



House of Commons  
Public Administration Select  
Committee

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# **The Prime Minister's adviser on Ministers' interests: independent or not?**

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**Twenty Second Report of Session  
2010–12**

*Report, together with formal minutes, and oral  
and written evidence*

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## The Public Administration Select Committee (PASC)

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## Summary

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The person referred to in the Ministerial Code as the 'independent adviser on Ministers' interests' is responsible for investigating, at the request of the Prime Minister, alleged breaches of the Code. We considered the role and remit of this post, and have recommended changes to the role to enable the adviser to carry out short, preliminary investigations and also to instigate his own investigations. Such changes would help prevent a recurrence of the events preceding the resignation of the Rt Hon Dr Liam Fox as Secretary of State for Defence in October 2011, when the independent adviser on Ministers' interests was not called upon to investigate the breach of the Code.

The retirement of Sir Philip Mawer as independent adviser shortly after Liam Fox's resignation provided the Prime Minister with an extremely timely opportunity to appoint a candidate with a proven record of independence to ensure and promote Ministerial propriety. We are disappointed that this opportunity was not taken, and that instead, a closed recruitment process was used to appoint Sir Alex Allan, a career civil servant, to the role. An open appointment process is essential to inspire public confidence in the independence of the role of the adviser on the Ministerial Code.

Sir Alex has had a distinguished career working for his country in public service, and has clearly been an outstanding civil servant. We felt, however, that he was unsuited to this role because he did not convince us that he would be able to demonstrate the independence the post requires. In fairness, it is unlikely that many retiring civil servants will have had the opportunity to demonstrate the necessary independence from Government in their career to date. We regret that we were not given the opportunity to express these views before Sir Alex took up his post.

We also sought to consider the role of the Civil Service in helping to prevent breaches of the Ministerial Code and recommended a revision to the Civil Service Code to ensure that officials are clear about their obligation to advise Ministers on matters relating to the Ministerial Code and how to act when matters remain unresolved.

There is a strong case for more structured co-ordination of the work of the various regulators of propriety in public life and we will consider in our future work how this might best be achieved.



# 1 Introduction

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## Our inquiry

1. The Prime Minister's independent adviser on Ministers' interests is responsible for advising Ministers on how to comply with the Ministerial Code, and, at the request of the Prime Minister, investigating alleged breaches of the Code.
2. This role has been held since 1 November 2011 by Sir Alex Allan. In January 2012 the Committee questioned Sir Alex about the recruitment process he had undergone, and how he planned to undertake his duties. We also took evidence from his predecessor, Sir Philip Mawer, about his time in post, and how the role might be strengthened.
3. We had previously taken evidence on the remit of the independent adviser as part of our inquiry into the role of the Head of the Civil Service in November and December 2011, hearing from the new Head of the Civil Service, Sir Bob Kerslake; the former Head of the Civil Service and Cabinet Secretary Lord (Gus) O'Donnell; and five other former Heads of the Civil Service, as well as from academics, journalists and commentators. This evidence explored the decision not to ask the independent adviser to investigate an alleged breach of the Ministerial Code in relation to the access by Mr Adam Werritty to the former Secretary of State for Defence, the Rt Hon Dr Liam Fox MP, and also touched on the role of the Civil Service in the events leading up to Liam Fox's resignation.
4. We have not taken evidence from Liam Fox, Adam Werritty or the Permanent Secretary at the Ministry of Defence, Ursula Brennan, nor have we sought to examine the specifics of the case. We do not therefore seek to make any judgement about the conduct of any individual in relation to this matter, nor do we invite any such conclusions to be drawn from this Report. We have examined whether there are lessons to be learnt for the Civil Service and how any future alleged breaches of conduct by Ministers should be addressed more effectively.

## The history of the post of independent adviser

5. The need for a strong and independent examiner of alleged breaches of the Ministerial Code was a recurring concern for PASC in the 1997–2001, 2001–2005 and 2005–2010 Parliaments. In February 2001, before the post existed, PASC recommended a twin-track approach to resolving this issue, with the Parliamentary Commissioner for Standards advising ministers on compliance with the Code and the Parliamentary Ombudsman conducting independent investigations of alleged breaches of the Code.<sup>1</sup> This recommendation was rejected by the Government in December 2001, which argued that:

there was no single approach to the investigation of allegations of ministerial misconduct that would be helpful in all cases, and that it would be undesirable to

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<sup>1</sup> Public Administration Select Committee, Third Report of Session 2000–01, *The Ministerial Code: Improving the rule book*, HC 235, para 30

fetter the Prime Minister's freedom to decide how individual cases should be handled.<sup>2</sup>

6. The Committee on Standards in Public Life (CSPL) recommended the establishment of a post of independent adviser on Ministers' interests in its 9<sup>th</sup> Report, published in 2003.<sup>3</sup> The Government response to this Report accepted this recommendation, "to provide Ministers and Permanent Secretaries with an additional source of professional advice as required on the handling of complex financial issues".<sup>4</sup>

7. The first independent adviser on Ministers' interests, Sir John Bourn (previously Comptroller and Auditor General), was appointed in March 2006. His terms of reference stated that the Prime Minister "may ask the independent adviser to establish the facts in certain cases concerning the Ministerial Code and to provide private advice to him".<sup>5</sup>

8. The remit of the independent adviser was extended by the then Prime Minister, the Rt Hon Gordon Brown MP, on taking office in 2007. Sir Philip Mawer took up this role in January 2008. PASC reported again in May 2008, welcoming the extended remit, but warning that it would be difficult to command public confidence in the role of independent adviser "if the Prime Minister can decide that *prima facie* breaches of the Code will not be investigated".<sup>6</sup> PASC therefore called for the independent adviser to have the power to instigate his own investigations in its report *Investigating the Conduct of Ministers*.<sup>7</sup> This Report also recommended greater distance between the independent adviser on Ministers' interests and the Cabinet Office, and called for the holder to be appointed through a transparent open competition and subject to a pre-appointment hearing by a parliamentary select committee.<sup>8</sup> These conclusions were not accepted in the Government's response.<sup>9</sup> We did not therefore treat the evidence session with the new independent adviser as a pre-appointment hearing. This evidence session also took place three months after the appointee had taken up the post. We return to this matter later in this report.

9. The role of independent adviser remains on a non-statutory footing. As Sir Philip confirmed, "insofar as [the role] is enshrined anywhere, it is enshrined in aspects of the Ministerial Code".<sup>10</sup> The Ministerial Code, the guide to propriety for Ministers, sets out the requirement for Ministers to consult with the independent adviser for advice on avoiding a conflict, or the perception of a conflict, with the Code.<sup>11</sup> Sir Philip stressed that the "life of

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2 Public Administration Select Committee, Second Report of Session 2001–02, *The Ministerial Code: Improving the rule book: the government response to the Committee's Third Report of Session 2000-01*, HC 439, Appendix

3 Ninth Report of the Committee on Standards in Public Life, Cm 5775, April 2003, [www.public-standards.org.uk/Library](http://www.public-standards.org.uk/Library)

4 HC Deb, 11 September 2003, col 33WS

5 Public Administration Select Committee, Seventh Report of Session 2007–08, *Investigating the conduct of ministers*, HC 381, para 3

6 *Ibid.* para 17

7 *Ibid.*

8 *Ibid.* paras 27-29

9 Public Administration Select Committee, Ninth Special Report of Session 2007–08, *Investigating the conduct of ministers: Government Response to the Committee's Seventh Report of Session 2007-08*, HC 1056

10 Q 9

11 Cabinet Office, *Ministerial Code*, May 2010. para 7.2

the adviser focuses very much on the advisory role”, arguing that “the important thing is to try and prevent problems arising in the first place, rather than investigating them after they have surfaced”.<sup>12</sup> This was, he told us, no small job: he “lost count of the number of times” on which he was involved in dialogue with Ministers in departments and others about Ministers’ interests.”<sup>13</sup> Having received returns from all Ministers, the independent adviser then compiles the twice-yearly publication of the List of Ministerial Interests (first published in March 2009, and most recently published in December 2011).<sup>14</sup> Sir Philip argued that this work—“the undramatic, non-publicity-catching work with officials in the Cabinet Office”—helps to enable “circumstances to be avoided that might have been stumbled into in the past”.<sup>15</sup> For this reason, he viewed this task as the high point of his time in post: “it is undramatic, it is boring and it is routine, but in my view it is a vital protection to the public”.<sup>16</sup>

10. The Ministerial Code also enshrines the circumstances in which the independent adviser is requested to investigate alleged breaches of the Code:

It is not the role of the Cabinet Secretary or other officials to enforce the Code. If there is an allegation about a breach of the Code, and the Prime Minister, having consulted the Cabinet Secretary, feels that it warrants further investigation, he will refer the matter to the independent adviser on Ministers’ interests.<sup>17</sup>

11. In his time in post, Sir Philip was asked to carry out only one investigation: an alleged breach of the Ministerial Code by Shahid Malik MP, the then Justice Minister. Following his investigation, Sir Philip found that no breach had occurred.<sup>18</sup>

## This Report

12. This Report examines two distinct but related sets of issues. The first draws lessons from the events surrounding Liam Fox’s resignation, both in regards to those who might have raised concerns sooner, and to the extent to which the investigatory processes available were followed. The second examines the process by which Sir Alex Allan came to be appointed independent adviser in 2011.

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12 Q 2, Q 3

13 Q 2

14 Q 3; Independent Adviser on Ministers’ Interests Annual Report 2010-11, Cabinet Office website

15 Q 62

16 *Ibid.*

17 Cabinet Office, *Ministerial Code*, May 2010, para 1.3

18 *Ministerial Code of Conduct Allegation against Mr Shahid Malik MP: Report by the Independent Adviser*, Cabinet Office, June 2009, Cabinet Office website

## 2 Lessons from Fox-Werritty

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### Lessons for the Civil Service

13. On 6 October 2011 the Secretary of State for Defence, the Rt Hon Dr Liam Fox MP, asked the Permanent Secretary at the Ministry of Defence, Ursula Brennan, to carry out an internal inquiry to establish whether there had been any breach of national security or the Ministerial Code in relation to allegations about the access by Mr Adam Werritty to his office.

14. In her interim report, dated 10 October 2011, Ursula Brennan stated that she had been aware in August 2011 of concerns relating to Adam Werritty:

I became aware of the allegation that Adam Werritty was handing out business cards describing himself as “Adviser to Rt Hon Dr Liam Fox” following a story in *The Guardian* on 19 August 2011, when I was on leave. The day after my return to the office (23 August) I raised the issue at my routine meeting with the Secretary of State.<sup>19</sup>

15. In his evidence to us, the then Cabinet Secretary Sir Gus O'Donnell (now Lord O'Donnell) confirmed that Ursula Brennan had not alerted him to this issue until after Dr Fox had asked her to investigate it.<sup>20</sup> In his evidence, Sir Gus stated that “with hindsight, I think it is probably right that this should have come to me earlier, yes”.<sup>21</sup> He further stated:

I wish I had been told about this earlier. I wish that somebody had told me, and I would have wanted to go and talk to the Secretary of State.<sup>22</sup>

16. Following Ursula Brennan's interim report, the Prime Minister asked Sir Gus “to establish the facts of the case in relation to the former Defence Secretary's conduct in the context of the Ministerial Code”.<sup>23</sup> Sir Gus's report to the Prime Minister proposed changes to the way the Civil Service raises concerns about ministers. It said:

I therefore propose a stronger and clearer system which is better understood by ministers and officials alike. Specifically, this episode has exposed a gap in dealing with matters that may appear initially only to be of minor concern, but give rise incrementally and over time to substantial concern. The system needs to be strengthened to allow such concerns to be aired between Permanent Secretaries and ministers, and where issues cannot be resolved they are referred to me and ultimately to you.<sup>24</sup>

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19 Letter From Ursula Brennan to Sir Gus O'Donnell, 10 October 2011, para 14, Cabinet Office website

20 Qq 338–339

21 Q 340

22 Q 401

23 Report by the Cabinet Secretary: *Allegations against Rt Hon Dr Liam Fox MP* October 2011, para 1, Cabinet Office website

24 *Ibid.* para 20

17. Sir Gus made five recommendations to achieve this objective, including the proposal that:

Permanent Secretaries should take responsibility for ensuring departmental procedures are followed, and for raising any concerns with Ministers, advising the Cabinet Secretary and ultimately the Prime Minister where such concerns are not resolved.<sup>25</sup>

18. Sir Gus reported that “the risks of Dr Fox’s association with Mr Werritty were raised with Dr Fox by both his private office and the Permanent Secretary”.<sup>26</sup> This was also suggested in Liam Fox’s personal statement on resignation, that “with hindsight, I should have been more willing to listen to the concerns of those around me”.<sup>27</sup> Ursula Brennan’s finding that “there are areas where the current guidance on propriety and the management of ministerial Private Offices needs to be strengthened” suggests that some officials in the Secretary of State’s office may have been unsure about how to raise such concerns.<sup>28</sup>

19. The Civil Service Code requires officials to act with “integrity, honesty, objectivity and impartiality”.<sup>29</sup> Civil servants must “fulfil [their] duties and obligations responsibly”.<sup>30</sup> The Code also sets out how officials should raise a grievance if they have a concern that instructions they have been given conflict with the Code. When he gave evidence to us, Lord Butler of Brockwell, a former Cabinet Secretary and Head of the Civil Service, argued that the Civil Service Code thus required officials to take action on concerns such as those in the case of Liam Fox.<sup>31</sup> Sir Philip Mawer, the then independent adviser on Ministers’ interests told us that he was “astonished” that Ministry of Defence officials did not escalate their concerns about Adam Werritty. It was, he suggested, “due to a lack of forethought by the Department on behalf of its Minister and its reputation”.<sup>32</sup>

**20. We are concerned that civil servants did not act or give formal guidance regarding the meetings between Adam Werritty and Liam Fox in the 18 months between May 2010 and October 2011. We recommend that the Civil Service Code or procedure in the Cabinet Manual be clarified to ensure that officials are clear about their obligation to advise Ministers on matters relating to the Ministerial Code and how to act when such matters remain unresolved.**

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25 Report by the Cabinet Secretary: *Allegations against Rt Hon Dr Liam Fox MP*, October 2011, para 27, Cabinet Office website

