

Committee on Standards in Public Life

Getting the Balance Right

Implementing Standards of Conduct in Public Life



Issues and Questions Paper

The Seven Principles of Public Life

Selflessness

Holders of public office should act solely in terms of the public interest. They should not do so in order to gain financial or other benefits for themselves, their family or their friends.

Integrity

Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might seek to influence them in the performance of their official duties.

Objectivity

In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

Accountability

Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

Openness

Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

Honesty

Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

Leadership

Holders of public office should promote and support these principles by leadership and example.

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CHAPTER 1 INTRODUCTION

The Committee and its terms of reference

1.1 The Committee on Standards in Public Life was set up in October 1994 by the then Prime Minister, the Rt Hon John Major. Its terms of reference are:

To examine current concerns about standards of conduct of all holders of public office, including arrangements relating to financial and commercial activities, and make recommendations as to any changes in present arrangements which might be required to ensure the highest standards of propriety in public life.

1.2 On 12 November 1997, the present Prime Minister, the Rt Hon Tony Blair MP, announced additional terms of reference:

To review issues in relation to the funding of political parties, and to make recommendations as to any changes in present arrangements.

The Committee has published nine reports. They are listed at Appendix 2.

1.3 Since March 2001, the Chair of the Committee has been Sir Nigel Wicks. Other members of the Committee are Rita Donaghy OBE, Professor Hazel Genn CBE, Sir Alistair Graham, Dame Patricia Hodgson CBE, Baroness Maddock, Rabbi Dame Julia Neuberger, the Rt Hon Gillian Shephard MP, the Rt Hon Chris Smith MP, and Brian Woods-Scawen.¹

The scope of the inquiry

1.4 The implementation of recommendations in many of the Committee’s reports has required the establishment of a number of procedures. If the burden of these procedures becomes disproportionate or ill-adapted to the outcomes desired, it is unlikely that standards of propriety will be maintained. In such circumstances, the work of those seeking to maintain public standards could be undermined not only by over-bureaucratic or over-zealous procedures, but also by a degree of public cynicism.

In short, in this enquiry, the Committee’s intention is to enhance the effectiveness of these arrangements.

1.5 Taking account of these considerations, the Committee intends to examine:

- (i) the administrative procedures which flow from the implementation of the various recommendations of the Committee. The Committee set out in its *First Report* three “common threads”² to ensure that the Seven Principles of Public Life were properly understood. These are:
 - Codes of Conduct
 - Independent Scrutiny
 - Guidance and Education

Common Threads

- **Codes of Conduct** – “Such Codes should be drawn up within each organisation concerned, so that they will be appropriate to their circumstances, and will form part of the culture of the organisation”;
- **Independent Scrutiny** – “In certain circumstances an independent body to oversee the framework within which actions are taken to monitor compliance can be an important safeguard in maintaining public confidence”; and
- **Guidance and Education** – “It is essential that more is done to inculcate high ethical standards through guidance, education, and training, particularly induction training, than has been thought necessary in the past. In this context, guidance means the planned promotion and reinforcement throughout every public body of ethical standards...it requires those in senior positions to set a good example; and it requires organisations to monitor the awareness of those standards and take remedial action when necessary.”

¹ Both Dame Patricia Hodgson and Brian Woods-Scawen joined the Committee after it had approved the final version of this Issues and Questions paper.

² *Standards in Public Life: First Report of the Committee on Standards in Public Life*, Cm 2850-1, HMSO, London, 1995, (Hereinafter referred to as CSPL First Report).

1.6 The Committee is now concerned to know whether the procedures and processes used to implement these common threads have been effective, proportional and not excessive to the objects of the exercise. In this context, the selected areas for inquiry include:

- Appointments and reappointments to public bodies (not to the civil service); and
- The management and enforcement of Codes of Conduct including declarations of interest across local government³, the National Health Service⁴, and other public bodies.

The Committee also intends to examine:

(ii) whether, in relevant areas, the Seven Principles of Public Life are being embedded into organisational culture, and what steps are being taken to ensure that this involves the appropriate use of training and development and is more than a box-ticking exercise. Here we wish to examine the effectiveness of present arrangements for overseeing propriety in public bodies (not the civil service or parliament); induction; appraisal and development for executives and non-executives; and the impact of the Public Interest Disclosure Act of 1998 and its provisions for whistle-blowing.

Approach

1.7 The Committee has decided to use a thematic approach to this inquiry. This will involve examining relevant mechanisms across a range of institutions including analysis of user, consumer and stakeholder perspectives of the administrative mechanisms. Having tested these perspectives through the examination of written submissions and through oral hearings, we will make conclusions about both the proportionality of the mechanisms and the extent to which the Seven Principles have become entrenched in organisational culture.

1.8 The Committee is interested in examining the issues in the context of the real tasks that the relevant institutions are required to perform.

