations in solemn terms: "A degree of austerity of respect for the traditions of upright behaviour in British public life, is not only desirable but essential. We recommend procedures and institutions that will deter and detect wrong-doing. We seek to restore respect for the ethical values inherent in the idea of public service".⁷³

91. During our inquiry we detected some uncertainty about CSPL's continuing role and its standing with the Executive. Giving evidence to us, Sir Alistair Graham argued that its authority derived in part from its direct reporting line to the Prime Minister but he noted that this did not necessarily involve face to face meetings:

That is not how the system has worked traditionally. The system has worked traditionally through having regular meetings with the Cabinet Secretary who reports to the Prime Minister, and I have at least quarterly meetings with the Cabinet Secretary to talk through the business of the committee, to raise issues of common concern between us, and the Cabinet Secretary reports regularly to the Prime Minister on these matters.⁷⁴

92. He also noted that the Committee's reports were now not adequately responded to by Government or appropriately handled in Parliament:

... when we produce a report the convention always was that the Government responded within three months. In the Tenth Inquiry Report they took a year to respond. There normally used to be a Parliamentary debate around reports that came from the Committee on Standards. I think this happens less often now.⁷⁵

He suggested that the CSPL's Annual Report, which undertakes an annual standards check "to see what have been the good things and less good things over the past year", could usefully be debated in Parliament "to test the temperature there".⁷⁶ There may be merit in this. We note the recent CSPL report on the Electoral Commission has attracted parliamentary attention.

93. Sir Alistair revealed that CSPL was constrained in its inquiries. Offers to look at business appointments, honours and party funding had been refused.⁷⁷ The Cabinet Secretary, Sir Gus O'Donnell, defended these refusals.⁷⁸ He asserted that at the time the offer was made to look at honours, our predecessor Committee was already engaged on an inquiry into honours. He considered that the role of an inquiry into party funding was one of finding a solution which commanded widespread political and public support, and the CSPL was not an appropriate body to do this. We recognise that there is a political and party dimension to these matters, which may have caused difficulty. On the other hand, in 1997 the CSPL's terms of reference were expanded to include power "to review issues in

73 Committee in Standards in Public Life, *Standards in Public Life*, First Report, Cm 2850, May 1995.

74 Q 200

75 Q179

76 Q179

77 Qq 212-5

78 Qq 280ff

relation to the funding of political parties”, and an independent committee might also usefully have been able to set out the principles which should govern business appointments.

94. The Quinquennial Review of the CSPL in 2000 concluded that:

Under the Chairmanship of Lord Nolan and Lord Neill, the Committee has mapped the ethical framework in which those who serve the public have operated and should operate. By proposing seven key principles of public life, recommending the establishment of the new institutions of Commissioners for Public Appointments and Parliamentary Standards and making recommendations which have led, for example, to the better codification of practices, the Committee has made an important contribution to the fabric which it was put in place to review. In doing so it has itself become part of that fabric.

Two things are now clear. The task is substantially completed and the ethical framework has been changed significantly. Yet there remains a continuing need to monitor the ethical environment and to respond to issues of concern which may arise.⁷⁹

As we have noted, as a result of the review, the Committee's budget was much reduced.

95. Professor Anthony King, a former member of the CSPL, told us that “The Committee on Standards in Public Life ... is not there to bark, in my view, but to give people who should do the barking some guidance as to when they should bark and an indication of the kind of behaviour that deserves to be barked at”.⁸⁰ There is no doubt that there will be a continuing need for such a body. Nonetheless, as the number of ethical regulators has increased, so CSPL's role has necessarily evolved. Although it continues to do valuable work in looking at the regulatory framework, there are now other watchdogs to bark. Its relationship with the Executive, which originally ensured that its reports were taken seriously and acted upon, has now become a constraint on its activities and on its budget. It is therefore sensible to have some scrutiny of the way in which the CSPL functions. Indeed, the position of the CSPL demonstrates the difficulties caused by the current ‘ad hocery’.

6 The future shape of ethical regulation

Designing for ethics

96. Having set out our core principles for a robust and effective system of ethical regulation, we can apply them to particular aspects of the system's design. In so doing, we recognise that we are not starting with a blank sheet of paper, nor do we bring preconceived notions, such as the need for radical rationalisation. We are not suggesting that there is any simple ‘one size fits all’ approach. As we have noted, the various watchdogs fulfil a range of different functions—auditing, investigating complaints,

⁷⁹ Cabinet Office Report of the Quinquennial Review of the Committee on Standards in Public Life, January 2001, paras 22-23.

⁸⁰ Q 377

advising and so on—and this has design and governance implications. The complexity of the tasks means that there can be no single model but there are a variety of ways in which ethical regulation could be made more coherent and constitutionally secure.

97. As Chapter 4 demonstrated, there is unlikely to be total independence for any public body, even a constitutional watchdog. Any design must necessarily envisage appropriate roles for Parliament and government in a satisfactory system of ethical regulation. This dual focus can have advantages, if utilised positively in an appropriate partnership. It can not only be operationally efficient and effective, but also constitutionally proper, by sharing the role of sponsor of the ethical auditors and so minimising dangers of dependence on one or the other and maximising appropriate democratic accountability. Even the ‘Officer of Parliament’ model described in Chapter 4 which applies, with variations, to several watchdogs, can be seen as a sharing of appropriate roles: Parliament’s lead role in accountability and oversight; Government input into the more ‘executive’ area of resourcing, and both with a role in appointments. This can be a positive partnership for agreed goals.

98. This chapter presents some illustrations of where and how the appropriate application of our principles can be translated into the design both of the constitutional watchdogs themselves, and of their oversight, coordination and institutional and financial support. The set of ethical regulators sponsored by the Cabinet Office is our particular concern, but we think our analysis can have wider application. We plan to take our deliberations forward by holding a seminar of the key players, to determine what degree of consensus exists for our basic principles and analysis, and what scope there is for reforms based on them.

What are the alternatives?

99. We begin by examining two opposing models.

- **Status Quo:** It is right to consider the option of no change to the present arrangements described in this Report. We acknowledge that the current system has developed in an ad hoc way, with a potential overlap between regulators, and that there are theoretical dangers to their independence and a risk of incoherent jurisdictions. Nonetheless it is common in our constitution for ad hoc arrangements to become permanent and to function effectively. While there may be some public confusion about the various bodies and their roles, within government they have become familiar and respected, and any insensitive or inappropriate interference with them may disrupt an effective system for little benefit.

We do not recommend the maintenance of the status quo. The plethora of monitoring bodies, and their differing institutional designs, can only increase public confusion. Still more importantly, we believe that it is unacceptable that the bodies charged with monitoring the Executive are directly dependent on that Executive for their funding.

- A single, all-purpose watchdog, charged with oversight of the entire ethical system: There is potential merit in a ‘one stop shop’ approach, in terms of coherence, consistency, accessibility and economy. Such a body might be more readily

understood by the public, and give a clearer point of access for concerns to be expressed. It clearly has a superficial attraction. But there are potential risks, both of principle and of practice, in uniting all the ‘constitutional watchdogs’ in this way. A single body would need to have its independence protected, and therefore might be expected to control its own appointments and budgets. This arrangement would result in a body which lacked accountability and which would be responsible for its own oversight.

We see major problems with this model. Internal oversight or self-regulation would not be regarded as adequate or acceptable. Bringing together watchdogs with different roles and functions, especially if it means general sharing of services and staffing, may bring superficial economy at the expense of conflicts of interest and disruption to the effective operation of each particular function. There would be a confusion of oversight and investigation. We doubt that this model would gain the necessary public trust or legitimacy, or prove to be robust or effective. **We reject the idea of a single body, charged with all the regulatory functions currently dispersed among the various ethical auditors.**

Other options

100. We therefore turn to alternatives between these two opposites. We present a range of options which need further and more detailed discussion by the watchdog bodies, Parliament and the Government. At present the Cabinet Office watchdogs have both regulatory and auditing roles. The CSPL in particular is responsible for the general audit of ethical issues and has played a major role in the design and direction of the other Cabinet Office bodies. It is not a regulator, but offers a perspective on the ethical landscape. Other Cabinet Office bodies regulate and advise for their specific ethical areas. The CSPL’s auditing role does not extend to sponsoring the other Cabinet Office bodies, in that CSPL has no responsibility for appointments, staffing or funding of these bodies. That distinct sponsoring role is currently carried out by the Cabinet Office. There are three pressing design questions therefore:

- Should the auditing and regulatory functions of ethical watchdogs be combined? If not, how should the functions be distributed?
- Who should sponsor ethical watchdogs, in terms of making appointments, staffing and funding?
- What should be the arrangements for oversight, accountability and scrutiny?

A collegiate arrangement

101. Having rejected the creation of a single body above, some or all of the watchdogs could operate under a more collegiate arrangement which would provide some operational autonomy for what are currently separate bodies, but would ensure closer working relationships, and possibly the transfer of some functions from one body to another. We see this process as a more focused development of current trends, whereby the Public Appointments Commissioner is already a Civil Service Commissioner. There are a range of options from virtually autonomous units, roughly comparable to the existing separate

bodies, to a more corporate structure with stricter central management and direction, either by a college of commissioners, a separate management board or a mixed board of watchdogs and other, independent members in a ‘non-executive director’ role.

102. Creating a system of central management through a college of regulators could bring advantages of coherence, consistency, accessibility and economy, as well as providing avenues for mutual support for the watchdog offices, enabling a common professional culture to develop, and providing a common interface with those with oversight or ‘sponsoring body’ functions over them. Over time, it might even allow functions to be shared or merged, if that was efficient.

103. On the other hand, there may be disadvantages to the merging of distinct roles and functions. Firstly, excessive structural reorganisation could harm effectiveness and public trust; and, secondly, there may be potential issues about sharing IT, legal advice or data, where one watchdog’s policy area may come into conflict with another. The recent report from the CSPL which offers some trenchant criticism of the leadership of the Electoral Commission, for example, illustrates how the perspective of constitutional watchdogs can differ considerably.⁸¹ These disadvantages might well outweigh any perceived benefits and, in any case, advantages such as enhanced cooperation and appropriate sharing of services could be achieved informally without the need for formal institutional restructuring.

104. Even where a formal merger is appropriate, this may apply only to some, rather than all of the bodies under consideration. We have already alluded to the unique role of the CSPL. **We think it inappropriate that any body fulfilling the remit of the CSPL—that of an ‘ethical auditor’—should be subsumed into a body consisting of those it may have to examine.** But there may well be a role for the individual members of the CSPL to staff a management board for the college of ethical regulators, or to offer some strategic direction, or research function for any college. We make no detailed proposals at this stage, but consider that the regulators could be usefully involved in proposing more detailed solutions.