26 *Ibid.* para 23

27 HC Deb, 19 October 2011, c923

28 Letter From Ursula Brennan to Sir Gus O’Donnell, 10 October 2011, para 4

29 Civil Service Code, November 2010, para 3, [www.civilservice.gov.uk](http://www.civilservice.gov.uk)

30 *Ibid.*, para 6

31 Public Administration Select Committee, Nineteenth Report of Session 2010-12, *Leadership of change: new arrangements for the roles of the Head of the Civil Service and the Cabinet Secretary*, HC 1582, Q 75

32 Q 66

## Lessons in relation to the independent adviser on Ministers' interests

21. Sir Philip Mawer was not asked to investigate the conduct of Liam Fox. Sir Philip viewed this as “a missed opportunity”.<sup>33</sup> It was, he told us, the “low point” of his time in post.<sup>34</sup> Sir Philip added:

I do believe that the adviser ought to have been brought in to investigate the Fox-Werritty affair and brought in quickly [...] Why did that not happen? I am not the person to answer that.<sup>35</sup>

22. Sir Philip did, however, set out three possible reasons why he might not have been consulted:

First of all, if one can stand back and try and learn the lessons, this got off on the wrong foot in the first place. The Permanent Secretary of the Department should not have been conducting any kind of inquiry at the request of Dr Fox. Second, the Cabinet Secretary was only brought into the matter relatively late in the day. Third, the evidence emerged pretty quickly through the media about Dr Fox's activities, which pretty conclusively demonstrated that a breach of the Code had occurred.<sup>36</sup>

23. Sir Philip argued that the Prime Minister's decision not to refer the case to him for investigation, was not, he believed, indicative of “a lack of faith” in him or in his role.<sup>37</sup>

No one in Whitehall, at any point, has suggested to me that the failure to involve the adviser was a reflection of a lack of confidence in the role of adviser or in me personally. I believe it was much more to do with events and also to do with the dynamics that develop around these issues [...] in terms of how long you can suspend a Minister who occupies an important role, and so on.<sup>38</sup>

### Time

24. Several of our witnesses, including the journalist and commentator Sue Cameron, suggested a different reason for not asking the independent adviser to investigate Liam Fox's conduct:

I think the reason they did not use Philip Mawer was a political one; there was this huge row going on, and he might be a very good guy but Sir Philip Mawer could have taken forever, in their terms, to decide on this, and they wanted it fixed by the end of the week.<sup>39</sup>

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33 Q 60

34 Q 62

35 Q 22

36 Q 60

37 Q 51

38 Q 60

39 Public Administration Select Committee, *Leadership of change*, Q 260

25. In his annual report for 2010–11, Sir Philip set out the procedure to be undertaken in the investigation of alleged misconduct: this ran to thirteen paragraphs.<sup>40</sup> In his evidence to us, he explained the need for “due process” during his investigations:

a due process has to be gone through—which, if you were in the hot seat, you would wish to be gone through—in which you are shown the evidence and you have an opportunity to give your response to it. Therefore, at that point, the initiative passes out of the hands of the adviser into the hands of the Minister concerned.<sup>41</sup>

26. Sir Philip did accept that “there is a need for speed in these matters”.<sup>42</sup> He also stated that he was “never given the opportunity to prove that [he] could produce the report quickly.”<sup>43</sup>

27. Sir Gus O’Donnell indicated that the time taken in the Shahid Malik investigation was a factor in the decision not to ask Sir Philip to investigate the Liam Fox case:

It was clear from what the Secretary of State himself had said, and it was backed up in my report, that there was a clear breach of the ministerial code. The Secretary of State took responsibility for that and resigned. If you had said, “Right, we want a full, lengthy investigation into all these issues,” what would the Secretary of State have done? In the past—in the Shahid Malik case, for example—the Minister was suspended. Would you have wanted a long period of having the Secretary of State for Defence suspended? I just do not think that would have been good for government.<sup>44</sup>

### A resolved issue?

28. Sir Gus also argued that there was no need for a full investigation by the independent adviser once Liam Fox had resigned. Sir Gus questioned “to what purpose” there would have been such an investigation, as “the Secretary of State admitted that he had broken the Ministerial Code. The Secretary of State decided and took responsibility for this and resigned”.<sup>45</sup>

29. When asked whether Liam Fox’s conduct should have been investigated, notwithstanding his resignation, Sir Philip suggested that Sir Gus had established “fairly quickly” that there was “more than a *prima facie* case—there was a clear-cut case” of a breach of the Ministerial Code.<sup>46</sup> The Prime Minister therefore “felt there was no point in further inquiry” and “brought the matter to a close”.<sup>47</sup> It was, Sir Philip stressed, not his decision, but the Prime Minister’s.<sup>48</sup> Sir Philip, did, however, suggest that it was a decision

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40 Independent Adviser on Ministers’ Interests Annual Report 2010-11, Cabinet Office website

41 Q 42

42 Q 47

43 Q 54

44 Q 367

45 Public Administration Select Committee, *Leadership of change*, Q 352

46 Q 23

47 Q 55

48 Q 24

he understood, stating that “if there is to be cause for an inquiry then I think it would need to be a rather different inquiry from one conducted by the adviser”.<sup>49</sup>

**30. We accept that, following a ministerial resignation, the kind of investigation that might be appropriate would differ substantially from an investigation carried out while a Minister was still in office; and in many cases it would not be appropriate at all. The resignation of a Minister should not, however, preclude altogether some form of independent investigation when further examination of the facts would be in the public interest.**

### ***Should the independent adviser have been involved?***

31. Sir Philip recognised that suspending a Minister under investigation by the independent adviser presented a difficulty for the government. He argued that if the independent adviser was “engaged earlier in the process”, this should be accompanied by “an expectation that the Minister will continue to do his or her work unless and until the Prime Minister decides, following an inquiry and the publication and presentation of a report, that the Minister should step down”.<sup>50</sup>

32. Such “ground rules” for investigations by the independent adviser on Ministers’ interests would help, Sir Philip argued, to avoid a situation:

in which politicians are at the mercy of those who make allegations about them, at the mercy of the media, and so on. I firmly believe that it is in the interests of the public, in the interests of those in political life and in the interests of preserving good standards in public life, to have a process that gives fairness, not only in the sense of independence of investigation but to the person who is the subject of that investigation.

33. Sir Philip argued that the independent adviser should be:

brought in quickly, given the opportunity to show they can produce a report that is appropriate in the circumstances, and the basis of fact on which a Prime Minister reaches a subsequent decision should be made public. In that way, the public will have confidence in the process that is undergone.<sup>51</sup>

34. Sir Philip added that he could not “insist [on carrying out an investigation] when the decision rests with the Prime Minister”.<sup>52</sup> Instead, as a result, there was still an unresolved issue “around how the adviser is engaged and brought into play in his investigatory function”.<sup>53</sup> His view was that “there needs to be a more ready willingness to engage the adviser earlier in the whole process”.<sup>54</sup>

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49 Q 25

50 Q 21

51 Q 43

52 Q 26

53 Q 20

54 Q 21

35. It is understandable that the Government in general and the Cabinet Secretary in particular would have wanted to avoid a lengthy investigation into a case of great political and personal sensitivity where a speedier and generally acceptable form of resolution was available. The Cabinet Secretary could well have believed, reasonably if perhaps wrongly, that to pass the case formally over to the independent adviser would have required such a lengthy investigation.

36. What we find less reasonable is that the independent adviser was apparently cut out of the loop altogether. **The level of media and public interest in this case should have made the involvement of the independent adviser, more, not less important. He should at least have been consulted.**

### *Possible changes to the independent adviser's processes*

37. Sir Philip's successor, Sir Alex Allan, told us that he had discussed the role of the independent adviser with the new Cabinet Secretary, Sir Jeremy Heywood, in which he "made the point that there are advantages to him in bringing the adviser in early and whenever major issues arise".<sup>55</sup> This point was, Sir Alex reported, accepted by the Cabinet Secretary.<sup>56</sup>

### *Shorter investigations*

38. Sir Alex Allan, told us that he was open to changing the way the adviser worked to allow for shorter investigations:

I would want to see whether there were ways of tailoring the investigation process to produce a different style of investigation for different types of allegations, some of which may be able to be done much quicker, some of which may require the full process that he [Sir Philip Mawer] outlined.<sup>57</sup>

39. He added that:

I want to establish that it is perfectly possible for my office to do quick investigations, so that, when the Prime Minister is considering whether to ask me to investigate, the fact that it might take a long time is not an issue.<sup>58</sup>

40. **We note the concerns expressed by Sir Gus O'Donnell over the effect of a lengthy investigation on the operation of Government, and recommend amending the Ministerial Code to empower the independent adviser to carry out shorter investigations to establish the preliminary facts of a case. This would strengthen public confidence and better reflect the principle, expressed in the Ministerial Code, that it is not for the Cabinet Secretary to enforce the Code.**

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55 Q 99

56 Q 99

57 Q 92

58 Q 110

### *Independently initiated investigations*

41. Sir Alex Allan did not agree that his powers should be extended to enable him to launch his own inquiries:

First of all, it is the Prime Minister who is accountable for the conduct of his Ministers, so ultimately the buck stops with him; it has to be his decision.<sup>59</sup>

He added that there were “continually allegations of breaches of the Ministerial Code, some of which are essentially very small-scale and easily dealt with” so it would be “very hard to say that any allegations of any breaches of the Ministerial Code should automatically be referred” to him.<sup>60</sup>

42. A point of comparison is the role of the Parliamentary Commissioner for Standards. Since the creation of this role in 1995, its occupant has decided autonomously which complaints against Members of Parliament to investigate, without a political filter of the kind that applies to the independent adviser. Clearly, an autonomous investigatory function would change the role and resource requirements of the independent adviser, but the example of the Parliamentary Commissioner suggests that it would be entirely practicable. We also note that, with the creation of such a function, the Prime Minister would remain responsible for deciding whether to retain a Minister in office or not.

43. In his evidence to us about the role of the independent adviser Sir Christopher Kelly, Chairman of the Committee on Standards in Public Life (CSPL) told us that “I think it was almost certainly a breach of the Ministerial Code that [the adviser] was not employed” to investigate the allegation against Liam Fox. For the avoidance of doubt, Sir Christopher subsequently corrected this in a letter which stated that his statement was incorrect as “the Code is clear that the Prime Minister has discretion about whether to invite the independent adviser to undertake an investigation, even in the case of allegations about breaches of the Code as serious as those made about Dr Fox”.<sup>61</sup> The letter emphasised that CSPL had previously recommended that the independent adviser should have the power to instigate his own inquiries in appropriate situations.

**44. As PASC recommended in the last Parliament, we again recommend that the independent adviser should be empowered to instigate his own investigations. The Prime Minister could do this on his own initiative, without any need for legislation, but placing the post on a statutory footing would be preferable.**

### *Co-ordination with related offices*

45. Sir Philip recommended that any potential changes to the role of the independent adviser should be considered alongside other “aspects of these arrangements in Government”, such as the Advisory Committee on Business Appointments, which advises former ministers and Civil Servants on the suitability of appointments after they leave the

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59 Q 113

60 Q 113

61 Ev 16

public sector, “which have grown up in a higgledy-piggledy way”.<sup>62</sup> We are currently conducting an inquiry into the role of the Advisory Committee on Business Appointments.

46. PASC in the last Parliament recommended a “collegiate structure” for the ethical regulators connected with the executive, under the scrutiny of Parliament and sponsored by a Public Standards Commission.<sup>63</sup> PASC recommended that

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.<sup>64</sup>

**47. We believe there is a strong case for more structured co-ordination of the work of the various regulators of propriety in public life and will consider in our future work how this might best be achieved.**

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62 Qq 46, 70

63 Public Administration Select Committee, Fourth Report of Session 2006–07, *Ethics and Standards: The Regulation of Conduct in Public Life*, HC 121-I, para 111

64 *Ibid.* para 113

## 3 The appointment of the new independent adviser on Ministers' interests

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48. Sir Philip Mawer retired from the role of independent adviser on Ministers' interests at the end of October 2011. This had, he emphasised, been his intention since Autumn 2010, and was unrelated to the failure to refer the case of Dr Fox to him for investigation.<sup>65</sup> We were not informed about Sir Philip's retirement until we received the annual report of the independent adviser in December 2011.

### The recruitment process

49. By the time Sir Philip's retirement annual report was published in December 2011, which announced his retirement, his successor was already in post. At the time of appointment, no details of the recruitment process were published.

50. Sir Philip told us that the independent adviser is "entirely a personal appointment of the Prime Minister of the day".<sup>66</sup> When Sir Alex Allan was asked about the recruitment process he responded:

I was asked if I would be interested in taking on the role, I said I was, the process went through and I was appointed.<sup>67</sup>

Sir Alex was not aware of any competition for his role.<sup>68</sup> When asked whether it was a "tap on the shoulder" he did not deny it.<sup>69</sup>

51. We contacted the Cabinet Office to request further information about the appointment process, and specifically asked how many other candidates were considered for the role. The response stated that:

A number of individuals were considered for the role and Sir Alex Allan was judged to have the experience, and the necessary skills and judgement, to make him ideally suited for the role.<sup>70</sup>

We only learned that Sir Alex was the new appointee through a letter to a Member of PASC which was dated 3 January 2012, two months after he started in post.

### Career background of the appointee

52. Sir Alex Allan took up the post of independent adviser immediately, at the beginning of November 2011. Sir Alex's previous career, apart from a three-year spell living in Western

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65 Q 64

66 Q 9

67 Q 77

68 Q 77

69 Q 93

70 Ev 16

Australia, has been spent entirely in public service, most recently in a number of senior Civil Service posts.

53. Sir Alex's background differs considerably from his two predecessors as independent adviser on Ministers' interests. While both Sir Philip Mawer and Sir John Bourn had served as senior civil servants, they had demonstrated their independence from Government since leaving the Civil Service through undertaking senior investigatory and audit functions as Officers of the House of Commons: Sir John as the Comptroller and Auditor General and Sir Philip as the Parliamentary Commissioner for Standards.