Public Bodies

A public body is not part of a government department, but carries out its function to a greater or lesser extent at arm's length from central government. Ministers are ultimately responsible to Parliament for the activities of the bodies sponsored by their department and in almost all cases (except, for example, where there is separate statutory provision) ministers make the appointments to their boards. Departments are responsible for funding and ensuring good governance of their public bodies...The term public body is a general one which includes: Nationalised Industries, such as British Shipbuilders; Public Corporations, such as the BBC; NHS Bodies; and Non-Departmental Public Bodies (NDPBs).⁵

The Committee's interest

1.9 The Committee's terms of reference require it to examine "*current concerns about standards of conduct of all holders of public office ...and make recommendations as to any changes in present arrangements which might be required to ensure the highest standards of propriety in public life.*" The "current concerns" leading to this inquiry include:

- The general issue of proportionality prompted by a range of developments, including the extension of the application of the mandatory Code of Conduct in local government to the operations of all parish councils;
- Whether Departments with delegated responsibility for handling appointments procedures do so with sufficient professionalism and due regard to issues of proportionality in decision-making.
- A degree of uncertainty about the principles determining whether or not a public body is regulated by the Office of the Commissioner for Public Appointments (OCA)⁶; and
- How effective the Public Interest Disclosure Act of 1998, with its provisions for the regulation of whistle-blowing, has been in changing the organisational culture in public sector organisations.

³ As set out on the Committee's website at <http://www.public-standards.gov.uk>, in the Register of Members' Interests, the Chair's spouse is a local government councillor.

⁴ Sir Alistair Graham's involvement in the inquiry will take account of any conflict of interest which might arise through his role as Northern and Yorkshire Commissioner for the NHS Appointments Commission.

⁵ *Public Bodies 2003*, Cabinet Office.

⁶ This was an issue raised in evidence to the Public Administration Select Committee in February 2003. <http://www.publications.parliament.uk/pa/cm200203/cmselect/cmpublicadm/uc165-iv/uc165026/03/03>.

1.10 The inquiry is within the Committee’s terms of reference, being concerned with the propriety of public office-holders in public bodies, the National Health Service, and local government. *Part 1* addresses three of the Seven Principles in Public Life – Objectivity, Openness and Accountability. All of the Seven Principles are addressed in *part 2* of the inquiry.

1.11 Our study will not cover the House of Commons, House of Lords, appointments to the Civil Service, or the Electoral Commission. The reasons for excluding office-holders in these bodies are set out in Appendix 1.

Purpose of the consultation paper

1.12 This consultation paper examines the issues concerned with proportionality and the incorporation of the Seven Principles of Public Life into the culture of public bodies. The full scope of the inquiry will depend upon the evidence received, but this paper sets out the main issues which seem most relevant at this stage. The Committee does not consider itself restricted to the questions asked here. The issues and questions sections of the paper are intended to stimulate and focus public debate and to invite responses. For convenience, a complete list of questions is set out in Chapter 4. The questions are not exclusive, nor intended to preclude comments on related issues.

1.13 Respondents are encouraged to set out fully the reasons in support of their views. Where respondents are unsatisfied with present arrangements or approaches, they are encouraged to describe how to amend, improve or replace them.

Related documents

1.14 Throughout this paper, references are made to a variety of reports, codes and other documents. These documents are referred to in footnotes in the text and presented cumulatively at Appendix 3, along with their website addresses where appropriate.

How to submit evidence

1.15 The Committee would welcome written submissions on any or all of the subjects raised in this consultation paper. While some questions are best answered by those with specialist knowledge or experience, others can be addressed by users of public bodies or consumers of their services. There is no need for respondents to answer every question or to confine submissions to the specific issues in the paper.

1.16 Respondents should note that **the Committee’s terms of reference specifically preclude it from investigating individual cases or specific allegations of misconduct. Nor has the Committee any powers to require others to do so.** But the Committee may take account of information on material cases in formulating its recommendations.

1.17 All submissions, with the exception of those that appear to the Committee to be defamatory, will be displayed on the Committee’s website at www.public-standards.gov.uk and be available for public scrutiny as soon after they are sent to the Committee as is practicable. They may also be published with the report. Any respondents who would prefer their submissions to be treated as confidential should state this clearly and their wishes will be respected.

1.18 Submissions and further evidence in response to this paper should be sent to:

The Committee on Standards in Public Life
35 Great Smith Street
London SW1P 3BQ.

Alternatively, they can be emailed to us at the following address:
Standards.evidence@gtnet.gov.uk

The closing date for submissions is **16 April 2004.**

Further copies of this document may be obtained free of charge from the Committee by telephoning 0800 692 1516. It may also be accessed, along with other Committee publications, via the Committee’s Internet site: **www.public-standards.gov.uk**. More information about the Committee can be found at the same address.

Public hearings

1.19 In addition to receiving written evidence, the Committee intends to hold a number of public hearings later in the year. The Committee regrets that it is unlikely to be possible to invite every respondent who expresses an interest in giving oral evidence to participate in the public hearings.

CHAPTER 2 THE COMMITTEE'S INTEREST IN PROPORTIONALITY AND IN CHANGING ORGANISATIONAL CULTURE

2.1 The Committee's interest in proportionality and in organisational culture dates back to its *First Report, Standards in Public Life*, May 1995.⁷ In this report, the Committee noted that conduct in public life was more rigorously scrutinised than in the past. While the great majority of people in public life met the necessary standards, there were weaknesses in the procedures for maintaining and enforcing them. As a result, the Committee drew up the Seven Principles of Public Life, as a restatement of the general principles of conduct underpinning public life. The Committee also recommended that:

- All public bodies should draw up Codes of Conduct incorporating the Seven Principles;
- Internal systems for maintaining standards should be supported by independent scrutiny; and
- More was needed to promote and reinforce standards of conduct in public bodies, in particular through guidance and training, including induction training.