The sponsoring and oversight roles

105. Having reviewed a range of options for a collegiate scheme, we need to address the design questions of sponsoring and oversight (or scrutiny) for such a college. Some Commonwealth parliaments have established ‘Officers of Parliament Committees’ to provide ‘one stop shop’ scrutiny of constitutional watchdogs, and also to perform some or all of the sponsoring body role. Such a committee could be established by the House, which, for example, would take over the scrutiny role from this Committee (in relation to the PCA and OCPA), and the Constitutional Affairs Committee (Information Commissioner).⁸² However, the early Scottish devolved experience, discussed in Chapter 4, suggests that giving parliaments sponsoring body roles, at least without proper consideration of the impact it may have on the rest of their core business, can be detrimental.

81 Committee on Standards in Public Life, Eleventh Report, *Review of the Electoral Commission*, Cm 7006, January 2007.

82 In practice, both the PAC and Standards & Privileges Committee have other, more direct, functional roles, in relation to their respective ‘watchdog’, than at of scrutiny in the conventional parliamentary sense.

106. As we have described, there are examples of specialised bodies associated with Parliament but which are not committees constituted by resolution of the House (or both Houses), but statutory bodies with a membership of parliamentarians—the Public Accounts Commission and the Speaker’s Committee on the Electoral Commission.⁸³ This model could be expanded to create an ‘Officers of Parliament Commission’-type body capable of an all-purpose watchdog scrutiny role, at ‘arm’s length’ from Parliament and its conventional scrutiny committees. This model would avoid some of the areas of difficulty identified in Scotland, in that such a new body would also be distinct from the corporate body of the Parliament (at Westminster, the House of Commons Commission, at Holyrood, the Scottish Parliamentary Corporate Body).

107. Creating separate mechanisms for the functions of oversight and sponsoring would enable Parliament to take its proper lead role in scrutinising and holding to account public bodies, without involving it in what has traditionally been regarded as ‘executive’ functions. Parliament could continue to use its existing array of scrutiny mechanisms, such as committees, Parliamentary Questions, motions, debates and so on, or it could create new machinery to deal specifically with watchdog scrutiny. These are ultimately matters for the House itself (or, as appropriate, the two Houses co-operatively) to consider. There are arguments for and against treating one activity discretely rather than integrating it within the overall scrutiny function.

A Public Standards Commission

108. If Parliament is to reserve to itself the role of scrutiny, then a new body to undertake sponsoring functions could be constructed, at arm’s length from both Government and Parliament (though it could have members from, or acting on behalf of, both). Such a Commission should have a statutory basis. This would have the necessary and desirable consequence that the bodies it sponsored would themselves all have a statutory footing.

109. Currently the membership of the statutory commissions sponsoring constitutional watchdogs is confined to Members of this House. We see no reason why such a statutory commission should necessarily be so limited. Indeed, the broader the range of bodies within such a commission’s remit, the stronger the arguments for a diversity of membership.

110. Wherever a separate, or free-standing body is created, then, of course, it brings with it issues of its own proper institutional design and governance arrangements, especially for its appointments, resourcing and oversight. This is the classic ultimate regression problem of ‘who guards the guardians’. In practice, decisions have to be taken that maximise effectiveness with propriety. Appointments to this new sponsoring body, a Public Standards Commission, could be made by the Crown on behalf of some ‘independent’ third party, perhaps using the body of privy counsellors. There could be a requirement to include a fixed proportion of lay members, to represent the public at large. This Commission would not be unprecedented; we have only to consider the House of Lords Appointments Commission, a non-statutory body established by the executive, consisting

83 There are other such bodies, including the House of Commons Commission itself (which in the context of our Inquiry’s discussion can loosely be regarded as the House’s own ‘sponsoring body’) and the Intelligence & Security Committee.

of eminent individuals (not exclusively peers)—responsible for selecting a key element of the membership of the legislature—to realise that the British constitution is eminently flexible.

111. To sum up, we propose a direction of travel for the ethical regulators which would lead to a collegiate structure. We consider that Parliament itself is best placed to undertake the scrutiny of such a college, and that a new arm's length body—a Public Standards Commission—be created by statute to undertake the sponsoring role of appointing, funding, staffing and auditing the college. The creation of such a Commission would entail bringing the ethical regulators themselves onto a statutory footing.

112. We favour institutional designs which are consistent with our stated principles. This means that we believe the most effective model for ethical audit is likely to be one which encourages co-operation between ethical auditors, and provides robust forms of both independence and accountability. The reform of ethical regulation is likely to be a gradual process, which will allow examination and review of new arrangements. We favour the 'statutory commission' model to undertake, on behalf of both Parliament and government, the sponsoring body functions we have described, thereby leaving Parliament to fulfil its proper constitutional scrutiny and oversight role, and the watchdogs themselves the appropriate balance of independence and accountability to enable them to carry out their work properly.

113. This report has described the principles that should underlie ethical regulation and suggested a broad model for institutional reform. There now needs to be further debate about the precise way in which ethical oversight is best arranged. We will take this further in the next few months, and will begin by holding a seminar with the constitutional watchdogs and other interested parties to consider the ways in which our principles might best be put into practice. We produce this report in the expectation that it will generate constructive reactions from Parliament, Government, the watchdogs themselves, those who are subject to their scrutiny, and the public itself. The reform of ethical regulation in British public life should be undertaken openly, consensually, and on the basis of principle. There must be an end to ad hocery. It is time to recognise that machinery for the regulation of conduct in public life is a permanent part of our constitutional arrangements, and needs now to be put on a proper statutory footing.

Conclusions and recommendations

1. A rule based system should never substitute for a culture of high standards, rooted in the traditions of public life and shared by all those who participate in it. (Paragraph 36)
2. Ethical regulation should not be driven by a desire to respond to every allegation that is ventilated. Such a response will lead to precisely the rule-based system which several of our witnesses suggested would lower standards. Moreover, there is a danger that it will perversely undermine the trust it attempts to build, as the public asks why the system requires the addition of even more safeguards. If standards are high, and properly safeguarded, then the hope is that public perception may, eventually, follow. (Paragraph 37)
3. We believe that the primary purpose of the ethical regulatory system is to ensure that standards of public conduct remain high, rather than to seek to promote trust in public life as a whole. Trust is a slippery concept, and will often depend on the general cultural and political environment. (Paragraph 40)
4. To command public confidence, ethical regulators need to be robustly and conspicuously independent, and the system of regulation needs to be proportionate and coherent. (Paragraph 47)
5. It is unsatisfactory for the ethical regulators created to regulate government to be appointed by government, and funded by government. On the other hand, we have no desire to establish endless committees of the great and the good, lacking any link to the democratic process. Consequently, we believe that the bodies whose core business is the ethical regulation of government should be established by statute, and report to Parliament rather than government. We consider that the arrangements for funding and scrutiny of the Comptroller and Auditor General and the National Audit Office provide a model for those regulators who are accountable to the House. This means that:
 - *Funding* and operational challenge should be provided by a body independent of government, yet with government representation, like the Public Accounts Commission. Separate committees should engage with reports. This would protect both accountability and independence;
 - *Appointment* should be by Resolution of the House, and the names proposed should be agreed by consultation among the parties. Appointments processes could still follow OCPA principles;
 - *Staffing*: the Officers should appoint their own staff, who would not be civil servants (although secondments from the civil service would be possible and often desirable). (Paragraph 64)
6. We believe that all constitutional watchdogs should, in principle, have power to initiate their own inquiries into matters of specific or general concern. They should

generally consult before doing so, as a matter of good practice, but the decision as to whether an inquiry is warranted should remain theirs alone. (Paragraph 76)

7. We recommend that the cost of each Independent Office and the CSPL be clearly indicated in Estimates and Accounts. (Paragraph 79)
8. The most effective safeguard against concerns that regulators' independence may be influenced by a desire for reappointment is to provide for a reasonably lengthy single non-renewable term. In our view this term should not be more than seven years (nor less than five years). (Paragraph 81)
9. The normal rule should be that chairs and board members of key constitutional watchdogs should only be dismissed following a resolution of both Houses. (Paragraph 82)
10. We do not recommend the maintenance of the status quo. The plethora of monitoring bodies, and their differing institutional designs, can only increase public confusion. Still more importantly, we believe that it is unacceptable that the bodies charged with monitoring the Executive are directly dependent on that Executive for their funding. (Paragraph 99)
11. We reject the idea of a single body, charged with all the regulatory functions currently dispersed among the various ethical auditors. (Paragraph 99)
12. We think it inappropriate that any body fulfilling the remit of the CSPL—that of an 'ethical auditor'—should be subsumed into a body consisting of those it may have to examine. (Paragraph 104)
13. To sum up, we propose a direction of travel for the ethical regulators which would lead to a collegiate structure. We consider that Parliament itself is best placed to undertake the scrutiny of such a college, and that a new arm's length body—a Public Standards Commission—be created by statute to undertake the sponsoring role of appointing, funding, staffing and auditing the college. The creation of such a Commission would entail bringing the ethical regulators themselves onto a statutory footing. (Paragraph 111)
14. We favour institutional designs which are consistent with our stated principles. This means that we believe the most effective model for ethical audit is likely to be one which encourages co-operation between ethical auditors, and provides robust forms of both independence and accountability. The reform of ethical regulation is likely to be a gradual process, which will allow examination and review of new arrangements. We favour the 'statutory commission' model to undertake, on behalf of both Parliament and government, the sponsoring body functions we have described, thereby leaving Parliament to fulfil its proper constitutional scrutiny and oversight role, and the watchdogs themselves the appropriate balance of independence and accountability to enable them to carry out their work properly. (Paragraph 112)
15. This report has described the principles that should underlie ethical regulation and suggested a broad model for institutional reform. There now needs to be further debate about the precise way in which ethical oversight is best arranged. We will take

this further in the next few months, and will begin by holding a seminar with the constitutional watchdogs and other interested parties to consider the ways in which our principles might best be put into practice. We produce this report in the expectation that it will generate constructive reactions from Parliament, Government, the watchdogs themselves, those who are subject to their scrutiny, and the public itself. The reform of ethical regulation in British public life should be undertaken openly, consensually, and on the basis of principle. There must be an end to ad hocery. It is time to recognise that machinery for the regulation of conduct in public life is a permanent part of our constitutional arrangements, and needs now to be put on a proper statutory footing (Paragraph 113)

Appendix 1—Ethical Watchdogs: Current institutional arrangements

The following tables, drawn up by the Committee's Special Advisers, provide an overview of features designed to promote independence and accountability of the ethical watchdogs.