54. We challenged Sir Alex on the question of independence. He argued that his most recent job, as Chairman of the Joint Intelligence Committee, had required him to provide independent advice to Ministers, and could "involve saying quite uncomfortable things, where Government policy is saying one thing and the intelligence may not bear that out".<sup>71</sup> Sir Alex also offered an example of his willingness to challenge ministers from his time as Permanent Secretary at the Ministry of Justice when:

The prison population was bursting at the seams and I had to go to the then Lord Chancellor and say, 'You really have no option but to introduce an early release scheme', which was politically extremely difficult and caused a lot of controversy. It was one of those issues where the facts on the ground demanded it and we had to press that through.<sup>72</sup>

He further stressed that he was "perfectly prepared to challenge Ministers" about their interests.<sup>73</sup>

55. We questioned whether the role of 'independent adviser' is truly independent. Sir Alex referred to the "the independent role providing the public confidence".<sup>74</sup> This is not, however, reflected in independent office support. Structurally the role is not independent, except insofar as the post-holder is not a member of the Civil Service. The role is a personal appointment of the Prime Minister, with support provided from the Cabinet Office. Sir Philip attempted to clarify the situation:

the bottom line here is that the adviser is an adviser; they are not an independent commissioner and therefore do not have an independent office.<sup>75</sup>

56. Whether the role is perceived as independent largely comes down to the personal qualities and career histories of the individuals who fill it. Its previous incumbents, while both had at one point been career civil servants, had when appointed already spent a number of years outside Government in the pursuit of independent investigative functions. Sir Alex Allan does not share this clear record of autonomy; nor is he known to have filled any investigative role in the past.

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71 Q 85

72 Q 91

73 Q 86

74 Qq 81– 82

75 Q 46

57. We make no personal criticism of Sir Alex, who has had a distinguished career working for his country in public service. We also recognise that, as Sir Alex told us, the role “does have two sides to it”, one of which is “to provide the Prime Minister with personal advice and deal with sensitive issues with Ministers, providing advice to Ministers in confidence and discussing some quite sensitive issues with them privately”.<sup>76</sup> We accept that the Prime Minister’s will wish to appoint an adviser whom he trusts to fulfil this part of the role, but the manner of the appointment and the independence of the individual appointed must inspire public confidence.

58. **The title given to the role we have been considering is the ‘independent adviser on Ministers’ interests’, but the nature of this independence must be in doubt, since:**

- **the post is in the Prime Minister’s gift;**
- **the appointment by a closed recruitment process took place without the House or the public even being informed that the previous incumbent had retired or that a new appointment had been made; and**
- **the new appointee himself had only just retired from a senior role at the heart of Government.**

59. **The title of the role implies that the independence of the role is a key objective. PASC in the last Parliament recommended a “healthy distance” between the independent adviser on Ministers’ interests and the Cabinet Office, and called for the holder to be appointed through a transparent open competition and subject to a pre-appointment hearing by a parliamentary select committee.<sup>77</sup> We view the implementation of these recommendations as essential if this post is to be genuinely ‘independent’ and to inspire public confidence in the enforcement of the Ministerial Code.**

60. **For the role to be independent, the appointment process was flawed, and so, unfortunately, was the choice of individual to fill that post. Any successful candidate for a post requiring independence from Government must be able to demonstrate that independence. Sir Alex Allan, as a recently retired senior civil servant, was therefore never likely to be an appropriate choice, and his evidence to us did nothing to convince us otherwise. In fairness, it is unlikely that many retiring civil servants will have had the opportunity to demonstrate the necessary independence from government in their career to date.**

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76 Qq 81– 82

77 See paragraph 8.

## 4 Conclusion

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61. We regret that Sir Philip Mawer was not consulted in the course of the events leading up to the resignation of Liam Fox. This decision suggests an unwillingness to refer difficult cases to the independent adviser and prompts questioning over the role and remit of this post.

62. Sir Philip's retirement shortly afterwards provided the Prime Minister with a timely opportunity to demonstrate the value he places on having investigations into complaints against Ministers investigated in a demonstrably independent way. We are disappointed that this opportunity was not taken and that instead a recently retired senior civil servant was appointed through an entirely closed recruitment process.

63. These two events lead us to conclude that, at present, the title of 'independent adviser' is a misnomer. We regret Sir Alex Allan is therefore unsuited to a role which demands demonstrable personal independence from Government. We also regret that we were not given the opportunity to express these views before Sir Alex took up post. We do not in any way question Sir Alex's integrity, ability or commitment, but neither he nor the role to which he has been appointed is independent of Government in any meaningful sense.

## Conclusions and recommendations

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### Lessons for the Civil Service

1. We are concerned that civil servants did not act or give formal guidance regarding the meetings between Adam Werritty and Liam Fox in the 18 months between May 2010 and October 2011. We recommend that the Civil Service Code or procedure in the Cabinet Manual be clarified to ensure that officials are clear about their obligation to advise Ministers on matters relating to the Ministerial Code and how to act when such matters remain unresolved. (Paragraph 20)

### Lessons in relation to the independent adviser on Ministers' interests

2. We accept that, following a ministerial resignation, the kind of investigation that might be appropriate would differ substantially from an investigation carried out while a Minister was still in office; and in many cases it would not be appropriate at all. The resignation of a Minister should not, however, preclude altogether some form of independent investigation when further examination of the facts would be in the public interest. (Paragraph 30)
3. The level of media and public interest in this case should have made the involvement of the independent adviser, more, not less important. He should at least have been consulted. (Paragraph 36)
4. We note the concerns expressed by Sir Gus O'Donnell over the effect of a lengthy investigation on the operation of Government, and recommend amending the Ministerial Code to empower the independent adviser to carry out shorter investigations to establish the preliminary facts of a case. This would strengthen public confidence and better reflect the principle, expressed in the Ministerial Code, that it is not for the Cabinet Secretary to enforce the Code. (Paragraph 40)
5. As PASC recommended in the last Parliament, we again recommend that the independent adviser should be empowered to instigate his own investigations. The Prime Minister could do this on his own initiative, without any need for legislation, but placing the post on a statutory footing would be preferable. (Paragraph 44)
6. We believe there is a strong case for more structured co-ordination of the work of the various regulators of propriety in public life and will consider in our future work how this might best be achieved. (Paragraph 47)

## Career background of the appointee

7. The title given to the role we have been considering is the 'independent adviser on Ministers' interests', but the nature of this independence must be in doubt, since:
  - the post is in the Prime Minister's gift;
  - the appointment by a closed recruitment process took place without the House or the public even being informed that the previous incumbent had retired or that a new appointment had been made; and
  - the new appointee himself had only just retired from a senior role at the heart of Government. (Paragraph 58)
8. The title of the role implies that the independence of the role is a key objective. PASC in the last Parliament recommended a "healthy distance" between the independent adviser on Ministers' interests and the Cabinet Office, and called for the holder to be appointed through a transparent open competition and subject to a pre-appointment hearing by a parliamentary select committee. We view the implementation of these recommendations as essential if this post is to be genuinely 'independent' and to inspire public confidence in the enforcement of the Ministerial Code. (Paragraph 59)
9. For the role to be independent, the appointment process was flawed, and so, unfortunately, was the choice of individual to fill that post. Any successful candidate for a post requiring independence from Government must be able to demonstrate that independence. Sir Alex Allan, as a recently retired senior civil servant, was therefore never likely to be an appropriate choice, and his evidence to us did nothing to convince us otherwise. In fairness, it is unlikely that many retiring civil servants will have had the opportunity to demonstrate the necessary independence from government in their career to date. (Paragraph 60)

## Formal Minutes

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**Wednesday 14 March 2012**

Members present:

Mr Bernard Jenkin, in the Chair

Paul Flynn  
Robert Halfon  
David Heyes

Kelvin Hopkins  
Priti Patel  
Lindsay Roy

Draft Report (*The Prime Minister's adviser on Ministers' interests: independent or not?*), proposed by the Chair, brought up and read.

Draft Report (*The Prime Minister's adviser on Ministers' interests*), proposed by Paul Flynn, brought up and read as follows:

1. Further investigations are essential into the allegations arising out of the Fox-Werritty affair. The conclusion to be drawn by the evidence of Sir Philip Mawer and Sir Christopher Kelly is that the Prime Minister may have broken the Ministerial code in not calling for the only enforcer of the code to undertake the investigation. There is powerful evidence that using Sir Gus O'Donnell to carry out the swift investigation was a decision taken to hide the whole truth in order to satisfy political expediency and avoid political embarrassment to the Coalition. The Ministerial Code clearly restricts the role of investigation of breaches in the Ministerial Code to the Independent Adviser.
2. Establishing the role of the Independent Adviser is a reform that is the culmination of continuous work by this Committee and others since 1999. It has been used once in Shahid Malik's case and abused once in this case. The value of this reform is now under threat because of the Prime Minister's failure to instigate a full investigation without a restrictive timetable.
3. The issue under consideration is not a trivial one. It is claimed that the former Secretary of State for Defence was operating a private defence policy under the influence of Adam Werritty who was himself under the influence of his paymasters from right wing neo-con groups in the United States. Liam Fox was conducting a policy on Sri Lanka which was not entirely in accord with government policy: it is possible that he may have been conducting a policy with Israel which was also not in accord with government policy. If that allegation proves to be true it could well lead to an acceleration of a process in which Britain could stumble to an avoidable war with Iran. That could lead to similar dire consequences to those of the wars in Iraq and Helmand which led to the deaths of 179 and 404 British soldiers. The past Secretary of State should not be allowed to escape a full investigation because of his resignation. These matters are of such importance to the nation and the conduct of future ministers that they require, not the botched brief probe conducted by Sir Gus O'Donnell, but a full thorough analysis and judgement of the alleged conduct of the past Secretary of State for Defence and its possible consequences.
4. The extraordinary events surrounding the resignation of Sir Philip Mawer and the unannounced appointment of his successor require explanation. Paul Flynn wrote a letter to Sir Philip and was surprised to receive a reply from Sir Alex Allen. It may be unprecedented for a change of role to take place with such extraordinary secrecy and subterfuge. It's a reasonable conclusion that the Government intention was to conceal the resignation and the new appointment to avoid unfavourable publicity.

5. The matters that still remain for further investigation are:

- The alleged breach of the Ministerial Code by the Prime Minister
- A full legitimate investigation into the alleged conduct of Liam Fox and Adam Werritty without the time constraints imposed on the Sir Gus O'Donnell report
- Revival of PASCs previous plea for the Independent Adviser to be appointed only after the pre-appointment hearing
- The need to ensure that no further investigation is restricted in scope and duration by the resignation of the accused party.

Motion made, and Question proposed, That the Chair's draft Report be read a second time, paragraph by paragraph.—(The Chair.)

Amendment proposed, to leave out "Chair's draft Report" and insert "draft Report proposed by Paul Flynn".—(Paul Flynn)

Question put, That the Amendment be made.

The Committee divided.

Ayes, 2

Paul Flynn  
Kelvin Hopkins

Noes, 4

Robert Halfon  
David Heyes  
Priti Patel  
Lindsay Roy

Another Amendment proposed, to leave out from "That" to the end of the Question and add "this Committee declines to read the draft Report a second time because its conclusions are defective with several omissions, as a result of the lack of a convincing response to the claim that Sir Gus O'Donnell's report commented on only two meetings between Liam Fox, Adam Werritty and unspecified Israelis and not the five that took place, the lack of a Committee investigation into the role of the Permanent Secretary Ursula Brennan in failing to report to higher authority the internal concerns in the Defence department, and the Committee's failure to call Liam Fox, Adam Werritty and Ursula Brennan to supply what could have been illuminating evidence under cross-examination; and notes that while a Select Committee cannot conduct an investigation to rival that of the Independent Adviser, the value of the Committee's conclusion would have been strengthened by information from the those principally involved in an alleged suppression of the truth of the conduct of Liam Fox." instead thereof.—(Paul Flynn)

Question put, That the Amendment be made.

The Committee divided.

Ayes, 2

Paul Flynn  
Kelvin Hopkins

Noes, 3

Robert Halfon  
Priti Patel  
Lindsay Roy

Main Question put and agreed to.

*Ordered*, That the Chair's draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 63 read and agreed to.

**24** The Prime Minister's adviser on Ministers' interests: independent or not?

Summary agreed to.

*Resolved*, That the Report be the Twenty Second Report of the Committee to the House.

*Ordered*, That the Chair make the Report to the House.

*Ordered*, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

Written evidence was ordered to be reported to the House for printing with the Report.

[Adjourned till Tuesday 20 March at 4.00 pm

## Witnesses

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**Tuesday 31 January 2012**

*Page*

**Sir Philip Mawer**, Holder of the role of Independent Adviser on Ministerial Interests between 2008-2011

Ev 1

**Sir Alex Allan KCB**, Independent Adviser on Ministerial Interests

Ev 10

## List of printed written evidence

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Cabinet Office

Ev 16

Sir Christopher Kelly, Chair of the Committee on Standards in Public Life

Ev 16

## List of Reports from the Committee during the current Parliament

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

### Session 2010–12

First Report	Who does UK National Strategy?	HC 435 (HC 713)
Second Report	Government Responses to the Committee's Eighth and Ninth reports of Session 2009-10	HC 150
Third Report	Equitable Life	HC 485 (Cm 7960)
Fourth Report	Pre-appointment hearing for the dual post of First Civil Service Commissioner and Commissioner for Public Appointments	HC 601
Fifth Report	Smaller Government: Shrinking the Quango State	HC 537 (Cm 8044)
Sixth Report	Who Does UK National Strategy? Further Report with the Government Response to the Committee's First Report of Session 2010-11	HC 713
Seventh Report	Smaller Government: What do Ministers do?	HC 530 (HC 1540)
Eighth Report	Cabinet Manual	HC 900 (HC 1127, Cm 8213)
First Special Report	Cabinet Manual: Government Interim Reponse to the Committee's Eighth Report of Session 2010-12	HC 1127
Ninth Report	Pre-appointment hearing for the post of Parliamentary and Health Service Ombudsman	HC 1220-I
Tenth Report	Remuneration of the Parliamentary and Health Service Ombudsman	HC 1350
Eleventh Report	Good Governance and Civil Service Reform: 'End of Term' report on Whitehall plans for structural reform	HC 901 (HC 1746)
Twelfth Report	Government and IT — "a recipe for rip-offs": time for a new approach	HC 715-I (HC 1724)
Thirteenth Report	Change in Government: the agenda for leadership	HC 714 (HC 1746)
Fourteenth Report	Public Appointments: regulation, recruitment and pay	HC 1389
Fifteenth Report	Smaller Government: What do Ministers do? Further Report	HC 1540 (HC 1746)
Sixteenth Report	Appointment of the Chair of the UK Statistics Authority	HC 910
Seventeenth Report	The Big Society	HC 902
Eighteenth Report	Change in Government: the agenda for leadership: Further Report, with the Government Responses to the Committee's Eleventh, Thirteenth and Fifteenth Reports of Session 2010-12	HC 1746
Nineteenth Report	Leadership of change: new arrangements for the roles of the Head of the Civil Service and the Cabinet Secretary	HC 1582

Twentieth Report	Government and IT—"a recipe for rip-offs": time for a new approach: Further Report, with the Government response to the Committee's Twelfth Report of Session 2010-12	HC 1724
Twenty First Report	Future oversight of administrative justice: the proposed abolition of the Administrative Justice and Tribunals Council	HC 1621



# Oral evidence

## Taken before the Public Administration Committee on Tuesday 31 January 2012

Members present:

Mr Bernard Jenkin (Chair)

Alun Cairns  
Charlie Elphicke  
Paul Flynn  
Robert Halfon

David Heyes  
Kelvin Hopkins  
Greg Mulholland  
Priti Patel

### Examination of Witness

*Witness:* **Sir Philip Mawer**, former Independent Adviser to the Prime Minister on Ministers' Interests, gave evidence.