2.2 These principles continue to play a central role in informing the Committee's judgements – and the judgements of others – about good practice in general and about proportionality and organisational culture in particular.

PROPORTIONALITY

2.3 Proportionality is a difficult concept to define. It concerns judgements about the relationship between processes and outcomes. In the standards field it is concerned with the balance between propriety, accountability and efficiency; the context in which decisions are made; and the outcomes intended. For example, overburdensome rules are not in themselves a guarantee of good conduct or excellent appointments. They may deter good candidates from seeking public appointments, stifle initiative and be a cover for improper behaviour.⁸

2.4 So, in the application of the Seven Principles of Public Life there are delicate balances to be struck. The principles of Objectivity and Accountability necessitate the application of rules of fair procedure ensuring appointments on merit (often a legal requirement). On the other hand this needs to be done in a way which avoids a slavish approach to rules and process without sufficient regard to outcomes. This requires critical judgement by public office holders in line with the principle of Leadership.

2.5 Proportionality is one of the Principles of Good Regulation disseminated by the Better

⁷ *CSPL First Report, Chapter 4.*

⁸ *Standards in Public Life: Review of Standards of Conduct in Executive NDPBs, NHS Trusts and Local Spending Bodies*, London 1997. (Hereinafter referred to as *CSPL Fourth Report*). Introduction, para 22, p.7.

Regulation Task Force⁹. In this account it is suggested that:

- Policy solutions must be proportionate to the perceived problem or risk and justify the compliance costs imposed – “don’t use a sledgehammer to crack a nut”;
- All the options for achieving policy objectives must be considered – not just prescriptive regulation. Alternatives may be more effective and cheaper to apply;
- Enforcement regimes should be proportionate to the risk posed; and
- Enforcers should consider an educational, rather than a punitive approach where possible.¹⁰

2.6 In its *First Report*, the Committee noted that the Government accepted “that appointments procedures need to be subject to the principle of ‘proportionality’. This means that a process which may be right and cost-effective for a full-time, highly paid post responsible for significant public spending is unlikely to be necessary for a part-time, one day a month, unpaid appointment to an advisory committee. We accept this principle, providing it is applied with some rigour and does not become an excuse for bureaucratic convenience.”¹¹

2.7 Here proportionality was seen as compatible with protecting the merit principle provided that it was not used as a cover for less rigorous and time-saving procedures. The report went on to recommend that the Public Appointments Commissioner should draw up a code of practice for public appointments procedures. Reasons for departures from the code on grounds of “proportionality” should be documented and capable of review.¹² This recommendation was accepted by the Government and implemented by the Commissioner with a Code of Practice (1996), revised in 1998, and further revised in 2001.

2.8 In its *Second Report*, the Committee argued that regulators and funders in higher and further education should seek to reduce detailed monitoring and collection of information; to make fewer changes in their requirements and to give adequate notice of such changes; and to place more reliance on audit reports.¹³ The Government agreed that monitoring

arrangements should be kept as simple as possible and not create unnecessary bureaucracy, but noted that at the same time controls were necessary for accountability.

2.9 The *Fourth Report* noted that as far as public appointments were concerned the principle of proportionality had “not properly been taken into account. Practical implementation of procedures has become too cumbersome”¹⁴ The Committee commented that “It is essential that Departments and Executive NDPBs should apply the principle of proportionality to the appointments procedure...It is nevertheless, important that correct procedures are adhered to, and that appointments are made on merit. Proportionality should not be an excuse for sloppy proceedings.”¹⁵

2.10 In its *Sixth Report*, the Committee recommended that the Secretary of State for Health should review the procedure governing reappointments to NHS bodies so that those seeking reappointment for the first time, who had been assessed as performing satisfactorily in their posts, could be reappointed without being compared to an external candidate.¹⁶ The Secretary of State saw this proposal as sensible, as did the NHS Appointments Commission which became operational on 1 April 2001, taking responsibility for these matters.

2.11 In its 2001 stock-take, *The First Seven Reports: A Review of Progress*, the Committee published “a snapshot of the position at the end of August 2001”¹⁷ This was an attempt to examine “the outcome (the actual results achieved) of action taken on the recommendations”.

2.12 The stock-take was not intended as a score-sheet of the number of Committee recommendations implemented, not least because the context in which the Committee made some of its recommendations had been changed significantly by the effect of machinery of government changes. These included devolution (begun in 1998), the advent of Regional Assemblies, and other changes to the institutional environment such as the creation of the Learning and Skills Council, and the new legal framework set out for maintained schools in the Schools Standards and Framework Act 1998.

⁹ *Independent Regulators*, Better Regulation Task Force, October 2003.

¹⁰ There are two other sub-principles, unrelated to this Inquiry.

¹¹ *CSPL First Report*, para 4.71, p.80.

¹² *CSPL First Report* Recommendation 44.