UK/English Regulators

1. Independence

Post	Type of body	Appointed by	Dismissal	Term and renewals	Staff (status & no)	Source of Funding	Budget 05/06	Powers to require information	Government powers of direction over body
Comptroller and Auditor General	Statutory, National Audit Act 1983	Crown on address from Commons	Crown on resolution from both Houses	Statute states holds office during good behaviour. No fixed term, no retirement age	Public servants, 800	Office and NAO funded from consolidated fund	£65,717,000	Statutory powers	Guarantee of independence in legislation
Parliamentary and Health Service Ombudsman	Statutory independent body, Parliamentary Commissioner's Act 1967	Crown, via involvement from PASC chair	Crown on resolution from both Houses	Statute states good behaviour, medical reasons. No fixed term, retirement at 65	Public servants, recruited independently, 280	Salary from consolidated fund, office from independent vote	£22,100,000	Statutory powers	None
Information Commissioner	Statutory independent body, Data Protection Act 1998 and Fol Act 2000	Crown, via Secretary of State	Crown on resolution from both Houses	Five year term, up to 2 re-appointments. No statutory criteria for dismissal.	Public servants, 240	Commissioner salary consolidated fund, Office grant in aid + fee income	£5m for Fol work, data protection self-financing	Statutory powers	None
Electoral Commission	Statutory independent	Crown on address from	Crown on resolution	Statute states absence,	Public servants,	Salaries and office funded	£23,974,000	Statutory powers	None, but Sec of State

Post	Type of body	Appointed by	Dismissal	Term and renewals	Staff (status & no)	Source of Funding	Budget 05/06	Powers to require information	Government powers of direction over body
	body, Political Parties, Election and Reform Act 2000	Commons	from both Houses	bankruptcy. Up to 10 years, but first appointments for 4-6 years	161	from consolidated fund			member of Speaker's Committee
Parliamentary Commissioner for Standards	Non statutory official	House of Commons Commission	Resolution of Commons, after majority vote in Standards and Privileges	Term of five years, no re-appointment. No set criteria.	Commons, staff 4/5	Commons Commission	04/05 £302,833	Parliamentary privilege via Standards and Privilege.	Standards and Privilege Committee powers.
Committee on Standards in Public Life (CSPL)	Non-statutory advisory NDPB	Prime Minister	Prime Minister. No set procedures	Leaders of three major political parties nominate one member each. Normally three year term, possible reappointment. No set criteria.	Cabinet Office secondments, staff 5	Cabinet Office vote	£573,000	CSPL chooses enquiries in consultation with PM.	Prime Minister sets terms of reference.
Civil Service Commissioners	Non statutory office, established by Order in Council	Crown via Prime Minister and Cabinet Office	Prime Minister. No set procedures	Normally three years with one re-appointment. No set criteria.	Cabinet Office, staff 7	Cabinet Office vote	£1,111,000	No initiation powers for investigation. General audit powers over recruitment.	Prime Minister. No set powers.
Public Appointments Commissioner	Non statutory Office, established by Order in Council	Crown via Prime Minister and Cabinet Office	Prime Minister. No set procedures	Three year appointment, one re-appointment. No set criteria.	Cabinet Office, staff 8	Cabinet Office vote	£557,000	No initiation powers for investigation. General audit powers over	Prime Minister. No set powers.

Post	Type of body	Appointed by	Dismissal	Term and renewals	Staff (status & no)	Source of Funding	Budget 05/06	Powers to require information	Government powers of direction over body
Business Appointments Committee	Non statutory committee	Crown via Prime Minister and Cabinet Office	Prime Minister. No set procedures	Three year term with one re-appointment. No set criteria.	Cabinet Office, staff 4	Cabinet Office vote	£184,000	appointments. No initiation powers, deals with referrals from civil service and Ministers.	Prime Minister. No set powers.
Political Honours Scrutiny Committee	Non statutory committee of three Privy Counsellors,	Crown via Prime Minister and Cabinet Office, through Order in Council	Prime Minister. No set procedures	Duration of office of current Government. No set criteria for re-appointment.	Cabinet Office staff.	Cabinet Office vote		None. Deals with referrals from Prime Minister.	Prime Minister. No set powers.
House of Lords Appointment Committee	Non statutory Advisory NDPB	Prime Minister via Cabinet Office	Prime Minister. No set procedures	Three year terms, with one re-appointment.	Cabinet Office staff, 3	Cabinet Office vote	£164,000	None. Deals with referrals from Prime Minister and from public.	Prime Minister. No set powers.
Audit Commission	Statutory Audit Commission Act 1998	Crown via Secretary of State	Secretary of State. Statutory procedure	Statutory criteria, bankruptcy, absence, unfitness etc. Three years, with up to three reappointments. Salary paid.	Public service, staff recruited independently 2,267	90% self-financing from fee income 10% Government grants	2004/5 £233,202 income (£188,234 audit fee income)	Decides own investigations and reports, but liaises with Government.	Secretary of State has broad powers of direction, largely unused.
Standards Board for England	Statutory Local Government Act 2000 Executive NDPB	Annual report to Secretary of State	Prime Minister. Statutory reasons in Schedule 4	Three year term, one reappointment. Statutory criteria for dismissal	Public service, staff recruited independently 110	Funded through grant-in-aid	2004/5 £9,534,000 income	Deals with complaints from public	No statutory powers

Post	Type of body	Appointed by	Dismissal	Term and renewals	Staff (status & no)	Source of Funding	Budget 05/06	Powers to require information	Government powers of direction over body
Judicial Appointments Commission	Statutory body Constitutional Reform Act 2005	Crown via Lord Chancellor	Lord Chancellor.	Maximum five year term, one reappointment Statutory reasons for dismissal	After three year start-up process, public service staff recruited independently	Funded through grant-in-aid	Not yet available	None. Will deal with referrals from DCA	None

2. Accountability

Post	Accountability to Parliament	Accountability to Government	Accountability to the courts by Judicial Review	Audit	FOI	Complaints machinery	Oversight of appointments process	Oversight of ethical standards	Account given direct to the public
Comptroller and Auditor General	Reports to Public Accounts Commission and Public Accounts Committee	None, but draft reports discussed with departments/agencies	No cases, untested possibility, due to parliamentary privilege under Article 9 Bill of Rights 1688.	Audited externally with results to Public Accounts Commission, together with Corporate Plan	Yes. 96 requests	Assistant Auditor General handles external complaints from departments etc Negligible amount.	Cabinet Secretary selected current appointment in 1988, before OCPA procedures existed.	CSPL in as far as general oversight, not individual cases.	Independent website, publicity budget. Website: 5.3 million hits in a year.
Parliamentary and Health Service Ombudsman	Annual report laid in Parliament. Reports examined by PASC	None, but draft reports discussed with departments/agencies	Yes. Has been reviewed several times.	C&AG	Yes, except for exemptions related to investigations. 231 requests	Internal complaints procedure, FoI or DP to Information Commissioner .	OCPA approved open competition, involvement of PASC chairman .	CSPL	Combined website with health ombudsman 8.1m hits a year. publicity budget
Information Commissioner	Annual report laid in Parliament. Gives evidence to DCA committee	Annual report to Secretary of State	Yes.	C&AG.	Yes. 246 requests	Internal complaints procedure, Ombudsman or Tribunal, if. FoI/DP	OCPA approved open competition, organised by DCA (then LCD)	CSPL	Independent website, 35.9m hits a year, publicity budget. Stakeholder meeting to launch Annual Report

Post	Accountability to Parliament	Accountability to Government	Accountability to the courts by Judicial Review	Audit	FOI	Complaints machinery	Oversight of appointments process	Oversight of ethical standards	Account given direct to the public
Electoral Commission	Reports to Speaker's Committee for budget, DCA for policy	None, but discussions with DCA	Yes, none so far.	C&AG, Parliamentary Ombudsman	Yes. 82	Internal complaints procedure, Ombudsman or if DP/FoI Information Commissioner	OCPA approved open competition, approval from registered parliamentary parties, sponsored by Home Office	CSPL	Independent website, 1.5m hits a year, publicity budget
Parliamentary Standards Commissioner	Reports to Standards and Privileges Committee	None	No, due to parliamentary privilege. Under Article 9 of the Bill of Rights 1688.	C&AG, House of Commons	Yes, but parliamentary privilege exemption applies. 11 requests	In first instance to the Committee on Standards and Privileges, then the House of Commons. No route to Ombudsman	In line with OCPA guidelines, open competition, involvement of House of Commons Commission.	CSPL, and Committee on Standards and Privileges	Part of Commons website and publicity budget
Committee on Standards in Public Life	Evidence to relevant committees	Annual report to Prime Minister	Yes. Never.	C&AG.	Yes. 4 requests	Parliamentary Ombudsman, never.	OCPA approved open competition, sponsored by Cabinet Office, involvement of Prime Minister	No formal oversight	Website and publicity budget provided by Cabinet Office. 30,000daily hits
Civil Service Commissioners	Gives evidence to PASC	Annual report to Crown (PM)	In theory. No cases.	C&AG	Yes. 4 requests	Internal complaints procedure, to Commissioner level, FoI/DP to Information Commissioner	OCPA approved open competition, involvement of Cabinet Secretary and permanent secretaries.	CSPL	Website and publicity budget provided by Cabinet Office. Number of hits

Post	Accountability to Parliament	Accountability to Government	Accountability to the courts by Judicial Review	Audit	FOI	Complaints machinery	Oversight of appointments process	Oversight of ethical standards	Account given direct to the public
							Opposition parties consulted.		unknown/
Public Appointments Commissioner	Gives evidence to PASC the Welsh Equality Opportunity Committee of the National Assembly for Wales	Annual report to Crown (PM)	In theory	C&AG via Cabinet Office.	Via Cabinet Office	Internal complaints procedure	OCPA approved open competition.	CSPL	Website and publicity budget provided by Cabinet Office. Number of hits unknown
Advisory Committee on Business Appointments	Gives evidence to PASC	Annual report to PM	In theory	C&AG via Cabinet Office	Yes. About 6	Senior internal appeals to board before the recommendation is made. .	Nominations for different backgrounds: 3 MPs by their leaders, the MOD, SASC, the diplomatic service, the CBI.	CSPL	Website, 6000 hits a year and publicity budget provided by Cabinet Office.
Political Honours Scrutiny Committee	None	No annual report. Regular contact with Chief Whip	In theory	None	No	No formal complaints procedure	Chosen from available privy counsellors from major parties by Prime Minister	CSPL	No website or publicity
House of Lords Appointment Committee	None	Intermittent annual report to PM. Contact with Chief Whip	In theory	C&AG	Yes. 9 requests	Internal complaints procedure. No complaints.	OCPA approved open Competition, sponsored by Cabinet Office 3 appointees from the three main political	CSPL	Website and publicity budget provided by Cabinet Office. Website hits unknown