**Q1 Chair:** May I welcome you to what might be termed a valedictory session, after your role as Independent Adviser to the Prime Minister on Ministers' Interests? Could you identify yourself for the record please?

**Sir Philip Mawer:** Yes. My name is Philip Mawer, and I am the recently retired Independent Adviser on Ministers' Interests.

**Q2 Chair:** How many times were you consulted by the Prime Minister or Permanent Secretaries about possible conflicts?

**Sir Philip Mawer:** I lost count of the number of times on which I was involved in dialogue with Ministers in Departments and others about Ministers' interests. The life of the Adviser focuses very much on the advisory role. There are a number of aspects to the role, but one absolutely critical one is advising Ministers; that is done through Permanent Secretaries and the Cabinet Office officials with whom one is in close dialogue as issues arise. They arise particularly, of course, when new Administrations are formed and also during major reshuffles of the Government. At that time, there is a regular flow.

**Q3 Chair:** So it is completely erroneous to have this view that somehow you are sitting there twiddling your thumbs because you are so rarely asked to conduct a formal investigation.

**Sir Philip Mawer:** I hope the Committee will agree with me that the important thing is to try and prevent problems arising in the first place, rather than investigating them after they have surfaced. Therefore the advice role is critical and as part of that, in the process of preparing the List of Ministers' Interests, the Adviser receives all returns from—what is it now?—something like 120 Ministers. Each of them completes a return when they are appointed to office. The Adviser also sees any advice that the Department has given the Minister on how those interests should be reconciled and discusses them with Cabinet Office officials and then advice goes back to Departments. That is the bulk of the role.

**Q4 Chair:** How proactive are you in that role? Do you wait for people to come to you? Is that how it works?

**Sir Philip Mawer:** No, it is a more formalised process than that. I hope that one of the things I achieved in the role was to bring some process and structural underpinning to the role of the Adviser. As I mentioned, on appointment Ministers now all complete a form. One of the simple things I did was to make sure the categories of interest that have to be declared were specified clearly. All Ministers go through this process.

**Q5 Chair:** Could you give an example of when you initiated something as opposed to waiting for a Minister or Permanent Secretary to approach you?

**Sir Philip Mawer:** As I have indicated, the initiation was largely through establishing a proper framework for getting returns in from Ministers of their interests. Then the dialogue starts. Of course, in the course of the dialogue one is not just reactive—one is also probing. You are checking that things have been done, you are advising Cabinet Office and other officials and you are engaged in a dialogue with them about ways in which interests might be handled. There is no single formula solution that fits all situations.

**Q6 Chair:** So your previous experience as Parliamentary Commissioner for Standards must have been extremely relevant.

**Sir Philip Mawer:** Indeed it was, Chairman.

**Q7 Kelvin Hopkins:** You have carried out one formal investigation—as the Chairman said we might even say “only” one formal investigation—during your time in the post. We appreciate that this has to be the Prime Minister's decision, but this investigation was into the conduct of Shahid Malik, on which you reported in June 2009. What lessons did you learn from that investigation?

**Sir Philip Mawer:** I think it set a number of important precedents. One was the initial decision by the Prime Minister to invite me to investigate. Second, it enabled me to clarify the procedures for conducting an investigation—procedures that I have subsequently

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made public as an appendix to my most recent annual report.

Third, it established a very important precedent that the Committee had urged, which was that the report of my investigation was made public in the context of the then Prime Minister's publication of his decision about what should happen. Fourth, there were both parliamentary and ministerial aspects to the allegations concerning Mr Malik. I think the current Parliamentary Commissioner and I handled that boundary successfully between us. So I thought that, although in itself it was relatively minor in the scale of allegations, and indeed my findings were not adverse to Mr Malik, it did establish some important precedents.

**Q8 Kelvin Hopkins:** My impression, and I do not want to be too dismissive, is that Shahid Malik was relatively small fry compared with some Ministers and was not going to make too many waves, and the reason why Shahid Malik was referred to you for a formal report was that it was not going to cause too much political difficulty for the Prime Minister. In other circumstances, the Prime Minister might have been reluctant to refer things to you for a formal report. Indeed, there have been some high-profile cases that some of us think should have gone to you but have not. Do you think there is something in what I have been saying?

**Sir Philip Mawer:** Of course, the decision on whether to refer or not is for the Prime Minister of the day. It may be that you want to get on to other cases where you think that referral ought to have taken place. But in that case, I am pretty clear that the Prime Minister decided that there was something to be looked into and he accordingly referred the matter to me. The previous Prime Minister has not been well regarded by history so far, but one thing you cannot criticise him for is his clear sense of personal integrity. I thought that was reflected in the decision he made.

**Q9 Robert Halfon:** Can I just go back to your role in general? Is it statutory now or not?

**Sir Philip Mawer:** No, it is entirely a personal appointment of the Prime Minister of the day and, insofar as it is enshrined anywhere, it is enshrined in aspects of the Ministerial Code.

**Q10 Robert Halfon:** So in essence what you do is entirely dependent on the person who is doing the job. Is that right?

**Sir Philip Mawer:** I would not go so far as that. Obviously, just as in the experience of this House, the approach taken by a particular Commissioner—a Parliamentary Commissioner or a particular Adviser on Ministers' Interests—does undoubtedly affect the way in which the role is perceived; you can add to or subtract from the credibility of the role by the way in which you conduct yourself in it. However, the role is now clear, in terms of the parameters within which it is set. I hope that, through my three-and-a-half-plus years as Independent Adviser, I have given the role some credibility and begun to build some trust in it.

**Q11 Robert Halfon:** Can you just define what "ministerial interests" means?

**Sir Philip Mawer:** Those interests, essentially, which are personal or closely familial in character, which might reasonably be perceived to create a potential conflict between the Minister's public responsibilities and those personal interests that they have.

**Q12 Robert Halfon:** So that covers quite a wide remit; it is not just about the possible business interests that they may have had in a previous life.

**Sir Philip Mawer:** No. As you know, it goes broader than the definition in terms of parliamentary interests and Members' interests. As you know, in my time as Adviser we published the List of Ministers' Interests for the first time. Another edition has recently been published. That is cast in a way that ensures that it sits alongside the Parliamentary Register of Interests, but it goes beyond it in scope. So, yes, the range of interests that may be relevant to a Minister's particular executive responsibilities are broader than those attached to Members of the House who are not occupying ministerial office.

**Q13 Robert Halfon:** Is it right that, because your role is not statutory and is partly under the Ministerial Code, there is no obligation for the Prime Minister to consult you? It is up to the Prime Minister whether he does or not. Is that right?

**Sir Philip Mawer:** There is no obligation for the Prime Minister to consult you. Having said that, it would be a curious Prime Minister who set up a role—or indeed, in the case of the current Prime Minister, continued it on coming into office—and did not take advantage of the fact that he had an Adviser there who could give him advice on matters when he felt that he needed it.

**Chair:** We will be coming back to that subject.

**Q14 Charlie Elphicke:** We have heard about Shahid Malik, which I believe involved a massage chair or something like that, did it not?

**Sir Philip Mawer:** No, it involved the rental of a property that he had been involved in.

**Charlie Elphicke:** That is on the low end of the spectrum. How many other investigations did you carry out?

**Sir Philip Mawer:** Only one, and that was the Malik inquiry. You have to recognise that that is a function of two things. One is whether in fact scandals or allegations are raised in relation to Ministers, and there have not been that many in my time as Adviser. The other is whether the Prime Minister decides to refer a matter for investigation.

**Q15 Charlie Elphicke:** Does the Code apply to ministerial interests only when the Minister is in office, or does it apply to former Ministers as well?

**Sir Philip Mawer:** It contains provisions in relation to former Ministers as regards their interests once they leave office. It says that they must follow the advice that they receive from the Advisory Committee on Business Appointments in relation to any appointments that they take up subsequent to ministerial office. A real problem that one has in

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relation to former Ministers is that they are former; the hold that a Prime Minister has over serving Ministers is clearly nothing like the same in relation to former Ministers.

**Q16 Charlie Elphicke:** Do you accept that, in relation to former Ministers, there would be some public concern that, for example, Tony Blair has had £12 million for his company? Some people might think that that is slightly odd and trading off the whole ministerial thing. This may cross-cut with your previous role as Parliamentary Commissioner for Standards, but today I read in the *Financial Times* that Lord Mandelson is alleged to have flipped his interest in Global Counsel from one category in the Register to another, so he does not publish anything at all. Do you not think we should have an overarching system to deal with these things so that there can be a greater sense of transparency?

**Sir Philip Mawer:** First, Lord Mandelson's Register declaration is, I assume, a matter for the authorities in the House of Lords. Therefore, if there is an allegation about that—that he had been improper in some way—then it would need to be investigated there.

Second, we have a great deal more transparency now—in the Commons, in the Lords and indeed in relation to Ministers, following the publication of the List—than we ever had before.

Third, I want to enter a note of caution, and I think I do so on behalf of all politicians. There is a boundary; there is a balance to be drawn between the public interest in transparency in relation to their activities in the public sphere and the preservation of some private space for both serving and former Ministers, MPs and others. I say that because I do not think you will get people of quality in public life if you allow too much prurience in these matters. The press and the media want to know everything, always. I myself do not believe that that is appropriate; there are boundaries to be drawn and there is a balance to be struck. One of the things that this Committee can do is to help examine just those kinds of issues, about where balance is appropriate and necessary.

**Q17 Chair:** When you say “appropriate”, do you mean it is not in the public interest?

**Sir Philip Mawer:** It is the public interest that determines what happens, Chairman. There is a public interest in transparency, but there is also a public interest in attracting high-quality people who have done something in life other than simply going up the political ladder from Research Assistant to Special Adviser—people who have actually done something and run something. If you are going to get people of that quality and with that background and experience, they will inevitably bring baggage with them.

**Q18 Chair:** This is your chance to put certain things on the record and you must do that. However, we do need to get through our questions, so can we have shorter answers?

**Sir Philip Mawer:** My apologies; I hoped I was making a point that was helpful.

**Q19 Charlie Elphicke:** In terms of registers of interest, and indeed the whole Code and former Ministers thing, can I ask your opinion on something? Should LLPs be treated the same as public and private companies on the Register of Interests and should strategic advice consultancy be treated in the same way as public affairs companies—that is to say that they have to declare clients? Or do you say that privacy should apply and it is all fine?

**Sir Philip Mawer:** I am looking at the cue the Chairman has just given me; you are taking me rather beyond the scope of my previous role. On another occasion, I would be happy to engage in a debate on these matters.

**Chair:** We are not investigating this issue.

**Charlie Elphicke:** I understand that, but Sir Philip is a great expert in this area and I am personally interested in the cross-cut connect. I am not sure it should be divided and I would just be interested in your opinion, because you are an expert.

**Chair:** I think that is a question for a different occasion on a different topic.

**Q20 Priti Patel:** Specific to the role that you have been involved in, in 2008 you said you had taken on the job because you had “perceived a gap” in arrangements for investigating ministerial conduct. From your time doing the role that you did, are you of the view that the role has filled that perceived gap at the time? Could you elaborate on what you defined as the perceived gap when you took the role on?

**Sir Philip Mawer:** The gap was partly around the extent to which there was transparency in these matters. The gap has been filled to the extent that we now publish the List of Ministers' Interests and we publish the annual report of the Adviser. We also publish various other things—for example, the procedures that should now underpin an inquiry involving a Minister. That has partly helped fill the gap.

Second, it is clear that the Adviser has a potential role in relation to an investigation. In the Malik case, that role was fulfilled. The issue that remains is around how the Adviser is engaged and brought into play in his investigatory function. That is clearly a matter that I know Members of this Committee have views on and it has been a matter of recent public discussion in the context of Dr Fox and Mr Werritty.

**Q21 Priti Patel:** Are you able to elaborate on that and say specifically what you think the best course of action would be in bringing that into play? I know that other Committee Members have touched on this, but going back to the point of transparency, do you think that publishing codes and interests is enough in the eyes of the public when they are always demanding more in terms of transparency, particularly from their public figures?

**Sir Philip Mawer:** I would just briefly deal with that last point first. I think I have made it clear to you that there is a balance to be struck in the public interest regarding transparency and how much is published. There is a great deal more published now than there ever was before. That gives opportunities for people—including the media, who have an important and

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necessary job to do—to ask probing questions of politicians about what they have been up to, and about their interests and so on. I hope that addresses the latter part of your question.

In terms of how the Adviser is engaged in the investigatory task, I think you have to recognise the very great difficulties that a Prime Minister has in engaging with these issues. By which I mean this: ultimately, a Prime Minister is responsible for the appointment of members of their Administration, and they have to answer to this place for the conduct of members of their Administration.