¹³ *Second Report* of the Committee on Standards in Public Life: Local Spending Bodies, CM3270, May 1996. (Hereinafter referred to as *CSPL Second Report*).

¹⁴ *CSPL Fourth Report*, para 10, p3.

¹⁵ *CSPL Fourth Report*, para 60, p21.

¹⁶ *Sixth Report* of the Committee on Standards in Public Life: Reinforcing Standards, CM 4557-1, January 2000. (Hereinafter referred to as *CSPL Sixth Report*), Recommendation 37.

¹⁷ London September 2001.

The 2001 stock-take underlined two important points:

- First, cumulatively, the Committee's recommendations had a significant impact on the institutional and policy framework for dealing with standards issues created during this period. Innovations in areas relevant to this inquiry included the Office of the Commissioner for Public Appointments (1995), the Public Interest Disclosure Act (1998) with its provisions for whistle-blowing, and the Standards Board for England (2001); and
- The "common threads" advocated by the Committee to retain high standards of conduct – adoption of Codes of Practice incorporating the Seven Principles, the use of independent scrutiny to support internal systems for maintaining standards, and the use of guidance and training to reinforce standards – were not susceptible to a "one size fits all" approach if implementation was to be proportionate.

mandatory Codes of Conduct for the staff, as well as the board members of executive NDPBs and NHS bodies,²⁰ was an acceptance of the need to encourage behaviour change that is wider than at board level. The principle of independent scrutiny to support internal systems for maintaining standards constituted appreciation of the persuasive power of organisational culture to deflect attention from standards issues. And the emphasis on guidance and training was recognition that coordinated formal action was necessary to challenge assumptions and beliefs that had been taken for granted.

- 2.15 Success in transformation is difficult to achieve. Committee reports have emphasised that successful change strategies require strong leadership and policy development from the top of organisations.²¹ The *Second Report* recommended that the principles of good practice on appointments, training, openness, codes of conduct and conflicts of interest should be adopted as policy across all public bodies.²² The *Third Report* made fundamental policy recommendations for the restructuring of the framework of standards and discipline for local government councillors and officers. All the first four reports called for the creation of new whistle-blowing procedures to enable concerns to be raised confidentially inside and, if necessary, outside public bodies.²³

ORGANISATIONAL CULTURE

2.13 Culture in organisations is an often overlooked key to understanding decision-making. It concerns the basic assumptions and beliefs that are learned, shared, and often taken for granted in an organisation.¹⁸ These assumptions and beliefs become associated with decision-making approaches that help to solve problems repeatedly encountered at work.¹⁹ What is important here is that organisational culture can make an informal but significant contribution to the way that an organisation addresses its primary tasks.

2.14 The Committee's recognition of the importance of organisational culture in maintaining standards of conduct in public life is demonstrated by its emphasis – in the *First Report* and since – on the "common threads" of the use of Codes of Conduct, Independent Scrutiny, and Guidance and Education. The recommendation in the *First Report* of

¹⁸ Rick S. Kurtz, Organizational Culture, Decision-Making, and Integrity. The National Park Service and Exxon Valdez, *Public Integrity*, Fall 2003, vol.5, no 4, p.306.

¹⁹ *Ibid*, p.306.

²⁰ *CSPL First Report*, recommendations 46,47,48,49.

²¹ In changing culture, leadership from the top needs to be supported by initiatives specifically designed to be effective right across the organisation. This includes effective strategies to develop skills, knowledge and behaviour. The Committee's emphasis on effective training and guidance has been a consistent theme, already referred to.

²² *Second Report*, General Recommendation 1.

²³ Standards of Conduct in Local Government in England, Scotland and Wales, CM3702-1, July 1997. (Hereinafter referred to as *CSPL Third Report*). Recommendation 26. For a full discussion of whistleblowing see below, Chapter 3, paras 3.36 – 3.41.

CHAPTER 3 THE INQUIRY IN DETAIL

The Inquiry is divided into two parts, proportionality and organisational culture.

Part 1: Proportionality

The Committee will examine administrative procedures which flow from the implementation of the various recommendations of the Committee. The Committee is concerned to know whether implementation based on the common threads of Codes of Conduct, Independent Scrutiny and Guidance has been effective, proportional and not excessive to the objects of the exercise. The selected areas for inquiry include:

- **Appointments and reappointments to public bodies²⁴ (not to the civil service); and**
- **The management and enforcement of Codes of Conduct including declarations of interest across local government, the National Health Service, and other public bodies.**

3.1 The aim of this part of the inquiry is to canvas a wide selection of users, stakeholders, officials and non-executive board members of regulatory bodies concerned with appointments to public bodies, declarations of interest, and operations of Codes of Conduct. Given that the objectives of these bodies are widely accepted, there is a need to ask a number of key questions about the implementation mechanisms they use. The purpose of asking these questions is to seek assurance that the implementation of Committee recommendations has been proportionate to the objectives defined.