Post	Accountability to Parliament	Accountability to Government	Accountability to the courts by Judicial Review	Audit	FOI	Complaints machinery	Oversight of appointments process	Oversight of ethical standards	Account given direct to the public
Audit Commission	Gives evidence to relevant select committees	Annual report, not specifically addressed to Secretary of State	Yes	C&AG	Yes. c250 requests	Internal complaints procedure, judicial review	parties. OCA approved open competition, sponsored by ODPM, consultation with local authority interests	CSPL	Independent website, several million hits per year and independent publicity
Standards Board for England	Gives evidence to ODPM Committee	Annual report to Secretary of State	Yes	C&AG	Yes. 102 FOI requests	Internal complaints procedure, 53 in 2005 Parliamentary Ombudsman.	OCA approved open competition, sponsored by ODPM.	CSPL	Independent website, 135,000 hits per year and publicity budget
Judicial Appointments Commission	Annual report laid in Parliament. Evidence to DCA committee	Annual report to Lord Chancellor	In theory.	C&AG	Yes	Body not yet in existence	OCA approved open competition 11 appts- 3 by Judges Council	CSPL	Website and publicity budget currently provided by DCA

Scottish Devolved ‘Parliamentary Commissioners’

1. Creation

Title	Creation	Type of legislation
Auditor General for Scotland (AGS)	(1) Scotland Act 1998, s69; (2) Public Finance & Accountability (Scotland) Act 2000	(1) UK, Govt Bill; (2) Sc Parl, Executive Bill
Scottish Public Services Ombudsman (SPSO) [+ 3 Deputies]	Scottish Public Services Ombudsman Act 2002	Sc Parl, Executive Bill
Scottish Information Commissioner (SIC)	Freedom of Information (Scotland) Act 2002, s42 & sch 2	Sc Parl, Executive Bill
Scottish Parliamentary Standards Commissioner (SPCS)	Scottish Parliamentary Standards Commissioner Act 2002	Sc Parl; Committee Bill
Commissioner for Public Appointments in Scotland (CPAS)	Public Appointments and Public Bodies etc. (Scotland) Act 2003 s1 & sch 1	Sc Parl, Executive Bill
Commissioner for Children and Young People (CCYP)	Commissioner for Children and Young People (Scotland) Act 2003	Sc Parl; Committee Bill
Not yet in operation:		
Scottish Commission for Human Rights (SCHR) [up to 5 members]	Scottish Commission for Human Rights Act 2006	Sc Parl, Executive Bill
Proposed Commissioners:		
<i>Commissioner for Older People (COP)</i>	<i>Commissioner for Older People (Scotland) Bill 2006 (SP Bill 71)</i>	<i>Sc Parl, Member's Bill</i>
<i>Keeper of the Scottish Register of Tartans (KSCT)</i>	<i>Scottish Register of Tartans Bill 2006 (SP Bill 76)—Bill withdrawn, Feb 2007</i>	<i>Sc Parl, Member's Bill</i>

Appendix 2—Constitutional watchdogs— Questionnaire response

Summary of responses from constitutional watchdogs to a questionnaire about their independence and accountability

Introduction

This is a summary of responses to a questionnaire sent on the Committee's behalf. Given the necessarily limited nature of responses to such questionnaires, the information recorded below is summary, and will not necessarily reflect the full view of an organisation on a subject, particularly in response to questions on possible changes rather than established facts.

The aim of this summary is to condense the main points of individual responses into one document. Where possible, the bodies are grouped together in each answer according to their similarities. Where no groups are possible, the individual replies are given. Some questions may not be relevant to all organisations.

The bodies or individuals who responded to the questionnaire are: the Audit Commission (AC), Electoral Commission (EC), Information Commissioner (IC), the Civil Service Commissioners and their Office (CSC and the OCSC), Committee on Standards in Public Life (CSPL), House of Lords Appointment Commission (HoLAC), the Commissioner for Public Appointments and her Office (CPA and OCPA), Advisory Committee on Business Appointments (ACoBA), Parliamentary Commissioner for Standards (PCS), Parliamentary Commissioner for Administration (PCA), and the Comptroller and Auditor General and his Office (C&AG and NAO). Acronyms are used throughout.

1. Appointments

1.1. How in practice are commissioner/board level appointments made?

Appointments are effectively made and recruitment processes run by the sponsoring department in many cases. Appointments to the EC are made by the Queen, on the advice of the House of Commons. However, the Political Parties, Elections and Referendums Act 2000 (PPERA) stipulates that no appointment/motion shall be made appointing Commissioners without the agreement of the Speaker. Additionally, the registered leaders of each political party with more than two members in the House of Commons must be consulted on any appointment. The Commission is currently discussing the detailed processes that will underpin future appointments with the Speaker. The appointment process is managed by the EC. As regards the CSC, the First Commissioner is appointed following a process run by the sponsoring department but other Commissioners are appointed through a process arranged by the CSC's Office and by a panel chaired by the First Commissioner.

In some cases there is a convention of consulting a third party: the Opposition Leaders in the case of the CPA and the First Civil Service Commissioner, and also the Scottish

Executive and National Assembly for Wales for the First Commissioner; the Chairman of PASC in the case of the PCA.

In the case of the C&AG and the NAO there is no sponsoring department. The C&AG is appointed by the Queen on an address proposed by the Prime Minister with the agreement of the chairman of PAC and approved by the House of Commons. The appointment process for the C&AG was revised by the National Audit Act 1983 and has only been used once, in 1987, for the appointment of the current C&AG. The detailed arrangements for appointing the next C&AG will be determined when there is a vacancy and they are thus excluded from paragraphs 1.3 -1.10 below.

1.2 Do you fall under the OCPA Code of Practice?

All the bodies operate formally or informally within the OCPA Code of Practice, with two exceptions: the CSC, who operate in accordance with the Civil Service Commissioners' Recruitment Code which they publish for use throughout the Civil Service; and the C&AG, who is not appointed by a Minister. Appointments to the CSPL, HoLAC, ACoBA and IC are regulated by the CPA. The AC believes that the DCLG (which manages their appointment process) also follows the Code—appointments are made in accordance with the Audit Commission Act 1998.

While the EC, PCA, PCS and CPA state that they do not fall under the OCPA Code of Practice, the EC has agreed that they will comply with the guidelines when recruiting Commissioners and Deputy Commissioners and will be allocated an Independent Assessor. The PCS appointment process was overseen by an OCPA Assessor, and the CPA understands the Government ran the last recruitment process as far as possible within the Code, although this is not an OCPA-regulated post. The OCPA code can only be applied as 'best practice' for a body/post that is not regulated by the OCPA, for example it is applied in this way to the PCA (but not to any other positions in that office).

1.3 What role does your office have in the appointments process?

The role each office plays in the appointments process is, on the whole, fairly limited. CSPL is consulted on the process and the terms of reference for appointments. The AC feels 'the process is primarily driven by our sponsor department'. The retiring PCS helps prepare the job specification but the process is administered by the House. The OCPA works with the Cabinet Office, but they 'effectively run the competition'. The OCPA does not play a 'full role' in an appointment process as the Commissioner's remit does not extend to managing such processes. The Commissioner set down a regulatory framework which must be followed and an Independent Assessor (IA) must participate in the process as laid down in the Code of Practice. IAs participate fully as members of the selection panel to ensure the Code is complied with and to act as the "eyes and ears" of the Commissioner. IAs are only allocated to processes outside the remit of the Commissioner if a request for each individual process is made and agreed.

The OCSC works closely with the Cabinet Office in helping to shape the job and person specifications, and in proposing membership of the panel in respect of the appointment of the First Civil Service Commissioner. As regards the appointment of the other Commissioners, the OCSC runs the competition under the direction of the First Commissioner.

1.4 Who determines the job descriptions of the posts you are filling and the criteria for filling them?

Role descriptions are frequently determined by the sponsoring department sometimes after consultation with the relevant office (eg CSPL). Statutory office holders (eg the IC) also have duties prescribed in statute. The main elements of the PCS are set out in House of Commons Standing Order No. 150, with the House of Commons Commission elaborating recruitment criteria after consultation with the Committee on Standards and Privileges.

The CSC work closely with the Cabinet Office as regards the job description for the First Commissioner. The job description for the other Commissioners is set by the First Commissioner.

1.5 Are the posts advertised? If so, who decides the format and text?

The only posts not advertised are those in ACoBA, the three political party members of HoLAC and the three party nominees on the CSPL. Advertisements are generally drafted and placed by the sponsoring department. The First Commissioner and the OSCS draft and place the advertisement for the other Civil Service Commissioners.

1.6 If no advertisement, who nominates the candidates?

The leaders of the three main political parties make nominations for the CSPL and HoLAC. Appointments to the ACoBA are made by the PM, with parliamentarians nominated by their Party Leader, former public servants by the SLC, MOD or FCO and business people after a selection process approved by the CPA. Appointments to the AC are made following nominations from the Local Government Association by each of the three main parties. Candidates must satisfy all other criteria and are subject to a selection.

1.7 Who runs the recruitment process?

Once again, a number of different agents are involved. The Cabinet Office in consultation with Number 10 run the process for HoLAC, the Cabinet Office alone for the CSPL, PCA and CPA, the DCA for the IC, the DCLG for the AC, staff of the House and consultants for the PCS. In the future, the Electoral Commission is likely to run its own recruitment process. For the CSC, the Cabinet Office is responsible for the First Commissioner, and the First Commissioner for other appointments.

1.8 Are recruitment consultants used to identify possible candidates? If so, are they required to operate within particular ethical or other guidelines?

The use of recruitment consultants is not standard. Consultants were used to recruit the independent members of HoLAC and are generally used by the PCA. To appoint for senior posts of the AC, such as the chairman, consultants have been used 'on occasions'. For the CSPL 'they could be but haven't been used in the last three years'. Consultants were used for recruitment of the CPA and the PCS, but not of the IC.