Second, there is a practical problem for them when an allegation emerges about a Government Minister. First, they have to decide whether there is a *prima facie* case that would justify referral to the Adviser and then they have to decide what to do about the Minister while the Adviser's inquiry is going on. The current balance, which the Code attempts to strike, is that the Cabinet Secretary seeks to establish whether there is a *prima facie* case and then the Prime Minister, on the Cabinet Secretary's advice, decides whether to bring the Adviser in.

I personally think that there needs to be a more ready willingness to engage the Adviser earlier in the whole process. I note that in his evidence to this Committee in November, Sir Gus O'Donnell said, "We need to think about whether we can find ways to allow these things to be done more quickly by the independent regulator". I take comfort from that and I believe that to be true.

I would make just one other point, Chairman, at the risk of over-extending the reply. I would prefer there to be a position in which a Minister who is subject to an investigation is able to remain in office—just as a member of this House remains with all their responsibilities—until the Adviser reports to the Prime Minister and the Prime Minister makes a decision.

One precedent that the Malik case established was that, in that case, the Minister concerned was suspended from ministerial office during the Adviser's inquiry. It is very difficult to suspend a Minister from their office; it may be easier with a junior Minister than with a Secretary of State. If the Adviser is to be engaged earlier in the process, which I believe to be important for all sorts of reasons that I am happy to go into later, then the *quid pro quo* is that there should be an expectation that the Minister will continue to do his or her work unless and until the Prime Minister decides, following an inquiry and the publication and presentation of a report, that the Minister should step down. I think it will help if the Committee can reflect on some of these difficulties in any report it publishes on these matters.

**Chair:** We are reflecting on them.

**Q22 Paul Flynn:** Do you agree that the issue of Liam Fox and Adam Werritty is one of the gravest importance, beyond prurience or dishonesty? If some of the accusations are true it could mean that the conduct of the Secretary of State for Defence was likely to lead us into an avoidable war against Iran, with unimaginable consequences. The charge made is that the rushed report, which everybody agrees was

done within eight days by Sir Gus O'Donnell, missed out on certain salient facts. There were five meetings between Liam Fox, Adam Werritty, Israeli officials and others. Only two of them were reported in Gus O'Donnell's report.

Do you accept what you said in the past, and we have interviewed you as a previous Committee in 2008, which was that you should be the person who decided on those investigations? There is a quote from the time saying that you had been bypassed in favour of what appears to be quick justice and a quick solution, but it was not the full solution. The suspicion remains that a Secretary of State might well have gone off his direction and off policy as far as the Government was concerned. He was advised by someone who was entirely unaccountable and who was being funded by American think-tanks and neo-cons who have a past policy of fomenting war and being warmongers rather than peacemongers. Isn't this a matter of such gravity that the defective report by Gus O'Donnell has to be followed up by a full report by yourself?

**Sir Philip Mawer:** Liam Fox resigned as a Minister and is therefore no longer subject to the Ministerial Code, except in the respect that I touched on earlier. If I may address your main point though: I do believe that the Adviser ought to have been brought in to investigate the Fox-Werritty affair and brought in quickly. I made the point earlier about the need, if the Adviser is to be involved, to engage them quickly. Why did that not happen? I am not the person to answer that.

**Q23 Paul Flynn:** Others have answered it. We have had a unanimous view that it was done for speed and to avoid political embarrassment to the Government. It was the Government acting in their own self-interest to get the thing out of the way as they thought that Philip Mawer would take weeks or months to do it. Gus O'Donnell and the other advisers said it. It was an attempt to get around what is explicitly in the Code. You are the sole enforcer; it excludes the fact that the Cabinet Secretary should be the enforcer.

**Sir Philip Mawer:** What the Cabinet Secretary at the time was doing, as he made clear in his evidence to this Committee, was trying to establish whether there was a *prima facie* case. One thing that happened in this instance was that it was pretty clear fairly quickly that there was a *prima facie* case. In fact there was more than a *prima facie* case—there was a clear-cut case. That led the Secretary of State to resign and that led the Cabinet Secretary to report in perhaps bolder and starker terms than he would have done had he simply been conducting the *prima facie* inquiry that had led to the Adviser's subsequent involvement.

**Q24 Paul Flynn:** We should look at the interests of the nation and the interests of those who might be the future casualties of another war. With the Iraq War, we stumbled in on the basis of false information, 179 died, and many will see this as a similar situation. The claim made in the national press is that a British Secretary of State was collaborating with Mossad and that some of these meetings involved Mossad. There is some group, maybe Mossad, which is murdering

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Iranian scientists at the moment and tension is being built up.

**Chair:** I think Mr Flynn's main question is—

**Paul Flynn:** Let me get through the importance of this and say that this is not something to be brushed aside by saying that the Minister has resigned and his reputation is gone. The crisis continues and other Ministers might be tempted to go off and do their own policies. We have not had a full explanation.

**Chair:** Notwithstanding the resignation, should this not have been investigated anyway?

**Sir Philip Mawer:** The decision is the Prime Minister's; it is not the Adviser's.

**Q25 Chair:** What is your belief? You are not in post anymore; you are free to speak.

**Sir Philip Mawer:** Frankly, if there is to be cause for an inquiry then I think it would need to be a rather different inquiry from one conducted by the Adviser. There are many other avenues through which Mr Flynn can pursue his call for an inquiry than by engaging my successor in the process.

**Q26 Paul Flynn:** In our previous Committee we said, "It is hard to see how the Independent Adviser can command public confidence if the Prime Minister can decide that *prima facie* breaches of the Code will not be investigated". What the Prime Minister has done, in his own interest, is to go for a brief investigation, which has come out inadequate. You, if you are doing your job, surely should not have resigned but should have insisted on a full investigation.

**Sir Philip Mawer:** You cannot insist when the decision rests with the Prime Minister.

**Q27 Paul Flynn:** Could you tell us why you resigned and why you left office?

**Sir Philip Mawer:** I had given notice of my intention to step down in the course of the last year to the Cabinet Secretary before the end of 2010. I stepped down for personal reasons and also because I felt I had done what I could in establishing the role within its current parameters.

**Q28 Chair:** So it was not connected with this case?

**Sir Philip Mawer:** It was not connected with or as a result of this case, no.

**Q29 Robert Halfon:** Following on from what my colleague Mr Flynn has said, is it not a matter for the Prime Minister to decide whether a Minister has followed collective Cabinet responsibility? That is not to do with your remit of looking at ministerial interests.

**Sir Philip Mawer:** He clearly has that responsibility too, yes. It is no doubt part of the thinking that went on in terms of his approach to this matter.

**Q30 Robert Halfon:** So it should be up to the Prime Minister to decide whether or not his former Minister was following collective Cabinet responsibility rather than a question for you as the investigator regarding ministerial interests, if you answer in the way Mr Flynn framed this question.

**Sir Philip Mawer:** I would answer your question in this way: the kind of inquiry for which Mr Flynn is now calling would not fall within the parameters of the role of the Independent Adviser. It is a different matter to be calling for an inquiry now, of the range and scope that Mr Flynn indicated he would wish, from the situation in which the allegation had broken, the immediate aftermath of the breaking of the allegation and the intervention, or possible intervention, of the Adviser at that point.

**Q31 Robert Halfon:** I am just trying to make the distinction between alleged breaking of collective Cabinet responsibility and ministerial interests. That seems to be quite murky in the Liam Fox-Werritty affair.

**Sir Philip Mawer:** There were matters that were to do with the Code. If I had been asked to investigate, I would not have restricted myself simply to looking at the question of Dr Fox's interests, narrowly defined. Clearly, I would have had regard to the Code as a whole but, at the end of the day, the Prime Minister makes the decision and is answerable to this place in terms of the conduct of members of his Administration; that includes their observance, or lack of observance, of the doctrine of collective responsibility.

**Q32 Robert Halfon:** Just to finally confirm, it is completely up to the Prime Minister whether or not he thinks your office's role is suitable for each occasion when this situation arises.

**Sir Philip Mawer:** It is for him to decide, on the advice of the Cabinet Secretary, whether to bring the Independent Adviser into play.

**Q33 Robert Halfon:** Did he ask the Cabinet Secretary which would be the best way to look into this: either through you or through him? Do you know that?

**Sir Philip Mawer:** I do not know that. As I said earlier, and as Sir Gus made clear in his evidence to you, he believed that he was doing the first bit of the action, which was to find whether there was a *prima facie* case. After that, events took the course they did.

**Q34 Chair:** Sir Philip, the problem seems to be that, as Lord Butler and now Lord O'Donnell made clear, they wanted a quick answer. That was perfectly justified, but the process you have established seems only to be capable of producing lengthy reports. Doesn't your successor need to revise what you have on offer to the Prime Minister so that you can do a 48-hour report on a *prima facie* breach of the Code?

**Sir Philip Mawer:** First, I am very happy for my successor to apply a fresh pair of eyes to everything that I have done. That is indeed the way these posts and offices develop in the public interest. As to the quick and dirty approach, as it were, frankly I would like to have been given the opportunity to have been tested on that.

**Q35 Chair:** How long did the Shahid Malik case take?

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**Sir Philip Mawer:** As I recollect, it took some three to four weeks.

**Q36 Chair:** Three to four weeks? How long did the Cabinet Secretary take?

**Sir Philip Mawer:** The Cabinet Secretary took two weeks, as I recollect.

**Q37 Chair:** No, I think he took about three days.

**Sir Philip Mawer:** No, no, no.

**Chair:** It was a weekend.

**Paul Flynn:** It was seven days.

**Sir Philip Mawer:** From the point at which the allegation broke until the presentation of his report was, I think, two weeks.

**Q38 Chair:** No, I think he was asked to do it on a Friday and he produced it on the Tuesday or the Wednesday.

**Paul Flynn:** It was the 14th to the 18th.

**Sir Philip Mawer:** I stand corrected and I am happy to stand corrected on that matter.

**Q39 Chair:** Shouldn't you be able to provide that facility as Independent Adviser to the Prime Minister?

**Sir Philip Mawer:** As I have endeavoured to say, I would have liked to have been given the opportunity to prove that the service the Adviser could provide could be speedy.

**Q40 Chair:** As soon as it becomes evident that there is a substantial case to answer, the Minister goes.

**Sir Philip Mawer:** I believe that the engagement of the Adviser provides a series of protections all around: it provides a protection for the public, in that it gives public confidence that an inquiry is going to be impartial and fairly conducted; it provides protection for the Prime Minister because he is able to stand back for a period; and it provides protection for the Minister who is the subject of the inquiry, because he knows that a fair and impartial process will be applied to him. These are all important protections.

**Q41 Chair:** We all know that justice delayed is justice denied. I have had to remind myself as to whether Shahid Malik was convicted or cleared because I could not remember; the damage to his reputation was done by the investigation. Isn't there a case for being able to undertake much quicker investigations, particularly when people turn out to be innocent?

**Sir Philip Mawer:** I want to just make this point, and it certainly applied in the Malik case, that the pace at which an inquiry is conducted is not only set by the Adviser; it is also affected by the Minister concerned.

**Q42 Chair:** I see: it is the wrongly accused person who is at fault.

**Sir Philip Mawer:** No, a due process has to be gone through—which, if you were in the hot seat, you would wish to be gone through—in which you are shown the evidence and you have an opportunity to give your response to it. Therefore, at that point, the initiative passes out of the hands of the Adviser into the hands of the Minister concerned, as it would in

the case of an inquiry here by the Parliamentary Commissioner.

**Q43 Chair:** The concern is that Ministers will get into this mangle and their reputation, much as Shahid Malik's has been, is impaired even though the final investigation shows their innocence. In some ways it is justifiable that the Prime Minister should want to protect his Ministers from that if there is not a substantial case to answer. I think you have answered the question: that it would be handy for you to be able to provide quick, and indeed private, advice to the Prime Minister. One of the comments made by Lord Butler was that Sir Gus O'Donnell's report should have remained private advice. What do you think about that?

**Sir Philip Mawer:** That was, I think, in relation to Sir Gus's role as a civil servant advising Ministers. My view is quite simple, Chairman: the Adviser should be brought in quickly, given the opportunity to show they can produce a report that is appropriate in the circumstances, and the basis of fact on which a Prime Minister reaches a subsequent decision should be made public. In that way, the public will have confidence in the process that is undergone.

**Q44 Paul Flynn:** Should an accused be allowed to escape from a thorough investigation by resigning prematurely and saying, "I have taken my punishment"? Then the issue is not fully probed by you, as it should have been according to the Ministerial Code.

**Sir Philip Mawer:** I think I have endeavoured to answer that. The game has moved on and it has moved on in the sense that any further inquiry needs to be conducted by someone other than the Adviser.

**Q45 Greg Mulholland:** Sir Philip, you used the phrase "public confidence", but is not the nub of this that there was a serious alleged breach of the Ministerial Code and yet you were entirely circumvented. People can speculate as to why—Mr Flynn is suggesting that the full facts of the case have not come out and have been brushed under the carpet; that is for him and others to speculate. Nevertheless, the reality is that in your role as the Independent Adviser on Ministerial Interests, you were circumvented. I do not think there is any public confidence and I think the public, never mind this Committee, will be asking what exactly is the point of the Independent Adviser on Ministerial Interests if, when a serious alleged breach comes up, you do not even get involved. Is it worth the salary?

**Sir Philip Mawer:** Can I deal with that latter matter in a moment? I hope I have made it sufficiently clear to the Committee that I believe that, in the case that has prompted all your questions, the Adviser ought to have been involved and ought to have been involved from pretty near the outset. That is my view.

In terms of whether the Adviser earns the money, I have also made clear in the course of answering questions that the role of the Adviser is not in any sense limited to the investigatory aspect. The bulk of the role is to do with advice to Ministers, the preparation of the List of Ministers' Interests and so

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on. As to whether the person occupying the role justifies the salary that is being paid, that is a matter for you and the public to judge.

I believe that the role is a necessary one. I believe that in the three and a half years I have done it, I have got some substance, credibility and due process into it, as well as increasing transparency significantly. No doubt my successor will in part drive what happens from here on, and I look forward to the report of this Committee dealing with these matters in a measured way that enables the kind of difficulties that the Chairman and others have alluded to, in how you handle these things, to be properly exposed. How do you enable the political and media difficulties and all the rest of it to be balanced with the public interest in achieving a proper and fair outcome?