Issues about public appointments

3.2 The Commissioner for Public Appointments

The post of Commissioner for Public Appointments was established in November 1995 following the recommendations of the Committee's *First Report*. The Committee was concerned about the concentration of powers of ministerial patronage, and the absence of independent checks and balances. These existing arrangements were not solid ground on which to build public confidence in the system.²⁵ The replacement arrangements aimed "to provide departments with a clear and concise guide to the steps they must follow in order to ensure a fair, open and transparent appointments process that produces a quality outcome and can command public confidence."²⁶

3.3 The Commissioner is appointed by The Queen under the Public Appointments Order in Council 2002, which consolidates and amends the 1995 and 1998 Orders. The Commissioner, currently Dame Rennie Fritchie, is independent of the Government.

3.4 The Commissioner's role is to "regulate, monitor and report on ministerial appointments to health bodies, non-departmental public bodies, public corporations, nationalised industries and the appointments of the Utility Regulators."²⁷ The OCPA Code of Practice sets out the regulatory framework for the public appointments process based on merit and subject to independent scrutiny.²⁸ The Code is presently undergoing revision and users and stakeholders (including the Committee) have been involved in a consultation exercise. A revised Code will be published in early 2004.

²⁴ See box on page 4.

²⁵ *CSPL First Report*, Chapter 4, para 25, p.71.

²⁶ The Commissioner for Public Appointments *Code of Practice for Ministerial Appointments to Public Bodies*, OCPA, London July 2001, (Hereinafter referred to as the OCPA Code of Practice) 1.5, p.4.

²⁷ *Ibid*, para 1.2.

²⁸ *Ibid*, para 1.5, p.4. This recognises the influence of the Committee's *First Report* in structuring its contents.

3.5 The public bodies regulated by OCPA (roughly 11,000 ministerial public appointments out of about 30,000 public appointments) are governed by the Order in Council of 16 July 2002.³⁰ The Schedule to the Order, which is maintained by the Cabinet Office, names the regulated public bodies. This constitutes a self-contained category, but it is not clear why some significant public bodies are excluded from this Schedule. The Order applies widely to public appointments made by Scottish Ministers and by the National Assembly for Wales as well as to appointments made by UK Ministers.³¹

3.6 The OCPA Code of Practice is the authoritative (mandatory) document governing appointments to public bodies. The appointments principles, set out in the Code of Practice, include:

- Responsibility of appointments to remain with Ministers;³²
- Appointment on merit taking into account the need for a balance of skills and backgrounds;³³
- Independent scrutiny;³⁴
- Openness;³⁵
- The declaration of significant political activity;³⁶ and
- Departures from this Code 'on grounds of proportionality' should be documented and capable of review.³⁷

3.7 Proportionality is specifically mentioned in the OCPA Code of Practice which states "*Proportionality must not be used to circumvent proper procedures.*"³⁸ It continues "*Regardless of the way in which the individual is targeted, applications must go through the same formal process as those from any other source.*" This includes completing an application form. However, practice around the targeting of candidates appears to vary considerably. The OCPA Code also states that "*Ministers and officials are equally free to suggest names of possible candidates, but where they wish to make formal nominations applications from their*

nominees must be received by the same closing date as for applications from any other sources."³⁹ There are concerns that a number of departments consult Ministers over the short-list for appointments in a way which might be seen to impair the independence of the selection process.

3.8 In its recent *Response to the Public Administration Select Committee's Fourth Report of Session 2002-2003*⁴⁰, the Government noted that there were "significant costs...a matter of serious concern" to the recommendation that, as soon as practicable, the Commissioner for Public Appointments should be made solely responsible for appointing and supporting all independent assessors on appointment panels. The Government pointed out that this Committee was about to embark on an inquiry into proportionality and appointments to public bodies and "*may wish to consider whether to include the role of independent assessors as part of this inquiry.*" This is an issue the Committee believes does warrant inclusion in the current inquiry.

3.9 Ministers have access to information contained in the Political Activity Questionnaire on receipt of the list of candidates judged 'above the line' and from whom Ministers make the final choice. At present practice as far as the appointment panels themselves is concerned is variable but the vast majority of panels do not have access to the information about political activity. By exception, in the handful of cases where the requirement for political balance on board then panels will have access to information about political activity. Just over 81 per cent of those appointed and reappointed to all OCPA-regulated boards in 2002-2003 declared that they had not been politically active during the previous five years.⁴¹

3.10 The OCPA Code of Practice makes clear that some organisations have a statutory right to have their interests represented on a particular public body.⁴² In these cases, the Nominating Body must ensure that their nominees meet the criteria

³⁰ Order in Council July 16th, 2002, para 1: "any body listed for the time being in the Schedule to this Order or any body which the Minister for the Cabinet Office has specified in writing as being a public body for the purposes of this Order."

³¹ Explanatory Note, d, Order in Council, July 16th 2002.

³² CSPL First Report, para. 29.

³³ Ibid, paras 4.35-46.

³⁴ Ibid, paras 4.48-9.

³⁵ Ibid, paras 4.59-61. Bearing in mind the balance to be struck between openness and the privacy of individuals.

³⁶ Ibid, para 4.68.

³⁷ Ibid paras 4.72, 70-1.

³⁸ OCPA Code of Practice, London 2001, paras 2.13-2.15.

³⁹ Ibid, para 3.24.

⁴⁰ Government Response to the Public Administration Select Committee's Fourth Report of Session 2002-2003 "Government by Appointment: Opening Up the Patronage State" (HC165), Cm 6056, December 2003, para 11, pp.3-4.