In recent years, consultants have been used to identify prospective Civil Service Commissioners and administer the competition process. They are required to operate in accordance with the Commissioners' Recruitment Code.

1.9 Who sits on the appointments panel? Who chooses them?

- The Cabinet Secretary agrees the panel for most Cabinet Office bodies—CSPL, CSC (First Commissioner), CPA, HoLAC, PCA. The panel comprises the Cabinet Secretary or his nominee, together with two or three others (one of whom will be the Chairman of CSPL in the case of the appointment of members) including an assessor as set out in the OCPA Code.
- The IC panel comprised two DCA officials and one independent person.
- For the AC, the panel is chaired by a senior DCLG official, plus the Chairman of the Commission and an OCPA Independent Assessor.

Cabinet Office panels may also include representatives from the appointed body—eg Civil Service Commissioners for the appointment of the First Civil Service Commissioner or Independent Assessors for the appointment of the CPA. The First Commissioner selects and chairs the panel which appoints other Commissioners at the CSC.

1.10 Who supervises/scrutinises the appointments process?

Regulation is provided mainly by the CPA. The CPA scrutinises independent appointments to the CSPL, HoLAC and PCS through the application of the Code and the involvement of an OCPA Independent Assessor. The OCPA Code of Practice applies to the IC and the AC.

The CSC ‘self-scrutinises’, using its own Recruitment Code as does the PCA, while for the CPA itself the process is run ‘as far as possible within the OCPA Code of Practice’, including an OCPA Independent Assessor.

1.11 Who decides on the final appointment?

The Prime Minister appoints independent members of HoLAC on the recommendation of the appointment panel. He has the last word in choosing the CSPL and ACoBA, and in providing the Queen with names for the CPA and CSC. The Prime Minister consults Party leaders for the CPA. He consults them and also the Scottish Executive and National Assembly for Wales in respect of the First Civil Service Commissioner. The Secretary of State for Communities and Local Government chooses the AC, and the Lord Chancellor the IC. The House of Commons has the final say with the PCS, C&AG, and members of the EC. The Panel has the final say in choosing the PCA.

1.12 How much discretion does the final decision maker have?

The OCPA Code requires the selection process to comply with the Principle of Ministerial Involvement, which entails Ministers having a choice of appointable candidates from which to select (eg the CSPL and HoLAC). For the PCA, the panel ‘has discretion’. For the AC, the Secretary of State for Communities and Local Government can reject the panel’s recommendation but not choose another candidate. The PM has never rejected candidates for ACoBA or the CSC. The House can reject nominations for the PCS and the EC. The C&AG is appointed by the Queen on an address proposed by the Prime Minister with the agreement of the chairman of the PAC and approved by the House of Commons.

2. Reappointment, and dismissal

2.2 Is there scope for reappointment?

For most watchdogs one reappointment is possible (subject to satisfactory performance), two is exceptional (and has not so far occurred for CSPL). For the PCS, however, the initial appointment is 5 years non-renewable. For HoLAC and ACoBA, according to OCPA rules for lower-tier bodies, there can be any number of terms totalling not more than 10 years. The C&AG's tenure, on the other hand, has no fixed term or age limit, lasting until he chooses to retire, as such the questions on reappointment are not relevant. The PCA currently has no scope for renewal, and has to vacate the office at 65. In a forthcoming amendment, the retirement age is to be removed and provision for a single, non-renewable term of not more than seven years inserted. The practice for the CSCs is for appointments to be for three years initially with the possibility of extension for a further two or three years.

2.3 What are the criteria for reappointment? Who decides these criteria?

Formal criteria are scant. The IC states that there are none. For the collegiate bodies, the Chairman plays an important role: for the CSPL, the Cabinet Secretary asks the Chairman for his assessment of performance; and the Chairman carries out an appraisal before reappointment of members of the EC and AC. HoLAC's criteria also include a satisfactory performance appraisal. For the CPA, the criteria for reappointment are decided by the Prime Minister on the advice of the Secretary of the Cabinet.

2.4 Have commissioners/members who wanted a second term not been reappointed?

None of the watchdogs were aware of commissioners seeking reappointment but being turned down. The PCS states: 'no commissioner who made a formal application has not been reappointed'.

2.5 What is the protection against dismissal for political reasons? Is this adequate?

CPA recognises that there are no formal safeguards. HoLAC and ACoBA are 'non-statutory advisory non-departmental public bodies', and could be wound down at any time although this situation has never arisen. The CSPL states that the Cabinet Office only seeks the views of the Chair about the effectiveness of members as and when the question of reappointment arises, while ACoBA states that the committee is unpaid and the situation has never arisen. The CSC's safeguard is media and political interest and 'the power for the Commissioners collectively to express concern in public fora at the time and in their annual report'.

Other watchdogs are protected by safeguards. The dismissal of the PCS needs a resolution of the House on the basis of a report from the Committee on Standards and Privileges; the IC and PCA need an address from both Houses and the Queen; guidelines for dismissal exist in PPERA Schedule 1 for the EC. The AC simply states that 'guidelines for dismissal exist and would not be used lightly'. The C&AG has statutory protection (set out in the Exchequer and Audit Departments Act 1866) under which the C&AG can only be removed by the Queen on an address from the two Houses of Parliament.

2.6 Should the grounds for removal or non-reappointment be set out in statute or other ‘constituent document’?

The CPA states that ‘clarity is always welcome’, while HoLAC states that there is a strong case for a Memorandum of Understanding to cover these matters (or a statute, if there were to be a statutory HoLAC). The CSC also think there is a ‘strong case’, as Orders in Council can be altered without prior public debate. For the CSPL the ‘grounds should be classified in the OCPA Code’.

Others are already governed by a ‘constituent document’: the PCS (Standing Order No. 150 (11)); the IC; the EC; the PCA; the AC (Audit Commission Act 1998 and OCPA guidance). In the case of the C&AG the ‘constituent document’ in this area is the Exchequer and Audit Departments Act 1866 which notes, in Section 3, that the C&AG ‘shall hold office during good behaviour...’ subject to removal under the process noted above.

3. Autonomy in policy and operation

3.1 Does government exercise any formal powers of direction it might have?

The answers demonstrate a spectrum of autonomy. The CPA and C&AG both state their independence. In the case of the C&AG, the National Audit Act 1983 provides a statutory base for the C&AG’s value for money work and gives him complete discretion in his work—it also made the C&AG an Officer of the House of Commons, signalling his independence from the Executive. The government has ‘no formal or indeed informal powers of direction’ over HoLAC or the PCA. For the IC, the Secretary of State has statutory controls over his budget and staffing, as well as an “exceptional override”. The government is similarly responsible for the AC’s overall size and shape of regulatory activity. For ACoBA, the question is ‘not applicable’ as the PM is responsible for the remit of the body. The CSC, PCS and CSPL also responded with ‘n/a’.

3.2 Does government seek to influence the body’s priorities or programmes?

None of the bodies feel unduly influenced by government. The DCA is entitled to see and comment on the IC’s Corporate and Business Plans. The chair of the CSPL is in regular dialogue with the Cabinet Secretary and it takes decisions about its work programme ‘after consultation with government’.

3.3 Does government seek to influence the body’s financial or staffing decisions or policies?

Government’s financial influence is more tangible. Both HoLAC and the CSC state that their budgets are set by the Cabinet Office and ‘there is always a possibility that [it] may attempt to reduce the budget[s] because of financial pressures’. The CPA, CSPL, and ACoBA work similarly under Cabinet Office restraints of staff and resources. The IC requires approval for the number of staff, remuneration and conditions of service from the DCA. The EC and NAO both receive their budgets from Parliament. For the EC there are government ministers on the Speaker’s Committee who may comment on the budget and corporate plan, which the Treasury is also obliged to comment on. While the NAO’s budget is based on an estimate that has been approved by the Public Accounts

Commission which, in discharging its functions, has regard to any advice given by the Public Accounts and the Treasury. The AC is not influenced by the government in its finances or staffing, but it does consult government on the fees it sets for its audited bodies. The PCA answers ‘no’.

3.4 Is your autonomy or independence affected by continuing dialogue your body may have with government?

None of the watchdogs feel their independence is diluted by dialogue with the government—the CSC ‘not at the moment’.

3.5 Does the body have scope to initiate its own inquiries or investigations?

The most common answer is a qualified ‘yes’. The IC, HoLAC (in terms of its vetting role) and ACoBA (in terms of cases they are considering) may initiate their own inquiries. So may the CPA (subject to financial and other resourcing limitations), and the CSPL (bearing in mind the fact that it takes its decisions after consultation with government).

The PCS’s inquiries are normally based on complaints or the agreement of the Committee on Standards and Privileges, while the AC gives appointed auditors power to investigate. The PCA cannot initiate its own inquiries, the EC has no formal powers to investigate complaints and limited powers in the regulatory field. The CSC have the power with regard to recruitment, but not with regard to issues related to the Civil Service Code where they can only act in response to an appeal from a civil servant.

For the C&AG the answer is an unqualified ‘yes’. He has, subject to any duty imposed on him by statute, complete discretion in the discharge of his functions.

3.6 Does the body publish thematic reports about systemic failures? If so, to whom? Are the reports published?

Again, the most common answer is a qualified ‘yes’. For the CSPL, this is their primary purpose as an independent body giving public policy advice to the Prime Minister. Their reports are published and presented to the Prime Minister and Parliament. The PCA also has reports published. The CPA and IC do occasional thematic reports and an annual report. The EC identifies systemic weakness in its report of every election and has ‘an active research function’. The PCS identifies systemic weaknesses in the context of individual cases and annual reports. HoLAC and ACoBA do not do so, but would if the need arose; concerns would usually be covered in their annual reports. It has not so far been the CSC’s practice to produce thematic reports but to cover matters of general interest in their annual reports. For the C&AG the answer is again an unqualified ‘yes’. The C&AG’s value for money reports include thematic reports on systemic failures. These are reported to, and printed as, House of Commons papers.

3.7 Are your powers insufficient in any respect?

The CPA would like reserve powers of enforcement, and the IC has pressed for stronger DPA enforcement powers. The CSC would like power to initiate inquiries under the Civil Service Code at their own initiative. They also believe there is a need to monitor internal promotions in the Civil Service to provide public assurance that they are made on merit.

The AC is in discussion with the DCLG about the rationalisation of arrangements for local services inspection. The changes desired by the EC were mostly included in the Electoral Administration Act.

