



House of Commons
Public Administration Select
Committee

**The Prime Minister's
Adviser on Ministers'
Interests: independent
or not? Government
Response to the
Committee's Twenty
Second Report of
Session 2010–12**

**Fifth Special Report of Session
2012–13**

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The Public Administration Select Committee (PASC)

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

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Committee staff

The current staff of the Committee are Emily Commander and Catherine Tyack (Joint Clerks), Rebecca Short (Second Clerk), Alexandra Meakin (Committee Specialist), Paul Simpkin (Senior Committee Assistant) and Su Panchanathan (Committee Assistant).

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Fifth Special Report

The Public Administration Select Committee reported to the House on *The Prime Minister's Adviser on Ministers' Interests: independent or not?* in its Twenty Second Report of Session 2010-12, published on 17 March 2012. The Government Response was received on 4 February 2013 and is published below:

Government Response

The Government is grateful to the Committee for its Report on the Prime Minister's Independent Adviser on Ministers' Interests and has also given careful consideration to the points raised in the debate in the House of Commons on 17 July 2012 on the Committee's recommendation for the Prime Minister's Adviser on Ministerial Interests to be empowered to instigate his own investigations.

At the core of the Government's Response to the Committee's Report is its belief that Parliament already has a powerful range of mechanisms to hold the Government, including the Prime Minister and his Ministers, to account. The Government believes that it would not be appropriate to change the Ministerial Code, as Mr Jenkin suggested on 17 July, so that it is

“owned by Parliament and controlled by Parliament in order that it can become a mechanism that can be used by Parliament to hold Ministers to account.”¹

In the Government's view this would lead to an unacceptable blurring of the lines between the Executive and Parliament.

The Government's response to each of the Committee's recommendations is set out below (with the exception of the recommendations contained in paragraphs 58, 59 and 60 which are more appropriately grouped together).

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)

Following the former Cabinet Secretary's report into allegations relating to the Rt Hon Dr Liam Fox MP, guidance was circulated to departments advising them to put in place arrangements to deal with the recommendations set out in pages 9 and 10 of the Report. Permanent Secretaries were asked to advise Ministers of these obligations and ensure that processes were in place to comply with these arrangements, including ensuring improved knowledge in the civil servant teams who support Ministers. This letter is attached for reference (see Appendix 2).

¹ HC Deb, 17 July 2012, col 876

Lessons in relation to the Independent Adviser on Ministers' Interests

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)

The Government agrees with the Committee's conclusion 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 may not be appropriate at all for there to be any further investigation. This does not mean that an investigation is precluded if a Minister has left office but the Government's view is that each issue should be considered on a case by case basis.

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)

The Government notes the Committee's views. In this particular case, the issue was not referred to the Independent Adviser because the Cabinet Secretary was able to establish the facts quickly, and whilst this was happening Dr Fox resigned. The Prime Minister having consulted the then Cabinet Secretary concluded that there was no need to refer the case to the Independent Adviser.

The former Cabinet Secretary made this clear in his evidence to the Committee:

‘What I would have done when I was looking at the facts—I was trying to establish whether there was anything to this—would have been to hand the material over and say to the Prime Minister, "You now need to get this investigated." We just got overtaken by events along the way.’²

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)

The Government notes the Committee's views. However, it believes it is not necessary to amend the Ministerial Code as the Independent Adviser can already do this when required at the request of the Prime Minister, as demonstrated by the Independent Adviser's report into issues raised in relation to the Rt Hon Baroness Warsi. There remains an important role for the Cabinet Secretary in advising the Prime Minister on whether there is a *prima*

² Oral evidence taken before the Public Administration Select Committee on 23 November 2011, HC (2010-12) 1582-iv, Q366

facie case for the Independent Adviser to investigate including using either a shorter or lengthier process of investigation.

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)

The Government notes the Committee's views, and has carefully considered the points raised in the debate on this issue on 17 July, but believes that the appropriate route to follow where there is an allegation of a breach of the Code is the process currently set out in the Ministerial Code (which is the same route taken by the previous Government) that if the Prime Minister, having consulted the Cabinet Secretary, feels that it warrants further investigation, the matter will be referred to the Independent Adviser.