⁴¹ The Commissioner for Public Appointments Eighth Report 2002-3, 2003,p.7.

⁴² OCPA Code of Practice, 3.24.d, p.23.

laid down for the appointment. The Commissioner has encouraged such Bodies to publicise among their membership the fact that nominees are being sought and to encourage suitably qualified individuals to put themselves forward for consideration.⁴³ Where there is no statutory requirement, the Minister may wish the board of a particular public body to include representatives from various interest groups, so the department may approach Nominating Bodies to invite them to put forward candidates. Currently, concern has been expressed that, through 'custom and practice', some public bodies have engineered what are effectively 'rights' to be represented on the boards of particular public bodies.

3.11 Chapter 5 of the OCPA Code of Practice deals with Complaints. The Commissioner has limited powers of investigation. She has no remit to investigate complaints unless it appears the selection process has breached the Code of Practice.⁴⁴ Complaints must be dealt with first by the department concerned.⁴⁵ In 2002-2003 Departments received 111 complaints and OCPA 30.⁴⁶ Of the 30 complaints investigated by the Commissioner, six were upheld or partially upheld on the grounds of breaching the Code on merit, anomalies in the selection criteria, poor treatment of the applicant, or lack of transparency.⁴⁷ The Commissioner reported that the core principles of her Code had been seriously breached following the interference of a DEFRA Minister in the appointments process.⁴⁸ In the *Response to the Public Administration Select Committee's Fourth Report of Session 2002-2003*, referred to in para 3.8 above, the Government noted that the current powers of the Commissioner were effective. It agreed to monitor how the whistle-blowing powers of the new Commissioner for Public Appointments for Scotland operate once these are inaugurated later in 2004.⁴⁹

3.12 Finally, of just under 3,500 OCPA regulated appointments to public bodies in 2002-3, 202 appointees held one or more other public appointment 34 appointees held three appointments or more.⁵⁰ There is no available information on multi-board membership of non-OCPA regulated appointments.

3.13 Devolved Arrangements

The Commissioner's remit covers appointments made by members of the National Assembly for Wales. In Scotland, Dame Rennie Fritchie is currently Commissioner. In Scotland, variants on English arrangements include a contracted-out call centre to manage the initial stages of the recruitment process for departments. There is also a Parliamentary Notification system, set up in 2002, which ensures that the Parliament is notified of all relevant non-executive vacancies and subsequent appointments. In March 2003, the Scottish Parliament passed legislation to set up a new, separate Commissioner for Scotland. The new arrangements will come into effect from 1 April 2004. In Northern Ireland, there is a separate OCPA office, and Dame Rennie is also Commissioner.

3.14 The National Health Service Appointments Commission

The NHS Appointments Commission was set up as a Special Health Authority within the National Health Service from 1 April 2001. Until then Health Ministers had been responsible for making non-executive appointments to NHS bodies. In this they took into account recommendations from NHS Regional Chairs after recruitment exercises run by Department of Health officials. As the Committee's *First Report* commented, under this process suspicions of bias remained which were "nearly impossible to prove or disprove."⁵¹

3.15 The Appointments Commission was established to make all chair and non-executive appointments to NHS Trusts, Primary Care Trusts and Health Authorities. All appointments made by the Commission fall within the remit of the Commissioner for Public Appointments. *The Commissioner for Public Appointments Code of Practice for Appointments made by the NHS Appointments Commission*⁵² sets out the regulatory framework for appointments by the Commission in line with the Seven Principles of Public Life.

⁴³ Leaflet for Nominating Bodies, OCPA, October 1998.

⁴⁴ OCPA Code of Practice, paras 5.3, 5.4.

⁴⁵ Ibid, 5.6, - 5.9.

⁴⁶ The Commissioner for Public Appointments Eighth Report, 2002-3, 2003, p.34.

⁴⁷ Ibid, p.34.

⁴⁸ Ibid, p.35.

⁴⁹ Government Response to the Public Administration Select Committee's Fourth Report of Session 2002-2003 "Government by Appointment: Opening Up the Patronage State" (HC165), Cm 6056, December 2003, para 17, p.5.

⁵⁰ The Commissioner for Public Appointments Eighth Report 2002-3, p.61.

⁵¹ CSPL First Report, Chapter 4 para 25, p.71. The point was made about executive NDPBs and NHS bodies together.

⁵² OCPA March 2002.

3.16 The Commission has responsibility for about 4,000 appointments, and consists of a Chair, a Chief Executive and eight Regional Commissioners.

3.17 In Scotland, appointments to NHS Boards and Trusts are made by the Scottish Executive, and

regulated by the Commissioner for Public Appointments. In Wales, appointments to NHS Executive bodies are made by the National Assembly and are also regulated by the Commissioner for Public Appointments.

Questions about public appointments

Q1. What lessons can be learned by comparing the way in which appointments and reappointments are made to different public bodies? For example, are there any lessons to be learned from the way in which the National Health Service Appointments Commission – which has responsibility for significant numbers of public appointments – operates?

Q2. The inquiry will ask a number of questions about how government departments deal with public appointments:

(a) Is the public appointments process managed with due attention to proportionality in Departments so that over-regulation and box-ticking are avoided?