Other bodies see their powers as sufficient: the PCA and the C&AG answer ‘no’, and HoLAC and CSPL indicate that, as their powers are solely advisory, the question is not applicable to them. The PCS has no formal powers, but the House’s powers stand in reserve.

4. Accountability

4.1 To whom do you consider your Commission/Council etc accountable? Who are your stakeholders?

Some bodies consider themselves accountable to Parliament: the PCA, and the IC; the EC through the Speaker’s Committee, the PCS through the Committee on Standards and Privileges; the C&AG is only accountable to Parliament. For others formal accountability lies to the Executive: the CSPL to the PM, and ACoBA to the PM and Foreign Secretary. The CSC are appointed by the Queen. Most of the bodies also consider themselves accountable to the public, or include the public among their stakeholders.

What measures would improve:

4.2 Your accountability to Parliament

The IC would like an annual session with the Constitutional Affairs Select Committee (CASC), the CSPL would like regular allocated time for debates on their reports (including their annual report), the AC would like a process whereby its findings are looked at by the relevant select committee. HoLAC would like the more direct relationship offered by a statutory footing. The EC is considering other mechanisms to engage with parliamentarians beyond those on the Speaker’s Committee. The PCA is satisfied, ACoBA answers with ‘n/a’, and the OCPA states that the Commissioner is not accountable to Parliament but is subject to Parliamentary scrutiny by the PASC. The CSC would welcome the obligation to make their report available to Parliament with the expectation of being examined on it.

4.3 Your accountability to the Government?

Fewer bodies make suggestions in this area, as they either see themselves as having no accountability to the Government, or already direct accountability. The CPA, PCS, ACoBA, PCA and CSC respond with ‘n/a’, and the IC and EC state that they are not accountable to the Government. The AC is accountable to the extent laid out in the Audit Commission Act, and HoLAC is already directly accountable to the PM. The CSPL thinks it is necessary to ensure its reports are responded to in a ‘timely and substantive manner’.

4.4 Your accountability to the public?

The CPA thinks a greater awareness of public bodies and the role of the CPA is necessary, the PCA that more access is necessary, and the IC is constantly seeking to improve accountability to the public—mainly through ‘intermediaries’ and customer satisfaction research. The CSPL, EC and AC think their accountability to the public is satisfactory. ACoBA and CSC consider the strength of the current arrangements satisfactory but would like to see a greater understanding of their role. While HoLAC has no formal accountability to the public, a clear understanding in public of its role and status, either through statute or a Memorandum of Understanding could improve the Commission’s accountability.

4.5 Your accountability to other stake-holders

For most bodies, the status quo is satisfactory. The PCS answers n/a, while ACoBA and CSC believe that they are sufficiently accountable. The CSPL and AC also believe things are adequate.

The CPA pointed out that a board of commissioners was proposed by the CSPL. While this proposal has merit, they would wish to gain a deeper understanding of what the role of such a board would be. Additional resources would be needed to support a board. While the PCA noted that it would like more effective external relations. The EC admits there is no formal accountability to stakeholders but is working on a plan.

5. Accessibility of the system

How could public awareness and access be improved

5.1 to your own organisation?

The bodies are generally satisfied with access to their own organisation, subject only to resources. The AC suggests higher profile branding if the cost warrants it, the CPA thinks that additional funding would enable more promotional opportunities and publicity, the CSC are planning a ‘renewed communications strategy aimed at raising the profile of the Commissioners in a variety of means’ and the PCA is reviewing communications media. Similarly, the IC, EC, CSPL and HoLAC are all in the process of enhancing their websites. The NAO believe they have a relatively high profile, due in part to the regular press coverage of their published reports. They also keep the accessibility of their website under review.

5.2 to the system of ‘ethical regulators’ generally

There is a broad consensus that the system needs simplifying or clarifying. As the AC says, ‘it is currently difficult for the public to navigate their way through the plethora of regulators’. The PCS suggests that the CSPL draws up a ‘roadmap’ of ethical regulators—indeed the CSPL currently finds itself being a ‘signpost’ by default. This could take the form of a central website (as suggested by the AC and CPA), or the publication of a general guide to clarify the different roles, coinciding with decisions on the location of the bodies (CSC).

6. Gaps in coverage

6.1 Are there ethics and standards issues which fail to be scrutinised by any body, or are inadequately scrutinised for lack of powers or jurisdiction?

The CPA commented that many public bodies fall outside the CPA's remit and are not regulated or scrutinised by anyone.

The CSC report a gap in relation to monitoring promotion on merit within the Civil Service and also point to the lack of any body to investigate concerns about the operation of the Civil Service Code unless an appeal is first made. The gap for the PCS was the lack of independent advice and investigation in relation to the conduct of ministers (but this was partially solved by the PM's appointment of the C&AG to fulfil the advice function in March 2006). For the EC the gap involved political parties not declaring loans. The AC is not able to audit companies that are owned by bodies within its audit jurisdiction (although this may be resolved in future legislation). The CSPL states that important recommendations (eg a Civil Service Act) remain either unaccepted or unimplemented.

For the C&AG, changes in the machinery of government and delivery mechanisms occasionally lead to gaps in coverage, where required this is sought to be remedied through appropriate legislation. The main gap will be remedied by the Companies Act 2006 which enables the C&AG to audit non-departmental public bodies that are companies and companies which are subsidiaries of non-departmental public bodies.

7. Scope for rationalisation

7.1 Is there any overlap or duplication of your functions (especially jurisdictions) with another body?

With the exception of the CSC and the C&AG, the bodies tend to see the potential for occasional overlap as opposed to duplication:

- The CPA say there is a general need for greater coherence and co-ordination of the various bodies now involved in public appointments (including the NHS Appointments Commission);
- HoLAC sees that its role of vetting the PM's additions to the honours list may overlap with the work of the Main Honours Committee;
- ACoBA thinks that the PCS might have an interest in the business activities of former ministers insofar as many remain members of Parliament;
- The PCS and EC see a possible duplication in the requirements on MPs to report donations. The Electoral Administration Bill should put an end to some of this;
- CSPL states that its remit "public policy advice on standards of conduct of all public office holders is a wide one not duplicated by any other body";
- The CPA recommends greater clarification of its role in terms of the roles of the CPAs for Scotland and N Ireland in relation to cross-border bodies;

- The PCA closely monitors potential overlap with, for example, the Independent Police Complaints Commission.

The CSC state functions to be specific to the Civil Service with neither duplication nor overlap. The C&AG states that there is no duplication of functions with other bodies, however, in some areas, such as Health, the NAO works co-operatively with other interested bodies in producing the value for money studies and prepare a joint report for Parliament.

7.2 Which other body comes closest to yours in terms of role and functions?

Most of the watchdogs struggle to find a close match to their own role.

- The CSC compare themselves with the CSC for Northern Ireland (who carry out a very similar role in relation to the Northern Ireland Civil Service), ACoBA (who look at civil servants, amongst others, taking up other work) and the CPA (who regulates ministerial appointments to public bodies);
- ACoBA, on the other hand, find no parallels;
- HoLAC also considers itself a discrete entity in terms of its appointments role, with few parallels with the Honours Committee: the Honours Committee look to reward past achievements while HoLAC looks at the possible future contribution an individual could make to the House of Lords;
- The AC compares itself to the NAO;
- The EC considers itself a unique body, although specific functions like boundary reviews might overlap with the Boundary Commissions;
- The IC compares itself to an Ombudsman in terms of looking at maladministration, and the Scottish Information Commissioner in terms of FOI;
- The PCS likens itself to the devolved Parliamentary Commissioners for Standards;
- The CPA compares itself to CSC;
- The PCA to the Scottish Public Services Ombudsman, the Public Services Ombudsman for Wales and the Northern Ireland Ombudsman;
- In the UK the C&AG's nearest equivalents are the heads of the audit agencies of the devolved administrations (the Auditor General for Scotland, the Auditor General for Wales, and the Northern Ireland Comptroller and Auditor General). Internationally most countries have an Auditor General with a similar role and functions to those of the C&AG.

7.3 If your body was merged with another, what would be gained and what would be lost?

While they recognise that there would be some gains through the sharing of resources and 'best practice', or having a single regulatory body for a given remit, most bodies think they occupy specific niches. The CSC thinks that a merger with the Northern Ireland CSC

would not work as the two Civil Services are different bodies with different relationships to government. However, they do see scope for merger with ACoBA (in respect of part of its role) as that would lead to the establishment of a single body covering entry, conduct (in relation to the Civil Service Code) during employment, and departure. HoLAC thinks that if it were merged with the Main Honours Committee, the understanding of a peerage now being a role, as a job not an honour might be lost. The AC thinks a merger with the NAO could be perceived as undermining the constitutional independence of local government given the NAO's accountability to the PAC. In relation to the proposed transfers of the Parliamentary Boundary Commissions to the EC, the EC believes that local government and Parliamentary boundary review work should be conducted by organisations in England, Scotland, Wales and Northern Ireland which are separate from the Electoral Commission. The IC does not see scope for a merger and ACoBA thinks it would need to remain discrete as a body even if it came under the umbrella of another. The PCA thinks a merger should not be the main focus of reform. The CPA felt advantages could be gained from working alongside other 'independent offices/regulators' by sharing resources and best practice. However, the precise remit of each would need to be carefully articulated and essential features retained (such as non-involvement in appointments so far as the CPA is concerned, and the independence necessary for a regulatory role).

8. Value for money

8.1 Has the budget ever been identified for across-the-board, or individual reduction?

Most of the bodies are familiar with the 'bottom line'. The C&AG, PCS and PCA are the exceptions: they state that they have never been identified for a reduction in funding.

The remaining bodies portray funding as a battle. CSPL had a 40% reduction in staffing of the secretariat in 2003, following recommendations in their 2000 quinquennial review and with the agreement of the then Chairman. The AC has introduced 2.5% reductions over the last 2 years, with efficiency apparently targeted every year.

The Independent Offices group, comprising HoLAC, OCPA, ACoBA and the CSC were once identified for a possible budget reduction—almost 50% in 2003/4—as part of a wider Cabinet Office exercise but this was not carried through. Since then the Cabinet Office has recognised the independent bodies' status and has always met their bids.

EC and IC seem to have got off marginally more lightly: while the IC is supposed to make medium and long-term efficiency savings, they have a temporary increase in budget for 06/07, and EC was expecting reductions to be imposed through the Speaker's Committee, but it has not been imposed.