**Q46 Kelvin Hopkins:** Isn't there a resource constraint as well? Your post has been a one-day-a-week post and modestly paid by the standards of high office. You are dependent on staff provided by the Cabinet Office; you have not had your own independent staff. So even with the best will in the world, your resource is not great. Lord Wilson of Dinton, who wrote the Ministerial Code, said that it is not the job of the civil service to investigate Ministers, and yet the actual office work is done by civil servants.

**Sir Philip Mawer:** The bottom line here is that the Adviser is an adviser; they are not an independent commissioner and therefore do not have an independent office, you are quite right. Frankly, in the current circumstances and given the current nature of the role, it makes sense for staff or support to be provided by the Cabinet Office. They are the people who are—given that the bulk of the role is about advice and so on—in direct contact with Departments. Therefore, you are available to the staff of the Cabinet Office as an additional, and indeed critical, resource. Now Departments say, “And what does the Adviser think about this?” Ministers themselves say, “And have you taken the advice of the Adviser on this?” So there is sense, given the way in which the role is currently configured, in working closely with Cabinet Office officials and being based in the Cabinet Office. If the role were to be altered, if there were to be more autonomy in the role, then one would be in a different ball game. Moreover, I would not look at the role of the Independent Adviser alone in assessing these matters. I would be looking at other aspects of these arrangements in Government, which have grown up in a higgledy-piggledy way, and trying to make more sense of them. That is an issue that this Committee has explored on previous occasions.

**Q47 Alun Cairns:** In the environment in which modern politics and Government operate, do you not accept that a quick preliminary investigation, or an outcome to a quick and preliminary investigation, is essential because of the demands of the public and the needs of the Prime Minister?

**Sir Philip Mawer:** Presumably, there is no difference between those in the sense that the Prime Minister serves the public and therefore his needs are a reflection of what he believes is in the public interest.

Yes, there is a need for speed in these matters; the Chairman has already made this point. I believe that that can be provided by an Adviser who is called in sufficiently quickly and given the opportunity to investigate these things thoroughly.

**Q48 Chair:** Would such a short report need to be published?

**Sir Philip Mawer:** It would add to the credibility of arrangements if it were, but, at the end of the day, the Prime Minister is able to form his own judgement about how to proceed in these matters.

**Q49 Charlie Elphicke:** Sir Philip, if I were explaining your evidence to a constituent of mine in Dover, I would say, “Sir Philip said he thought the investigation into Malik was very important on a property matter but thinks your interest in former Ministers earning millions and millions is just prurience, and that you do not have the right to know and you should not be interested in that”. They would say to me, “That man is a paper tiger and why do we have that office at all? We want to know why these people are making millions, not why they are doing trivial property things”. What would you say to that constituent of mine?

**Sir Philip Mawer:** I would say that you are confusing two things. One is the arrangements that apply to serving Ministers; the other is the position of former Ministers. The Adviser does not have a role in relation to former Ministers. As you know, there is a separate body—the Advisory Committee—that looks at the business interests of former Ministers and senior civil servants.

I also do believe that there is a public interest in enabling people to go into political life who have had experience and involvements in previous walks of life. Moreover, I think that those who have had political experience have something to offer to life after politics. There is a life outside politics and those who have been in this place and in ministerial office have something to give.

**Q50 Chair:** That is relevant to another inquiry we are doing.

**Sir Philip Mawer:** Forgive me.

**Chair:** Mr Halfon.

**Charlie Elphicke:** But he says it is prurience. He says it is prurient to ask the question.

**Chair:** I will call you in a second. Mr Halfon—a brief supplementary, please.

**Q51 Robert Halfon:** Do you think that the Prime Minister went to Sir Gus O'Donnell rather than you because there was an implied lack of faith in your role? What was to stop you from just publically, when this thing first started happening, saying, “I am going to mount an investigation”?

**Sir Philip Mawer:** No, I do not believe he went to Sir Gus because he had a lack of faith in my role.

**Q52 Chair:** They thought you would be too long; that is certainly true.

**Sir Philip Mawer:** That is your assertion.

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**Q53 Chair:** That is what everyone said; it is what Sir Gus said.

**Sir Philip Mawer:** I did not read that in his evidence; however, you may well be right. My view is that—

**Q54 Robert Halfon:** Answer the question directly, if you would?

**Sir Philip Mawer:** Sorry. I have made my point; I think one was never given the opportunity to prove that one could produce the report quickly.

**Q55 Robert Halfon:** In specific answer to my question: was there a lack of faith in your role?

**Sir Philip Mawer:** My answer is no. What the Prime Minister was doing was asking his Cabinet Secretary whether there was a *prima facie* case to answer. The evidence was so overwhelming and appeared so soon that it enabled the Cabinet Secretary to produce a pretty speedy report to the Prime Minister, on the basis of which—given the fact Dr Fox by then had resigned—the Prime Minister brought the matter to a close. He felt there was no point in further inquiry.

**Robert Halfon:** It had been going on for three weeks.

**Chair:** That is enough.

**Q56 Paul Flynn:** Can I just check on something that you said? You had given notice that you intended to retire at the end of 2010?

**Sir Philip Mawer:** Yes, before the end of 2010.

**Q57 Paul Flynn:** You stayed on for a longer period. You said in evidence to our previous Committee that if you thought you had been crossed in the job, or prevented from doing it properly, you would walk away. You said, “Frankly I would do that”, if the Prime Minister was doing that to you. Isn’t this exactly what happened? You were brassed off with what took place; you were bypassed and insulted by the action of the Prime Minister, which was something very offensive because of your distinguished career. So you then left at that precise moment because your office did not have the respect—

**Chair:** Mr Flynn; you have in fact taken Mr Cairns’s question.

**Paul Flynn:** I did not realise it was Mr Cairns’s question.

**Chair:** Could you leave it to Mr Cairns, please?

**Paul Flynn:** It is about the 2010 issue. Could we find out when the retirement took place or when your decision was taken?

**Sir Philip Mawer:** Chairman, who do you wish me to answer?

**Chair:** Could you answer Mr Flynn’s question and then Mr Cairns will follow up.

**Sir Philip Mawer:** I had given notice for reasons that I have previously recorded in evidence today. I had given notice before the end of 2010. The fact that I stood down at the end of October was pure coincidence of timing.

**Q58 Chair:** You were not fed up?

**Sir Philip Mawer:** I was frustrated at the failure to call me in during the Fox-Werritty affair. I made clear to the Cabinet Office at the time my view that the

credibility of the role of Adviser had not been assisted by the decisions that were taken.

**Q59 Chair:** But were you generally fed up and did that feed your decision to leave?

**Sir Philip Mawer:** No, it was not the cause of my decision to leave. I hope that I have done something valuable in trying to bring this post into being. I had reached the point at which, after nearly 10 years in this walk of life, I felt it was time to move on.

**Q60 Alun Cairns:** My substantive question has been asked, but I want to go back to two issues that you mentioned earlier. One follows on immediately from the last question. Why do you think you were not called on to conduct the investigations—not only this investigation, but other investigations by other Prime Ministers when there have been issues facing Ministers and Ministerial Codes?

**Sir Philip Mawer:** I am not clear that there were lots of other examples of cases where the Adviser could have been called in, other than the one involving Mr Malik, where he was called in. I would dispute that this is simply the last of a long series of failures to call in the Adviser.

Why did it not happen on this occasion? I think it did not happen for a variety of reasons. First of all, if one can stand back and try and learn the lessons, this got off on the wrong foot in the first place. The Permanent Secretary of the Department should not have been conducting any kind of inquiry at the request of Dr Fox. Second, the Cabinet Secretary was only brought into the matter relatively late in the day. Third, the evidence emerged pretty quickly through the media about Dr Fox’s activities, which pretty conclusively demonstrated that a breach of the Code had occurred. No one in Whitehall, at any point, has suggested to me that the failure to involve the Adviser was a reflection of a lack of confidence in the role of Adviser or in me personally. I believe it was much more to do with events and also to do with the dynamics that develop around these issues, of the sort that the Chairman, I and other Members of the Committee have been exploring, in terms of how long you can suspend a Minister who occupies an important role, and so on.

**Q61 Alun Cairns:** This is my final question. Do you think it is at all practical, within the frenzy of modern politics and governance, for a Minister to stay in post while an investigation is being undertaken, in view of the length that the Shahid Malik case took and the suggestions that an investigation by your office would have taken longer had it been called into the Fox-Werritty case?

**Sir Philip Mawer:** I do believe it is possible for a Minister to stay in post. Frankly, I think it is in the public interest and I think this Committee has a potentially very important role to play in trying to establish some ground rules around the handling of these situations. Unless you can get to a situation in which a Minister is not immediately going to be suspended or sacked from office whenever an allegation is made against them, then you will be left with a circumstance in which politicians are at the

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mercy of those who make allegations about them, at the mercy of the media, and so on. I firmly believe that it is in the interests of the public, in the interests of those in political life and in the interests of preserving good standards in public life, to have a process that gives fairness, not only in the sense of independence of investigation but to the person who is the subject of that investigation. So let's try to get to some sensible ground rules.

**Q62 Priti Patel:** Sir Philip, you mentioned a sense of frustration when you did the role. Obviously, there are certain aspects that you were alluding to. Can you tell the Committee what were the highs and lows of the job when you were doing it? What key insights would you share with your successor in building on the point that many colleagues in the Committee have raised—about public confidence on matters of breaches of the Code?

**Chair:** Briefly please.

**Sir Philip Mawer:** I will do my best, Chairman. The low point was the failure to involve me in investigating the Fox-Werritty affair. Frankly, I thought that was a missed opportunity and I regret it. The high point has been the undramatic, non-publicity-catching work with officials in the Cabinet Office—for whom, incidentally, I have a high regard—in building an infrastructure that now supports the role of Adviser. This involves the declaration of Ministers' interests to Departments and, through them, to the Adviser in a much more structured way and it enables, I hope, circumstances to be avoided that might have been stumbled into in the past. It is undramatic, it is boring and it is routine, but in my view it is a vital protection to the public. Those would be my answers to your high-and-low-points question.

**Q63 Robert Halfon:** You said that you would like to have been given the opportunity to show you could have done the investigation quickly. Did you at any time go to the Prime Minister or any senior civil servant and say, "I can do this investigation quickly; I should be the one doing the investigation"?

**Sir Philip Mawer:** I made my views very clear to Cabinet Office officials and I also made them clear to the Cabinet Secretary.

**Q64 Paul Flynn:** Will you publish any resignation letter that you send?

**Sir Philip Mawer:** No, because I wrote my resignation letter in the autumn of 2010 as I have previously made clear.

**Chair:** I am sure it would come out under Freedom of Information if you insisted.

**Paul Flynn:** It will.

**Q65 Chair:** Can I just ask three very brief things, which you may want to write to us about? Do you think there is any deficiency in the drafting of the Code?

**Sir Philip Mawer:** No, and I was consulted at various points about provisions in the Code, so I had an opportunity to express views.

**Q66 Chair:** When Sir Gus O'Donnell said again and again to us, "I wish I had been told earlier", why do you not think it was clear to civil servants that their role was to escalate this much sooner?

**Sir Philip Mawer:** I am astonished that they did not do so and I do not think that was due to any deficiency in the Ministerial Code. It was due to a lack of forethought by the Department on behalf of its Minister and its reputation.

**Q67 Chair:** PASC previously recommended that the office of Independent Adviser should be subject to a pre-appointment hearing. This was noted by the Government but rather put on hold. Don't you think that it would improve confidence in the post and the independence of the post if future appointments were subject to a pre-appointment hearing?

**Sir Philip Mawer:** The appointment, as you know, is a personal appointment of the Prime Minister of the day. Incidentally, I took it as something of a vote of confidence that the current Prime Minister continued my appointment on the change of Administration. I feel that you have it about right. Given it is a personal appointment and the Prime Minister has to have confidence in the person occupying the role, I think that the kind of grilling you are giving me today, and are going to give my successor very shortly, is a sensible way to proceed.

**Q68 Chair:** Isn't this a recognition of the fact that you are acting in a very quasi-judicial capacity and that this is necessarily highly political? Do you think it would be wrong for Parliament to try and make this role more judicial in character, because ultimately it is up to the judgement of the Prime Minister whether he seeks to retain somebody in the Government or lets them go?

**Sir Philip Mawer:** It is a quasi-judicial role and that is how I tried to operate when I was Commissioner here and it is how I tried to operate in the Cabinet Office. I believe it is the way to build confidence in the role. It is undramatic and all the rest of it, but it is necessary to build confidence, trust and credibility in the role.

Sorry, I have lost the last point you made.

**Q69 Chair:** It cannot be separated from the politics at such a point, when a Government is in crisis over the conduct of a Minister. It is political, with a small "p", unavoidably. The idea that you could make it into a pristine judicial process would be impossible because it is not going to be judged like that in real life.

**Sir Philip Mawer:** There is a balance to be struck again. Of course it is an activity conducted in a political context, but Ministers, just like Members of this House, are entitled to the kinds of protections, in terms of due process, fairness and impartiality, which they would wish for their own constituents, and which they have legislated for in respect of their own constituents in many contexts. So I think there is a balance to be struck here. You cannot, at the end of the day, say that public interest purely lies in having a process that is politically expedient.

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**Chair:** I do not think you come into politics expecting fair treatment most of the time.

**Q70 Charlie Elphicke:** Don't you think your post should be abolished and merged with the organisation that deals with the revolving door, so that there can be a proper dealing with Ministers and former Ministers?

**Sir Philip Mawer:** I do think that there is scope for revisiting the configuration of these arrangements within Government. As I mentioned earlier, this Committee has previously addressed these matters and I suspect it may do so again.

**Q71 Greg Mulholland:** Considering the very clear criticism that you have made of the fact that the Permanent Secretary was initially asked to investigate the Fox-Werritty affair, does that give you any concerns that your successor, who has been appointed, is a recently retired civil servant?

**Sir Philip Mawer:** No, I know my successor brings to the role a tradition of impartiality and offering independence of advice. He also, as a former Chairman of the Joint Intelligence Committee, is used to telling Ministers what they need to hear, not what they want to hear.