(b) Are the key stages of the appointments process managed with a professionalism which exhibits the necessary skill and expertise to make excellent appointments?

(c) Do staff responsible for public appointments in departments have sufficient knowledge and experience of what public bodies do, and therefore of what are the key skills that candidates need to operate successfully?

Q3. Are the measures currently in place in the OCPA Code of Practice robust enough to safeguard the requirement for appointment on merit and independent scrutiny? For example:

(a) Is the practice of consulting Ministers at the short-listing stage compatible with the merit principle?

(b) What are the most appropriate arrangements for the recruitment, training and management of independent assessors?

Q4. Is there any evidence that good candidates have been discouraged and/or that the calibre and diversity of appointments made has changed as a result of the existing processes?

Q5. Should appointment panels for public bodies have access to the Political Activity Questionnaire submitted by candidates?

Q6. What contribution should Nominating Bodies make in the appointments process?

Q7. Does OCPA have adequate powers to deal with abuses of the Code? If not, should the Commissioner's powers be increased?

Q8. Is the accumulation of multiple public appointments by a small number of individuals a matter for legitimate public concern?

Issues about the management and enforcement of Codes of Conduct

3.18 In its *First Report*, the Committee pointed to some lapses from generally high standards in the behaviour of board members of public bodies and NHS bodies.⁵³ A variety of practices opened up potential for impropriety. The gravest concerns focused on the misuse of public office to pursue personal interest.⁵⁴ Where failure to declare a conflict of interest, or withdraw from a relevant discussion, was a criminal offence for a local councillor, there were no legal penalties laid down in respect of breaches by board members of executive NDPBs and NHS bodies.

3.19 Mandatory codes of conduct for board members of each executive NDPB and NHS body were needed, together with a mandatory code of conduct for their staff.⁵⁵ Subsequently, the Committee's *Third Report* examined standards of conduct in local government and concluded that there was a need for a consistent framework of conduct, underpinned by a revised Code of Conduct for councillors.⁵⁶ This led to the creation of the Standards Board for England (see below, paras 3.24 – 3.28). In its *Fourth Report*, the Committee again emphasised the importance of rules governing conflicts of interest being introduced not only in executive NDPBs and NHS Trusts but also by regulators in what were then called local public spending bodies. Today this includes OCPA-regulated public bodies such as the Higher Education Funding Council (further and higher education), the Learning and Skills Council (education and training for over-16 year-olds) and the Housing Corporation (registered social housing), together with their devolved equivalents.

3.20 *The Commissioner for Public Appointments' Code of Practice for Ministerial Appointments* (2001, Paras 2.9-2.11) deals with the probity of Board members as well as appointments procedures. In relation to conflicts of interest, the Code notes that those most frequently encountered included:

- Financial interests or share ownership;
- Candidates who are actively sought from within a field of expertise in which the public body works. Such a connection should not

- necessarily 'preclude' appointment; and
- Membership of societies where there is a potential conflict of interest. Again this should not be an automatic bar to appointment.⁵⁷

3.21 The Commissioner has recently produced guidance concerning conflicts of interest for departments making public appointments in Northern Ireland.⁵⁸ This is intended to be distributed to GB departments in order to promote good practice.

3.22 As far as the management of the Code itself is concerned, the Commissioner has recently consulted with stakeholders and users on proposed revisions to the Code. The Commissioner's Code is supplemented by Cabinet Office guidance.⁵⁹

3.23 In NHS bodies, *The Commissioner for Public Appointments Code of Practice for Appointments made by the NHS Appointments Commission* (2002) replicates the probity rules set out in the OCPA Code of Practice.

3.24 *The Standards Board for England* came into existence in March 2001, following recommendations of the Committee's *Third Report*⁶⁰ enacted in the Local Government Act 2000. This new framework has three principal components:

- A requirement upon every authority to adopt a Code of Conduct that all members (councillors) have to sign up to;
- A requirement that authorities set up a standards committee to oversee ethical issues and provide advice and guidance on the Code of Conduct and its implementation; and
- The establishment of an independent body (the Standards Board) with responsibility for investigating alleged breaches of a Council's Code of Conduct and promoting and maintaining high standards of conduct.⁶¹

3.25 The Standards Board has an extensive regulatory field. It covers 386 local authorities (plus over 8,000 parish councils), 31 fire and civil defence authorities and 44 police authorities. It also covers the Greater London Authority and other regional assemblies. Every authority is required

⁵³ CSPL *First Report*, Chapter 4, paras 73-5, pp.82-3.

⁵⁴ CSPL *First Report*, Chapter 4, paras, 79, 83: "Directing contracts, business or expenditure towards organisations with which members or staff have a personal or financial connection is a particularly acute and widespread concern."

⁵⁵ CSPL *First Report*, Chapter 4, paras 91-6.

⁵⁶ CSPL *Third Report*, paras 1.14-17

⁵⁷ OCPA *Code of Practice*, op.cit, pp.10-11.

⁵⁸ *Probity & Conflicts of Interest – A Guide for Departments*, OCPA 2003.