8.2 Has the budget ever been cut to meet a 'political' objective?

Each watchdog states that this has never happened, but the CPA mentions that 'the possibility remains'.

8.3 What are the main measures of inputs, outputs and outcomes used when negotiating your budget?

The watchdogs use performance measures of varying sorts.

- For the PCS, it is the number and complexity of cases handled;

- The IC's data-protection work is self-funded but its FOI work assessed according to KPIs;
- The CSPL has a set of objectives and performance indicators. These are reported on in its annual report;
- The CSC according to the number of senior recruitment competitions;
- The CPA's obligations are stated in the Order of Council, with the Cabinet Office providing a 'flat-line budget' which is said not to provide scope for new initiatives;
- The EC submits its budget with its corporate plan, outlining the resources needed to meet its targets;
- The AC sets its own budget by negotiating a grant to pay for parts of its activity (inspection and development), with inspections being its main measures;
- For ACoBA, the Committee is unpaid and its small budget pays for the 4-person secretariat plus office costs and training;
- For HoLAC, the outcomes are meeting the PM's expectations and it bids for the resources to enable it to do this;
- The PCA is measured according to complaints cleared; special reports issued and performance against customer service standards;
- The headline performance indicator for the C&AG and the NAO is their success in achieving financial savings for the taxpayer. From 2007-08 the NAO's target is to achieve savings to the taxpayer of at least nine times its net costs. Performance indicators include contracting out 25% of financial audit work; compliance with auditing standards; reducing corporate services expenditure by 2.5% a year; and the percentage of recommendations accepted.

8.4 Who assesses whether your organisation delivers value for money?

Ultimately the Cabinet Office is solely responsible for assessing ACoBA and HoLAC, CSPL, CPA and CSC with the help of the NAO.

The PCS is assessed by the House of Commons Commission and the Committee on Standards and Privileges; the EC's budget proposals go to the Speaker's Committee yearly and are commented on by the Treasury; the IC is audited by the NAO, PAC and CASC scrutiny, with PwC as internal auditors, an audit committee and the DCA on Value for Money. The C&AG and NAO's expenditure proposals are examined by the Public Accounts Commission, who also appoint the external auditors. The PCA is assessed by PASC through their Annual Report and appearances before the Committee by the Ombudsman. The AC is audited by the NAO and through its internal audit systems. DCLG also carries out regular assessments of the AC's performance.

8.5 What are the performance measures you would like to use?

The watchdogs replies fall into three categories. Firstly, some would like to measure their reception in the public at large. The CPA considers the measuring of the level of public

assurance about the appointments process to be a necessity and the IC and PCA would like to use customer satisfaction, reputation and credibility as well as stakeholder assessment. The PCS also understands the importance of the 'level of member and public confidence' but thinks its high profile ensures that criticisms come to light.

Secondly, other bodies make different suggestions: looking forward, the CSC would like to be assessed on charring recruitment competitions, and would like information on the subsequent performance of civil servants they helped directly to appoint in order to learn lessons for the future.

Thirdly, ACoBA, CSPL, EC, AC, C&AG and HoLAC are happy with the status quo.

9. Relationship with Parliament

9.1 Do you have sufficient attention and support from Parliament?

The watchdogs are not easily drawn to make a judgement on the sufficiency or otherwise of their relationship with Parliament, but they nevertheless make some comments.

The EC states that arrangements have not engaged the full range of parliamentarians and the Chairman has suggested that there may be other mechanisms. The CSC says that PASC takes an interest in the Commissioners' work and invites them to give evidence 'from time to time'. HoLAC states that there is no formal relationship with Parliament, although the Commission has given evidence to PASC. The PCA does have sufficient attention. The CPA gives evidence to both PASC and the National Assembly for Wales' Select Committee on Equality of Opportunity. The NAO enjoys significant levels of attention and support from Parliament primarily from the Committee on Public Accounts. They also provide support to other Parliamentary Select Committees and individual Members.

9.2 Does Parliament follow up issues raised in your reports?

With the exception of the C&AG, there is only limited or informal scope for Parliament to follow up issues raised in reports and the bodies often rely on gaining the attention of MPs or Peers.

CSC believe that PASC takes an interest in their work and issues raised by the CSC and the PCA are followed up by PASC; PQs are the main mechanism for issues raised about HoLAC or the AC to get into Parliament. The EC is required to do reports, but these are not required to be presented and there is no formal mechanism for following them up. Similarly, the CSPL would also like more formalised and regular time slots. The CPA speaks at select committees and the IC hopes their forthcoming report will gain the attention of a select committee and the House of Lords and lead to legislation, although once again it is not clear if this is through a formal mechanism. The Committee on Public Accounts holds evidence sessions on most of the reports of the NAO at which they question the senior official responsible. The Committee publishes recommendations to which the Government subsequently replies.

9.3 Does Parliament hear when you blow the whistle?

A high proportion of the bodies either see themselves as not having a whistle-blowing function, or have no formal mechanism for blowing the whistle.

ACoBA, HoLAC, the CPA (despite a CSPL recommendation) and the CSPL state that they have no whistle-blowing function. The EC has no formal mechanism to alert Parliament to specific concerns, but aims to brief through other channels. The AC also has no formal mechanism. The PCS's procedure is via the Committee on Standards and Privileges, while the IC hopes to blow a whistle in its forthcoming report, but the formality of the mechanism is unclear. The CSC believe Parliament would take note if it ever had serious concerns to raise. While the C&AG states that the reports of the NAO do command Parliament's attention.

9.4 What do you do to make Parliament aware of your work, eg regular mailings to, or briefing sessions with, MPs/peers, specific committees?

The NAO send copies of all their reports to Members of the PAC, to the relevant departmental select committee, and to other interested Members. They also provide regular briefings to the PAC and the Public Accounts Commission and other Parliamentary committees on request. For the other bodies a lack of a formalised mechanism, mean that the 'other channels' are crucial. In general the watchdogs seem reasonably 'proactive', The AC seems the most proactive and has, for example, regular mailings on all its reports, briefing sessions, appearances before select committees and a quarterly e-bulletin. The IC points out that it tries to keep a low profile at times of controversy.

10. Sponsorship by Parliament

10.1 Would you prefer to be sponsored by Parliament, in terms of, for example, appointment; determining and providing your budget; giving powers of direction?

The watchdogs are either non-committal or marginally in favour. The PCS, CSPL and ACoBA respond with 'n/a', though for the CSPL this was because their primary function is to provide independent public policy advice to the Prime Minister. Given this function it is difficult to see how the Committee can be accountable to anyone but the PM. The CPA is 'open-minded', provided sponsorship would not affect its independence, while the AC thinks there are arguments for and against. The EC thinks the current limited sponsorship via the Speaker's Committee is appropriate.

On the other hand, the IC thinks the possibility of a closer link and vote for FOI funding would strengthen accountability and independence, as well as avoiding the perception of conflict of interest for the DCA. In June 2006, the Constitutional Affairs Select Committee concluded that it saw 'considerable merit' in direct funding for the Office of the IC however, in its response the Government concluded it was 'satisfied' with the present arrangements. Similarly the CSC believes the perception of its independence of government and the Civil Service might be enhanced through Parliamentary sponsorship. As noted earlier, the C&AG already has statutory safeguards to guarantee his independence and provide complete discretion in the discharge of his functions.

10.2 Would there be any risks involved in being sponsored by Parliament? If so, what safeguards might help to reduce those risks?

The bodies mention some risks but no safeguards. For the CSPL, there exists a risk that the line of accountability to the PM, who is in turn accountable for standards of conduct within government, would be broken. In addition, sponsorship by Parliament might be seen to compromise the Committee's ability to inquire into standards of conduct in Parliament, which currently forms part of the Committees' remit (see 1st, 6th and 8th Reports). The AC feel that sponsorship might signify for local government the encroachment of Parliament on their constitutional independence. For the CPA, the risk might be related to perceived independence. Both HoLAC and the CSC would be concerned if Parliament tried to direct their work, and given the current constitutional position, both believe they should be set up on a statutory basis.

10.3 Which chamber is most suited to carry out the sponsoring role?

The bodies to which this question applies raise the possibility of a joint committee. The IC draws the distinction between operational sponsorship and policy sponsorship, and suggests a multi-disciplinary secretariat.

10.4 Are there alternative models to sponsorship by either the Government or Parliament which might provide more appropriate arrangements?

The only body that answers the question fully is the CSC. They think that establishment as a non-Ministerial department or as a non-departmental public body would make it more 'arms length', but still reliant on the Government for funding. According to them, reassurance about the status-quo could be provided through a Memorandum of Understanding and a ring-fenced budget, which might also help to reinforce the perception of their independence.

11. Single person or collegiate model

11.1 Which model works best in your field, and why?

The CSC, HoLAC, ACoBA, AC, and CSPL believe that the collegiate model is more appropriate because of the wider expertise and experience that can be brought to bear. The EC is also a collegiate model but has taken no formal assessment of the benefits of this model over other alternatives. The PCS favours the decision-making of a single commissioner model, the C&AG mentions that a single person has been charged with auditing government expenditure since 1314, while for the CPA the board of commissioners model is untested and more expensive. The IC is a sole commissioner but with a collegiate-style Management Board, which is said to provide good performance and a form of accountability. The PCA believes the same person holding the posts of Parliamentary Ombudsman and Health Service Ombudsman for England works well, but the 2000 Collcutt Review of public sector ombudsmen recommended a collegiate system in the UK.

11.2 Amongst your international counterparts, are there examples of the opposite model?

HoLAC does not have any international counterparts, while the CSPL is not aware of any. The only bodies who answer this question are the PCA, AC, C&AG, EC and IC. The PCA states that there are examples of the opposite model. The AC's counterparts are thought to be more directly linked to the legislative body, the EC's are generally collegiate but with one clear senior figure (except in Canada, where there is a sole commissioner and a deputy, and the EU countries, where the role is normally performed by government departments). The IC thinks that, although both models are common, the collegiate model is more widespread, while among the C&AG's European counterparts, those following the single person model seem marginally more numerous.

12. Co-operation and collegiality between Commissioners

12.1 Do you meet with the other similar bodies, and if so, which and how often?

There appears to be an informal network of watchdogs as only ACoBA and HoLAC say that they do not meet other similar bodies. However, their staff share offices with the staff of CPA and CSC, with CSPL adjacent. The EC have informal contact with all 'watchdogs' or 'ethical regulators', the NAO 'works closely with other auditors and organisations involved in assessing and improving public services' and the PCA regularly meets other ombudsmen. The CSPL has regular contact at all levels (Committee and secretariat) with 'ethical' and other regulators concerned with issues affecting standards of conduct throughout the public sector. The frequency of such contacts will depend on the current Committee inquiry and/or 'current concerns' and ranges from daily or weekly to monthly. The AC has a formal agreement with a number of regulators covering the health sector. The IC also has informal contact, but its location outside London reduces the scope for this.