**Q72 Paul Flynn:** What about the Iraq War?

**Sir Philip Mawer:** At that time, he was not Chairman of the Joint Intelligence Committee.

**Paul Flynn:** We will exonerate him from that then.

**Sir Philip Mawer:** I believe he will acquit himself with distinction in the task, but then you will have your opportunity to judge in a moment.

**Chair:** We will.

**Q73 Greg Mulholland:** A final question: we are not aware that there has been any competition, let alone open competition, in the selection. Indeed, no details of the appointment process have been provided. Do you not think that that does not help the credibility of the role, which is something we have all touched on today?

**Sir Philip Mawer:** At the end of the day, the credibility of the role comes from the way in which those who occupy it conduct themselves in it. I hope you will distinguish between any difficulties that might arise from the way in which the role is configured and the actions of the individual who occupies it. As I have made clear, I do believe there are some aspects of the way in which the role is configured that could be improved for the future.

**Chair:** Sir Philip, thank you very much indeed for coming to us today. May I, on behalf of the Committee, thank you for your work in this post? It is obviously extremely complex, has been personally frustrating for you at times, but, nevertheless, there has never been any question about your commitment and integrity in the role. We thank you very much for your public service.

**Sir Philip Mawer:** I am grateful. Thank you, Chairman.

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### Examination of Witness

*Witness:* **Sir Alex Allan KCB**, Independent Adviser to the Prime Minister on Ministers' Interests, gave evidence.

**Q74 Chair:** Could you identify yourself for the record, please?

**Sir Alex Allan:** Yes. I am Alex Allan, recently appointed as Prime Minister's Independent Adviser on Ministerial Interests.

**Q75 Chair:** Have you ever given evidence to a Select Committee before?

**Sir Alex Allan:** Yes, quite a number of times.

**Chair:** You will be a practised hand.

**Q76 David Heyes:** You have just sat and listened to a glowing testimonial from your predecessor. He has talked about your experience, your suitability for the job and particularly your spirit of independence. That is fine; your predecessor has confidence in you and clearly the Prime Minister did because he made the appointment. How can the public be assured of confidence in your independence?

**Sir Alex Allan:** As Sir Philip has said, the proof of the pudding is in the eating. It depends on how I perform in the role and how the role evolves. That is the way the public will, I hope, maintain their confidence in the role.

**Q77 David Heyes:** What was the recruitment process for the job? Can you take us through it?

**Sir Alex Allan:** I am not sure about it. I was asked if I would be interested in taking on the role, I said I was, the process went through and I was appointed. I am not aware of what process went on behind the scenes.

**Q78 Greg Mulholland:** Further to that, can I ask you if there was any form of competition in that process that you were aware of?

**Sir Alex Allan:** Not that I am aware of.

**Q79 Greg Mulholland:** So as far as you are aware, you were the only person considered for this role?

**Sir Alex Allan:** I have no idea whether other people were considered. I do not know.

**Q80 Greg Mulholland:** Do you not understand that it does not help the credibility of the role that you have now taken up that no details whatever of the appointment process have been provided? Do you think that is a sensible way forward or do you think it would be helpful for the Committee, and indeed the

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general public, if we had details of how your appointment was conducted?

**Sir Alex Allan:** This was raised at the time of the Committee's previous inquiry and the Government's response. One of the things the Government made clear then was that the appointment is a personal one by the Prime Minister and there needs to be somebody the Prime Minister has confidence in to provide independent and impartial advice. So the decision taken then was it was not one that was suitable for open competition. The Government then said they would keep that under review. As I say, I was not involved in the discussions about the process by which I was appointed.

**Q81 Greg Mulholland:** Do you not accept that there is something that does not sit very easily about this? This is the Independent Adviser on Ministerial Interests and, as you have just said, it is a personal appointment by the Prime Minister. Either it is a role there to advise and assist the Prime Minister or it is actually an Independent Adviser that the Committee and the public can have confidence in.

**Sir Alex Allan:** I do understand the point. As I say, I was not involved in the process by which the appointment was made.

The role does have two sides to it. On the one hand, there is the need to provide the Prime Minister with personal advice and deal with sensitive issues with Ministers, providing advice to Ministers in confidence and discussing some quite sensitive issues with them privately. Then clearly there is, as you say, the independent role providing the public confidence. There are arguments both ways.

**Q82 Greg Mulholland:** So there is perhaps a case for renaming the post—the Adviser on Ministerial Interests, rather than the Independent Adviser on Ministerial Interests. Considering the appointment process, I think it is hard to accept that that is the reality and purpose of the position.

**Sir Alex Allan:** I believe I will be able to offer independent advice. I do not believe that will be an issue.

**Q83 Greg Mulholland:** The final question on this from me, Sir Alex, is just going back to the predecessor Committee's report in 2008. The Committee said, "The Independent Adviser should be appointed, if not by Parliament, then at least through a transparent open competition, regulated by the Commissioner for Public Appointments. This would still allow the Prime Minister the final say, but only after a rigorous, safeguarded process. The appointment should then be made on a fixed term, and it should be subject to a pre-appointment hearing". Why do you think the Committee was wrong then?

**Sir Alex Allan:** I saw the Government's response to that Committee's recommendations, which went through a number of issues and said, "These requirements reinforce the Government's belief that the post-holder should be a personal appointment by the Prime Minister, for which he or she is accountable". They then went on to discuss the issue of pre- or post-appointment hearings. So this was

considered by the Government back in 2008 and that was the decision taken then.

**Q84 Greg Mulholland:** So you disagree with the Committee and you agree with the Government. Does that make you independent?

**Sir Alex Allan:** It is not my decision how I am appointed. I am reporting what the Government decision was, rather than reflecting what I might think.

**Q85 Priti Patel:** In light of the lack of competition for your appointment, can you share with the Committee what special qualities you think you have to qualify for this role?

**Sir Alex Allan:** I have been involved in some of these issues for quite a long time. I was in No. 10 in the 1990s, initially for John Major and then for a bit for Tony Blair, for example when the Government decided to publish what was then called Questions of Procedure for Ministers, which has now become the Ministerial Code. I was there when the decision was taken to set up the Committee on Standards in Public Life. I was also there when, rather unsatisfactorily, the then Cabinet Secretary—Sir Robin Butler, as he was then—was asked to investigate a number of allegations of impropriety against Ministers. Subsequently I know Lord Butler has said he felt that was a very uncomfortable position and it was not one that he felt was appropriate. So I have been involved in that for a long time.

Also, as was said previously, my last job in the civil service—until I retired in October—was as Chairman of the Joint Intelligence Committee, which is a role that very specifically requires you to provide independent advice and assessments to the Government on what the intelligence about various issues is revealing and telling you. Sometimes that can involve saying quite uncomfortable things, where Government policy is saying one thing and the intelligence may not bear that out. You need to report that.

**Q86 Priti Patel:** Do you feel in your current role that you are actually able to challenge those around you, including the Prime Minister, if you hear or see of anything untoward that needs to be drawn to his attention?

**Sir Alex Allan:** My role is to advise the Prime Minister and other Ministers on their interests, and then obviously there is the role in investigations, which, as Sir Philip has said, is separate. In advising Ministers on their interests, yes, I am perfectly prepared to challenge Ministers if they take a position in relation to an interest that I do not believe is tenable.

**Q87 Robert Halfon:** I want to refer back to something Mr Elphicke said to the previous witness. Is there really any point in your post? Could it not be done by either Lord Lang's Committee or by the Cabinet Secretary himself? This post seems to be a retirement home for senior high-flying civil servants.

**Sir Alex Allan:** First of all, Lord Lang's Committee has a very different and specific remit, which is considering the position of both Ministers and civil

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servants who, in the period after they have left office, want to take up private appointments.

**Q88 Robert Halfon:** It could be expanded.

**Sir Alex Allan:** It is always possible to rearrange the structure of different advisory bodies; you can imagine all sorts of configurations. I would just point out that there are very different roles in advising whether it is appropriate for Ministers, former Ministers or former civil servants to take up positions in industry or other outside appointments on the one hand and, on the other hand, advising Ministers in office whether it is appropriate for them to retain particular interests that they had before they became Ministers.

**Robert Halfon:** Why can't the Cabinet Secretary do this?

**Paul Flynn:** Chairman, can I raise a point of order? I am reluctant to do this, but we have had a number of questions about a subject that we are going to investigate in depth, which is about ACoBA. It has nothing at all to do with the investigation we are having this morning. It is just wasting time.

**Chair:** The point has been made and we do not need to say it again. Thank you very much for raising that point; I have made the point myself, but I do not think you, Mr Halfon, were actually raising that.

**Q89 Robert Halfon:** I am just asking, given that you are not an independent adviser, as has been established by Mr Mulholland, why can't the Cabinet Secretary do the job you are doing? Why does your post need to exist?

**Sir Alex Allan:** This dates back quite a long way; it was only established when Sir John Bourn was appointed. I think there is an advantage to the Cabinet Secretary in having somebody who is external and impartial, who can go and talk to Ministers and Permanent Secretaries and discuss with them and, when necessary, as Priti Patel said, can challenge Ministers on the particular issues where they believe that a particular interest is compatible with their ministerial office and I may disagree.

**Q90 Chair:** It is unfortunate, isn't it, that you may well have been selected for this role had there been an open recruitment process? Indeed, we cannot know with what distinction you have served this country and you obviously have served with great distinction in your previous occupations. Don't you think it would be better if we did not have an old-boy network for this kind of thing? That is not questioning your integrity or your fitness to do this job in any way.

**Sir Alex Allan:** Obviously, I can see the advantages of that from the perspective of appearing before this Committee having said that I beat off lots of competition for the job. As I said, I believe I can do the job well and I would not have taken it on if I did not believe I could.

**Q91 Charlie Elphicke:** Sir Alex, I have a question on the issue of independence. If I recall correctly, you were Principal Private Secretary to the Prime Minister and to the Chancellor, British High Commissioner to Australia, Permanent Secretary at the Ministry of

Justice, Chairman of the Joint Intelligence Committee and now you are doing this job. Throughout this career, can you give the Committee examples of where you have stood up to the establishment or shown great independence?

**Sir Alex Allan:** There are a number of examples I probably cannot give you. Certainly, if you take the job as Chairman of the Joint Intelligence Committee, obviously I cannot give you specific examples but there were quite a number of issues where the Committee I chaired and was responsible for produced assessments that were difficult for the Government. They were discussed at the National Security Council and that is part of the process. So there are certainly instances there.

There were other instances; I could take one when I was Permanent Secretary at the Ministry of Justice. The prison population was bursting at the seams and I had to go to the then Lord Chancellor and say, "You really have no option but to introduce an early release scheme", which was politically extremely difficult and caused a lot of controversy. It was one of those issues where the facts on the ground demanded it and we had to press that through.

**Q92 Charlie Elphicke:** You heard Sir Philip's evidence; I saw you sitting through it. Would you disagree or challenge anything that he had to say to the Committee?

**Sir Alex Allan:** No. I think one of the points he made, which other people may want to question me on, about the speed of investigations, the extent to which that may be an issue and whether the Independent Adviser is called in, is certainly something that, as he indicated, I would want to have a look at. I would want to see whether there were ways of tailoring the investigation process to produce a different style of investigation for different types of allegations, some of which may be able to be done much quicker, some of which may require the full process that he outlined.

**Q93 Charlie Elphicke:** Broadly then, you are recruited by the usual Whitehall tap on the shoulder and, broadly, it is business as usual.

**Sir Alex Allan:** As Sir Philip has indicated, he has done a good job in putting the issues of advice to Ministers on interests on a much more clear footing and he has managed to get through publication of a series of reports of Ministers' interests and his annual report. I heard what he had to say about the issue of investigations. If you are implying "business as usual" is a criticism of continuing the work that Sir Philip has done, I believe I will want to continue a lot of what he has done.

**Q94 Charlie Elphicke:** Finally, do you agree with Sir Philip that the issue of vast oceans of cash made by former Ministers is a matter of prurience or do you think it is something that should be within the remit?

**Sir Alex Allan:** I think it is clearly not within the remit, in the sense that the issue of the Ministerial Code is about the interests of Ministers while they are in office. The issue of what former Ministers do after they have left ministerial office I do not see as being within the scope of my role. I gather that you are

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holding a separate inquiry looking into the Advisory Committee on Business Appointments, which is where it falls more naturally.

**Charlie Elphicke:** The “Revolving Door Committee”.

**Q95 Chair:** I am sorry to labour the point, but throughout your entire career you have done the line to take. You are going to break the habit of a lifetime now, I hope.

**Sir Alex Allan:** I am not sure I accept the fact that I have done the line to take.

**Q96 Chair:** But that is what you are required to do as a civil servant. When you appear in public, you have to take the line of the Government.

**Sir Alex Allan:** I see what you mean; in terms of appearing before this Committee, yes, absolutely.

**Q97 Chair:** In terms of any public utterances, you are schooled by a career as a civil servant to take the line to take. Are you going to break the habit of a lifetime?

**Sir Alex Allan:** I hope I will be completely frank with this Committee, yes.

**Chair:** We will depend on it.

**Q98 Paul Flynn:** If this was a pre-appointment hearing, I would, on the basis of what we have heard from you now, vigorously canvass that you not be given the job. We have interviewed on previous jobs for the Chair of the UK Statistics Authority, the Ombudsman and so on, and we have looked for people who could prove they had a record in their career of robust independence. You have a record, maybe a very distinguished one, of being an establishment figure. You chaired a Committee, which you seem to be very proud of, that has been a poodle for all Prime Ministers over the 25 years I have been here. Their role has seemed to be to lie in front of Prime Ministers and invite Prime Ministers to walk all over them. They have been cheerleaders for the two worst mistakes we have made: the Iraq War and the encroachment into Helmand.

What on earth can you tell us that would suggest that you are going to take on the Prime Minister when he is in a very difficult situation, defending his own Ministers and trying to avoid scandals? Are you really the person who will go in and say, “Prime Minister, I should be investigating this, not your civil servant”?

**Sir Alex Allan:** First of all, I do not accept your characterisation of the Joint Intelligence Committee. Second, I do believe that throughout my career I have dealt very closely with Ministers in the kinds of roles where a part of the job has been to be willing to stand up and say things to Ministers that they may not want to hear.