The Government has considered the Committee's comparison with the role of the Parliamentary Commissioner for Standards but believes that the Prime Minister's Adviser's role is fundamentally different. As set out in the Ministerial Code, Ministers only remain in office for so long as they retain the confidence of the Prime Minister. The Prime Minister is the ultimate judge of the standards of behaviour expected of a Minister and the appropriate consequences of a breach of those standards. The Prime Minister confirmed this position in his evidence to the Liaison Committee on 3 July 2012 when he said:

“The Ministerial Adviser on interests is there to advise the Prime Minister; he gives the advice and the Prime Minister has to make the decision.”³

The Ministerial Code sets out the standards that the Prime Minister expects from his Ministers, so it is appropriate that it is his decision whether a matter is referred to the Independent Adviser. The Government does not believe that the role should be placed on a statutory footing, and believes that the current model provides appropriate flexibility to respond to individual cases.

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)

The Government notes the Committee's views in this Report and in the Report on the Business Appointment Rules and will be responding separately to the detailed recommendations made in the Committee's Report on Business Appointment Rules.

Career background of the appointee

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;**

³ Oral evidence taken before the Liaison Committee on 3 July 2012, HC (2012-13) 484-i, Q 86

- **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)**

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)

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)

The Government is responding to the recommendations contained in paragraphs 58,59 and 60 together as they all deal with the same issue and to separate the response would we believe be less helpful to the Committee.

The Government remains of the view that the role of the Independent Adviser should be a personal appointment made by the Prime Minister of the day. A number of qualities are required for the job, including expertise and experience and a relationship of trust and confidence between the Adviser and Ministers and their permanent secretaries. Sir Alex Allan was judged to have the experience, and the necessary skills and judgement to make him ideally suited for the role.

The use of the term 'independent' is intended to show that the post-holder is neither part of the Government of the day nor party political. The Adviser is there—personally appointed by the Prime Minister—to advise the Prime Minister on allegations of breaches of the Code if the Prime Minister thinks it is necessary. The Government remains clear that the post-holder must remain outside of party politics and the Civil Service, and provide his own 'independent' views on issues which are referred to him.

The Government remains of the view that the appointment should not be subject to a pre-appointment hearing, as the personal nature of the appointment makes it more suitable for scrutiny post-appointment rather than pre-appointment.

Appendix 2: Letter from Sir Gus O'Donnell to Permanent Secretaries, dated 20 October 2011

REPORT INTO ALLEGATIONS RELATING TO RT HON LIAM FOX MP: LESSONS LEARNED

As you know, and as discussed at this week's Wednesday morning meeting, the Prime Minister has accepted the recommendations I made in my report into the allegations against the former Defence Secretary. I have since discussed with him the recommendations and have agreed that I will ask you to put the following arrangements in place, as set out in my report:

- Where discussions take place with external organisations which raise substantive issues relating to departmental decisions or contracts and where an official is not present Ministers should inform their department;
- On Ministerial visits, whether in the UK or abroad, departments should make sure there is no confusion about who is and is not a member of the Ministerial party;
- Officials should accompany Ministers to all official visits and meetings overseas
- at which it is expected that official matters may be raised, and should seek guidance from the FCO if there is any uncertainty about the status of such meetings or the attendance of non-officials at them;
- Permanent Secretaries should discuss with Ministers at the time of their appointment and regularly thereafter whether any acquaintances or advisers have contractual relationships with the department or are involved in policy development. The Minister and the Permanent Secretary should take action as necessary to ensure there can be no actual or perceived conflict of interest in line with the principles of the Ministerial Code;
- 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.

You may want to start having conversations with your Secretary of State and Ministerial team now to ensure that you are complying with these arrangements. Sue Gray stands ready to help or advise should you need any help.

At our Wednesday meeting we also touched on the role of Private Offices. As we agreed they have an important role to play in upholding the rules as well as providing challenge to Ministers. If it would be helpful Sue is also very happy to come to your departments and run propriety sessions with your private office staff. Please get in touch with her if you would find such a session helpful.

I am of course here to help as well. If there are issues that are causing you difficulty or on which you would like advice, please do let me know.