12.2 What issues do you discuss?

The issues discussed vary, but are said to include sharing best practice and common interests.

12.3 Is coordination with other similar bodies a significant aspect of your activities?

ACoBA, CSC, HoLAC and EC do not consider coordination a significant aspect of their work. The PCA considers it significant. The CPA, IC and PCS consider this important in terms of good practice sharing but not in terms of the time taken, while the CSPL and AC consider it an essential part of their work.

12.4 With which other similar bodies do you coordinate/cooperate most frequently?

The bodies refer back to part 12.1, but the PCS includes the Cabinet Office, and the IC and EC include their international counterparts.

12.5 Do you ever support each other when you come under pressure?

The CPA, PCS, IC, AC, PCA and CSPL say that this is the case.

12.6 Would you be willing to be part of a process of peer review?

Apart from ACoBA, who answers with 'n/a', the bodies express at least mild interest. The PCA and CPA answer 'yes', the PCS and IC are keen; HoLAC and CSC are 'always willing to learn'; the CSPL, EC and AC say yes in principle - if it is demonstrated to add value and does not compromise the ability to carry out core function.

12.7 Would you like more formal arrangements for mutual support?

The bodies are not enthusiastic, as the existing arrangements are thought to suffice. Indeed the IC states explicitly that more formal arrangements should not replace the informal ones.

13. Staffing issues

13.1 Do you have the right to recruit your own staff?

As in finance, government influence in staffing issues is more tangible. The staff of CSC, CSPL, HoLAC, ACoBA and CPA are employed by the Cabinet Office, on the Cabinet Office's terms and conditions of employment. In practice, however, each office is able to select its own staff; this is done through interdepartmental trawls and in some cases through external competitions. The AC, PCA, EC, C&AG and IC are able, however, to recruit their own staff.

13.2 If not, would you welcome such a right?

The CSC and HoLAC thinks that the current procedures are satisfactory, but implicitly recognise the potential for tension: 'the staff are used to adapting their loyalty to the needs of their principals; 'staff identify with principals, not the Cabinet Office'. The CPA would like to be able to recruit at the market rate.

13.3 If you have your own staff, do you do the recruitment independently?

Yes for the EC, PCA, AC, CSPL, C&AG and IC. No for the PCS, and the CPA is 'bound to follow the Cabinet Office process'.

13.4 If not, please describe any involvement of outside bodies in your recruitment processes

IC mentions the occasional use of recruitment specialists; the CSC talks of a 'trawl of government departments' for potential candidates.

13.5 Do you have any role in accepting/rejecting seconded staff?

Those who have the right to recruit independently do have a role. The NAO has an active programme over which it has complete discretion. Otherwise, the First Civil Service Commissioner approves the senior staff appointments in the CSC and the PCS could veto appointments.

13.6 Are there shared services and staff which could/should be pooled across similar bodies?

Generally the bodies are favourable towards such pooling. The CSC talks of combining the support function of the independent offices, while HoLAC thinks it might be more

effective to continue to use the resources of the Cabinet Office rather than set up a comprehensive stand-alone service. The CSPL already makes use of ‘shared’ Cabinet Office services such as: HR support, IT, accommodation, security, finance etc. For the CSPL, having a small team (of five) meant that the scope for further ‘sharing’ appeared very limited. The AC is already pooling resources with the Healthcare Commission and Wales Audit Office and is in discussion with other regulators to extend this pooling, while the PCA shares some common services with the Local Government Ombudsmen for England. The EC has had secondments in the past, the IC has explored the pooling of resources in IT, but the base in Wilmslow reduces the scope. The NAO does not have any formal shared services or pooling arrangements with counterparts in the public sector, however they do have a secondment programme. They also contract out work to the private sector and buy in expertise when required. ACoBA finds the question not applicable.

14. Statutory foundation

14.1 Would you welcome a statutory basis for your organisation?

Among those bodies not on a statutory basis, there are mixed views on this. The bodies already on a statutory basis are the PCA, IC, EC, C&AG and AC, while ACoBA thinks that the question is ‘n/a’. The CPA, on the other hand, would ‘need to understand the advantages before commenting’ and, as an advisory body, the CSPL thinks that statutory footing would only offer a degree more permanence and the PCS is deliberately established on a non-statutory basis.

However, HoLAC would welcome the change, and CSC says that until there is a Civil Service Act, it must be a concern that the Government can influence the way the Commissioners undertake their work.

14.2 In the absence of a statutory basis, are there any fundamental issues you would like to see enshrined as a constitutional convention in relation to your body?

- The CSPL would like formalised time slots in parliament for debates on their reports;
- HoLAC would like a Memorandum of Understanding between the Commission, the PM and the Cabinet Office, covering its role, status and finance;
- The CSC would like a Memorandum of Understanding including an assurance about funding levels. It also believes that the independence of the First Commissioner could be enhanced by configuring the appointment panel to include an independent chair and a majority of independent members.

15. Other matters

15.2 Are there other issues you would like to bring to the attention of the Committee?

Several bodies wish to bring an issue to the attention of the Committee:

- The CSC are reviewing the way they exercise their role;
- The CSPL would like to stress that they are not a regulator but an advisory body, which is why, for example, they are not part of the ‘independent offices’ ethical

regulators in the Cabinet Office - 'we felt that the PASC issues and questions paper was not as clear as it might be in this respect';

- The CPA wants to emphasise that the Commissioner is new, still in 'listening mode' and would welcome the continuing support of the Committee;
- The IC mention, firstly that their salary structure is below the market rate, but that the DCA have agreed to a comprehensive Pay and Grading Review; secondly, that they would welcome more secondments and transfers within a structured framework, but feel hampered by geography; thirdly, that they would be happy to elaborate on any point;
- The EC has nothing to add, but points out that they are also under a similar review by the CSPL.

Formal Minutes

Thursday 19 April 2007

Members present:

Dr Tony Wright, in the Chair

Kelvin Hopkins

Mr Ian Liddell-Grainger

Julie Morgan

Mr Gordon Prentice

Mr Charles Walker

Jenny Willott

Draft Report [*Ethics and Standards: The Regulation of Conduct in Public Life*], proposed by the Chairman, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs entitled Summary read and postponed.

Paragraphs 1 to 114 read and agreed to.

Postponed paragraphs entitled Summary read again and agreed to.

Resolved, That the Report be the Fourth Report of the Committee to the House.

Ordered, That the Chairman make the Report to the House.

Ordered, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order 134.

Several papers were ordered to be appended to the Report.

[Adjourned till Thursday 26 April at 9.45 a.m.]

Witnesses

Thursday 2 February 2006

Mr Peter Riddell, *The Times*, **Mr John Lloyd**, *The Financial Times* and **Simon Jenkins**, *The Guardian* Ev 1

Thursday 9 February 2006

Sir Patrick Brown KCB Ev 18

Thursday 16 March 2006

Rt Hon Lord Smith of Finsbury and **Rt Hon Lord King of Bridgwater CH** Ev 25

Thursday 27 April 2006

Sir Alistair Graham, Chairman, **Dr Richard Jarvis**, Assistant Secretary, Committee on Standards in Public Life Ev 35

Tuesday 16 May 2006

Sir Gus O'Donnell KCB, Secretary of the Cabinet and Head of the Home Civil Service Ev 48

Thursday 18 May 2006

Baroness O'Neill of Bengarve CBE FBA, **Mr Peter Kellner**, Chairman, YouGov, and **Professor John Curtice**, Department of Government, University of Strathclyde Ev 60

Thursday 8 June 2006

Professor Anthony King, University of Essex, and **Dr David Hine**, University of Oxford Ev 75

Rt Hon Lord Mayhew of Twysden, QC, DL, Chairman, and **Mr Tony Nichols**, Secretary, Advisory Committee on Business Appointments Ev 85

Thursday 15 June 2006

Mrs Janet Gaymer CBE, Commissioner for Public Appointments, and **Ms Janet Paraskeva**, First Civil Service Commissioner Ev 91

List of Written Evidence

Written evidence submitted by witnesses who also gave oral evidence:

1	Peter Riddell, <i>The Times</i>	Ev 103
2	Committee on Standards in Public Life	Ev 103, Ev 107
3	Cabinet Office	Ev 109
4	Baroness O'Neill of Bengarve CBE FBA	Ev 113
5	Dr David Hine, University of Oxford	Ev 114
6	Advisory Committee on Business Appointments	Ev 115
7	Commissioner for Public Appointments	Ev 117, Ev 122, Ev 149
8	Civil Service Commissioners	Ev 123

Other written evidence:

1	Campaign Against the Arms Trade	Ev 130
2	The Rt Hon Lord Maclennan of Rogart	Ev 132
3	Dr Rachel Murray, University of Bristol	Ev 133
4	Dawn Oliver, Professor of Constitutional Law, University College London	Ev 140

Presentations by witnesses:

1.	Professor John Curtice, University of Strathclyde	Ev 142
2.	Mr Peter Kellner, YouGov	Ev 148

Reports from the Public Administration Select Committee since 2005

The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

Session 2006-07

First Report	The Work of the Committee in 2005-06	HC 258
Second Report	Governing the Future	HC 123
Third Report	Politics and Administration: Ministers and Civil Servants	HC 122

Session 2005-06

First Report	A Debt of Honour	HC 735
Second Report	Tax Credits: putting things right	HC 577 (HC 1076)
Third Report	Legislative and Regulatory Reform Bill	HC 1033 (HC 1205)
Fourth Report	Propriety and Honours: Interim Findings	HC 1119
Fifth Report	Whitehall Confidential? The Publication of Political Memoirs	HC 689
Sixth Report	Ombudsman in Question: the Ombudsman's report on pensions and its constitutional implications	HC 1081
Seventh Report	The Ministerial Code: the case for Independent Investigation	HC 1457
First Special Report	The Attendance of the Prime Minister's Strategy Adviser before the Public Administration Select Committee	HC 690
Second Special Report	Ministerial Accountability and Parliamentary Questions: Government Response to the Committee's Fifth Report (Session 2004-05)	HC 853
Third Special Report	Inquiry into the Scrutiny of Political Honours	HC 1020