**Q99 Paul Flynn:** There is a belief that the job of a successful civil servant is the unimportance of being right. They continue to please their masters and their career progresses; if they challenge their political masters, their careers wither. I would suggest that if you were in the position that Sir Philip Mawer was in—I think it is pretty clear from reading between the

lines of his evidence, that he was pretty braced off that the job he has done so much to shape was bypassed regarding by far the most important issue that had come before him. What would you have done in those circumstances—if you heard that Gus O’Donnell was going to take over the report, do a quick one over the weekend, and there was not going to be a full investigation?

**Sir Alex Allan:** I have had a brief discussion with Sir Jeremy Heywood, Gus O’Donnell’s successor, about the issue. I made the point that there are advantages to him in bringing the Adviser in early and whenever major issues arise. He accepted the point.

**Q100 Paul Flynn:** But it is a non-job now. When the previous Committee looked at this, we set down suggestions and rules to make sure it was genuinely independent. Some of those were disregarded by the last Government and some were accepted. But now it has come to a real test, the Prime Minister has failed by not engaging the only enforcer. It specifically says in the Ministerial Code that the Cabinet Secretary and the civil service should not be involved; it should go straight to the Adviser. The actual investigation in the Ministerial Code was a breach of the Ministerial Code itself.

**Sir Alex Allan:** To be fair, the Ministerial Code says that the Prime Minister may decide, after getting advice from the Cabinet Secretary, to ask the Independent Adviser to do an investigation. It is not the case that things go automatically to the Adviser to investigate.

**Q101 Paul Flynn:** But there is nothing in the Ministerial Code that says that the Cabinet Secretary should do the investigation himself.

**Sir Alex Allan:** You have heard what Sir Philip said about this issue. The Cabinet Secretary needs to be in a position to advise the Prime Minister, so he clearly has to do some work. I noticed that when Sir Philip appeared before this Committee in 2008, he referred to the process and said the intention is that the Cabinet Secretary will do a preliminary recce, if you like, to establish the facts on the basis of which the Prime Minister can answer that question about referring a matter to the Independent Adviser. So the principle of that process has been recognised for quite a long time. I was not involved at all in the issue of Dr Fox and Mr Werritty.

**Q102 Paul Flynn:** Have you any view on the importance of the issue and whether it should have had a more thorough investigation because of the inaccuracies in, and omissions from, Gus O’Donnell’s report?

**Sir Alex Allan:** One of the things that the Chairman brought up, and I do not know to what extent this is true, was that one of the issues that may have weighed in the decision on whether to bring in Sir Philip as the Independent Adviser was the desire to make sure that the process was done swiftly. One of the things I have said I would like to establish is that it is possible for the Independent Adviser to act quickly when necessary. As Sir Philip said, he was frustrated at not being given a chance to demonstrate that himself.

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**Q103 Paul Flynn:** After Philip Mawer had been treated in this way by the Prime Minister, you were then appointed as an establishment figure—from a shortlist of one, presumably, without any competition or any pre-appointment hearing. I, for one, would regard you as being unsuitable for the job. Is it not true that you are just there as the Prime Minister’s poodle?

**Sir Alex Allan:** I would not have taken the job on that basis.

**Q104 Chair:** Can you envisage circumstances where you would go to the Prime Minister and say, “I should be investigating this”?

**Sir Alex Allan:** Yes. I can envisage that it would probably be more likely in the first instance that I would talk to the Cabinet Secretary.

**Q105 Chair:** So we have established that you are going to do short inquiries in order to establish *prima facie* cases and you are going to go to the Prime Minister or the Cabinet Secretary and say, “You should not be doing that; I should be doing that”. We wait to see it happen.

**Sir Alex Allan:** I think the *prima facie* case may still be for the Cabinet Secretary himself; that is the way the Code is established.

**Q106 Chair:** Do you think the Cabinet Secretary just did a *prima facie* investigation over those five days? Was that all he did?

**Sir Alex Allan:** I am not that familiar with the details but, from listening to the earlier testimony, it does sound as though Sir Gus O’Donnell started doing the fact-finding, *prima facie* bit and then events just swept it up and Dr Fox resigned.

**Q107 Chair:** Having heard what Sir Philip Mawer said, I presume you would be at least as disappointed as he was that he was not invited to investigate it. In light of all this coming to light, I hope you would be more disappointed and would make your views known.

**Sir Alex Allan:** As I said, I have already had a brief discussion with Sir Jeremy Heywood. I would certainly envisage making my views known if these sorts of issues arose.

**Q108 Robert Halfon:** If you found yourself being bypassed and the Prime Minister used the Cabinet Secretary for future cases, would you then step down from the post?

**Sir Alex Allan:** It is very hard to deal with hypothetical cases. With the hypothesis you have put forward, if I felt that I was being deliberately bypassed in favour of the Cabinet Secretary doing investigations then, yes, I would agree that in those circumstances there was not any point in my continuing in the role and I would step down. But, as I said, that is an entirely hypothetical position.

**Q109 David Heyes:** I would press a bit further on this point. You said that you wanted to establish the right to act quickly, and that infers a conversation with the Prime Minister about the powers of the job. Would

you not want to add into that conversation that it would be beneficial for you to have the power to act independently and, where you see a problem, to be able to decide to conduct the investigation without being invited to do so by the PM? Not doing that leaves the impression—as has been referred to over and over again in this Committee—that this job is the creature of the Prime Minister.

**Sir Alex Allan:** I am appointed under the terms that have been set out in the Ministerial Code, and that is very clear that I investigate cases that the Prime Minister has asked me to. That is the basis on which the job is set up.

**Q110 David Heyes:** The inference to be taken from what you said is that you want to talk to the Prime Minister about changing the role and responsibilities, particularly in relation to the right to act quickly. Why not expand that conversation and address some of the issues that the Committee has come back to over and over again, including greater independence for the role?

**Sir Alex Allan:** I want to establish that it is perfectly possible for my office to do quick investigations, so that, when the Prime Minister is considering whether to ask me to investigate, the fact that it might take a long time is not an issue.

**Q111 David Heyes:** It would not be too hard to say to the Prime Minister, “I want the power to act quickly, but I also want the power to act independently where I see the need for that. I do not want to have to come to you every time I see an issue that needs to be investigated.”

**Sir Alex Allan:** That would be quite a significant change in the constitutional remit.

**David Heyes:** It would be consistent with the recommendations of our predecessor Committee.

**Q112 Alun Cairns:** Sir Alex, how do you view the role of the Cabinet Secretary with regard to investigating potential breaches of the Ministerial Code?

**Sir Alex Allan:** As I have said, he is the person who provides advice to the Prime Minister on whether I should be asked to do an investigation. So he needs to do a minimum amount of work; I quoted from what Sir Philip said in 2008 on that. So he needs to do a certain amount. Also, from my experience in the 1990s, with the then Cabinet Secretary being asked to investigate issues of allegations against Ministers, it is not very satisfactory when the Cabinet Secretary gets sucked into a full investigation himself.

**Q113 Alun Cairns:** Do you think that the process should be formalised far more, so that, should an allegation arise and be quite easily defined, it should automatically be referred to you?

**Sir Alex Allan:** First of all, it is the Prime Minister who is accountable for the conduct of his Ministers, so ultimately the buck stops with him; it has to be his decision. There are continually allegations of breaches of the Ministerial Code, some of which are essentially very small-scale and easily dealt with, so it does not feel that the process of asking the Independent

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Adviser to conduct an investigation is remotely justified. So I do think there is judgement, and it is very hard to say that any allegations of any breaches of the Ministerial Code should automatically be referred to the ministerial Adviser.

**Q114 Alun Cairns:** I accept that—some would be malicious and some would just be time-wasting. However, if there was a frenzy in the press and in the public interest around an issue, for example such as that which we have seen recently, do you not think that an investigation by you or any of your successors could neutralise the situation immediately?

**Sir Alex Allan:** There are real advantages, as Sir Philip has said, in the Independent Adviser's being asked to do investigations in those sorts of circumstances.

**Q115 Alun Cairns:** Therefore, a formal structure leading to that would be helpful.

**Sir Alex Allan:** The structure is there.

**Q116 Alun Cairns:** It is not being used though, is it?

**Sir Alex Allan:** This was the issue that occupied a lot of the earlier questioning here. It clearly wasn't used and Sir Philip has expressed his opinion about that.

**Q117 Charlie Elphicke:** Sir Alex, looking across the landscape of standards regulation, you seem to have yourself as the Independent Adviser on Ministerial Interests, then you have the Parliamentary Commissioner for Standards, then you have Lord Lang's "Committee for lots of jobs" or whatever it is called; I do not know the formal name of it. We had him before us too, and we were not impressed.

**Robert Halfon:** It is the "Circumlocution Office".

**Charlie Elphicke:** Yes, Mr Halfon says it is the "Circumlocution Office"; we were not impressed. There seems to be a whole diaspora of various bits of regulator here, there and everywhere. For us as MPs, and indeed for Ministers, it is quite confusing. It is very easy to fill in the wrong form or not fill in enough forms. Should there not just be one simple organisation that has oversight of the whole lot, in a sensible way, so that we know where we stand—be we simple Parliamentarians, Ministers or indeed former Ministers? The whole system could be much more simplified in terms of the regulation and oversight.

**Sir Alex Allan:** As I indicated in answer to an earlier question, I gather that you are doing a further

investigation on the business appointments issue, and the extent to which this Committee wants to make recommendations about combining offices is obviously a matter for the Committee. The Parliamentary Commissioner for Standards does have a different role. He is an officer of the House of Commons and has a specific role in relation to the House of Commons that is different from the role of Government. There might be constitutional issues in trying to combine those roles.

**Q118 Paul Flynn:** If a majority of this Committee decided that you were not fit to do the job, and you were not the right person, what would you do?

**Sir Alex Allan:** If there was a clear recommendation from this Committee that I should relinquish my appointment, I think I would probably relinquish my appointment.

**Q119 Chair:** Sir Alex, you have been very honest with us and we thank you for that. Could you just summarise what changes in role or remit you envisage for the office of Independent Adviser to the Prime Minister on Ministers' Interests?

**Sir Alex Allan:** As I indicated, I start from a position of wanting to continue what I regard as the good work that Sir Philip Mawer has put in.

**Q120 Chair:** We heard Sir Philip earlier; he clearly wants a change in the nature of the role so that it is able to do quick and short investigations.

**Sir Alex Allan:** I have said that, yes

**Chair:** And also that it is able not exactly to initiate its own inquiries, but to be more proactive. Is that fair?

**Sir Alex Allan:** What I would want to see is that there was not an inhibition about asking the Independent Adviser to conduct investigations because the way in which investigations were conducted was seen to be flexible and as speedy as necessary. As Sir Philip said, he was obviously frustrated at not being given the opportunity to demonstrate that.

**Q121 Chair:** So you are not just a safe choice? You are going to be a stone in the shoe for the Prime Minister and Cabinet Secretary from time to time?

**Sir Alex Allan:** If that is necessary, yes.

**Chair:** Thank you very much indeed for your evidence this morning. I am most grateful for the evidence you have given us.

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## Written evidence

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### Written evidence submitted by the Cabinet Office

Thank you for your letter of 6 February about the appointment process for the Independent Adviser on Ministers' Interests.

You ask whether there is a job description for the role of Independent Adviser. I have enclosed a copy of the terms of reference for the role for you to share with the Committee.

The appointment of the Independent Adviser is a personal appointment by the Prime Minister where he is looking for a range of skills—including experience of working with Ministers, a good understanding of how Departments and Government work, the ability to handle issues in confidence, and the ability to provide robust, independent advice.

A number of individuals were considered for the role and Sir Alex Allan was judged to have the experience, and the necessary skills and judgement to make him ideally suited for the role.

### INDEPENDENT ADVISER ON MINISTERS' INTERESTS

#### Terms of reference

Under the terms of the Ministerial Code, it is for individual Ministers to decide, after taking advice from their Permanent Secretary and the Independent Adviser on Ministers' Interests, whether and what action is needed to avoid a conflict of interest or the perception of a conflict of interest, and to defend that decision, if necessary by accounting for it to Parliament.

The Independent Adviser on Ministers' interests will have the following role:

- Under the Ministerial Code, Ministers are required, on appointment to each new office, to provide their Permanent Secretary and the Independent Adviser with a full list in writing of their interests which might be thought to give rise to a conflict of interest.
- The Independent Adviser will advise individual Ministers (and Permanent Secretaries) on any action necessary to avoid a conflict or potential conflict of interests. The advice provided by the Independent Adviser to Ministers and Permanent Secretaries will be private and in confidence.
- The Independent Adviser will be consulted in the preparation of the list of Ministers' relevant Interests.
- The Prime Minister may ask the Independent Adviser to investigate alleged breaches of the Ministerial Code. The decision on whether an individual Minister will remain in office will ultimately be a decision for the Prime Minister taking account of the facts established by the Independent Adviser. The results of any investigation by the Independent Adviser will be made public.
- The Independent Adviser will publish an annual report on the operation of the system, commenting on individual cases as appropriate.
- The Cabinet Office will provide support to the Independent Adviser on Ministers' Interests.

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### Written evidence submitted by Sir Christopher Kelly

At yesterday's evidence session on the Business Appointment Rules I inadvertently made an error in responding to a question about the use of the Independent Adviser on Ministerial Interests. I am writing to correct that mistake. I apologise to the Committee for having made it.

In referring to the Ministerial Code, I said that the Prime Minister had broken the Code by not referring the recent investigation into the Rt Hon Dr Liam Fox MP to the Independent Adviser on Ministerial Interests. This was incorrect. The code is clear that the Prime Minister has discretion about whether to invite the Independent Adviser to undertake an investigation, even in the case of allegations about breaches of the code as serious as those made about Dr Fox.

Whether the Prime Minister should have complete discretion over such decisions is, of course, another question. My Committee has previously recommended that the Adviser should be able to initiate them himself, in appropriate situations.

The point I was trying to make was that having decided that an investigation was necessary, as it clearly was in this case, it would have been better in my view to ask the Adviser on Ministerial Interests to undertake it rather than leaving it to the Permanent Secretary of the Ministry of Defence and the Cabinet Secretary. The creation of the post of Independent Adviser on Ministerial Interests was recommended by this Committee partly to avoid any possibility or perception of a clash of loyalties when investigations of this kind are undertaken.

I regret misleading the Committee. I hope they will accept my apologies.

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