⁵⁹ *Making Public Appointments: A Best Practice Guide for Departments*, Cabinet Office, July 2001.

⁶⁰ CSPL *Third Report*, Chapter 1, pp.3-11.

⁶¹ *The Standards Board for England: Annual Report and Accounts, 2001/02*, p.4.

to adopt a Code of Conduct that sets out rules governing the behaviour of its members. Each Code must include the provisions of the Model Code of Conduct approved by Parliament in November 2001.⁶² Concern has been expressed that the provisions of the Code when applied across all tiers of local government could act as a disincentive for good candidates to undertake public office in (for example) parish councils. Authorities can choose to add their own local rules to the Model Code if they wish, although most have adopted the Model Code without additions. Authorities had until 5 May 2002 to adopt a Code of Conduct. After this date the Model Code was automatically applied to those who had not adopted and amended it. The Code covers areas of individual behaviour such as members not abusing their position or not misusing the authority's resources. There are also rules governing recording and disclosure of interests and withdrawal from meetings.

3.26 More than 4,000 complaints have been received by the Standards Board since the Code of Conduct came into effect. Less than half the complaints received are referred by the Board to be investigated. Most complaints come from either a member of the public or a fellow councillor. Of the complaints referred for investigation a significant number are about a failure to register a personal or financial interest.⁶³ Other complaints were about bringing the authority into disrepute and a failure to treat others with respect. By the summer of 2003, 82 councillors had been disqualified from holding office and a further 15 members suspended following the 100 cases referred to the Adjudication Panel. The Standards Board Chair, Sir Anthony Holland noted, *"The fact that we have received so many complaints shows that there is real concern about the behaviour of a minority who are clearly letting everyone else down."*⁶⁴

3.27 Under the Local Government Act 2000, the Standards Committee in each authority is required to: give the Council advice about adopting a local Code of Conduct; monitor the effectiveness of the Code in operation; train members; promote and maintain high standards of conduct for members; and help members follow the Code. The introduction of Section 66

regulations in the summer of 2003 has finally put into place a framework for local authorities to deal with cases referred to them by Ethical Standards Officers. Without this framework *"many Standards Committee members felt ...unable to fulfil their roles adequately over the past year."*⁶⁵

3.28 As far as the Standards Board is concerned, the Model Code of Conduct sets out that financial and other interests have to be registered within 28 days of election or co-option.⁶⁶ Members are required to declare personal interests at meetings, even if the interest is registered. Where the interest is 'prejudicial', the member must declare it and withdraw from the meeting. Members of the public have a right to inspect the Registers of Interest. It is unclear whether Councils can charge a fee for inspection. Membership of charities or bodies directed to charitable purposes must be registered.⁶⁷ However, not all societies are legally charities registered with the Charity Commission, though many are directed to charitable purposes.

3.29 Devolved Arrangements

In Scotland, a separate *Standards Commission for Scotland* was established under the Ethical Standards in Public Life etc (Scotland) Act, 2000. The Commission is committed to high ethical standards in public life through the promotion and enforcement of Codes of Conduct for councillors in 32 local authorities and those appointed to 129 other public bodies. *The Model Code of Conduct for Members of Devolved Public Bodies*⁶⁸ contains extensive Chapters on General Conduct, Registration of Interests and Declaration of Interests. The Commission, through its Chief Investigating Officer, investigates all complaints of alleged breaches of the Code.

3.30 In Wales, under the Local Commissioner in Wales (Standards Investigations) Order 2001,⁶⁹ *the Commission for Local Administration in Wales* is the custodian of the Local Authority Members Code of Conduct. The Commission carries out the role allocated to ethical standards officers in England.

⁶² *Statutory Instrument 2001 No 3575*. The Local Authorities (Model Code of Conduct) (England) Order 2001.

⁶³ Standards Board Press Office, Press Release 15 August 2003. Standards Board for England *Annual Report and Accounts 2002/03*, p.9.

⁶⁴ *Ibid.* With regard to allegations that the Model Code has been broken, the Board will consider any written allegations it receives that allege a member has breached the Code. If an allegation is referred for investigation, then an Ethical Standards Officer will carry out an independent investigation. If the investigation concludes that a matter is serious enough, they can refer the case to The Adjudication Panel for England. This is an independent statutory body which will make a final judgement. They can suspend a member for up to one year or disqualify them from holding office for up to five years. The Board has the option of referring a matter to be dealt with by the local Standards Committee.

⁶⁵ *The Standards Board for England: Annual Report and Accounts 2002/3*, Chair's Statement, p.6.

⁶⁶ Model Code of Conduct, para. 14.

⁶⁷ *Ibid.*, para 15c.

⁶⁸ Standards Commission for Scotland, March 2002.

Questions about the management and enforcement of Codes of Practice

- Q9.** What lessons can be learned from comparing the content and operations of Codes of Conduct across across NHS bodies, local government and other public bodies?
- Q10.** Should the Local Government Model Code of Conduct apply to all tiers of local government?
- Q11.** Should there be a general requirement in Codes of Conduct to register membership of any society which though not a charity or directed to charitable purposes might be perceived to constitute a conflict of interest?
- Q12.** Are the requirements in the various Codes of Conduct proportionate or a disincentive to public service?
- Q13.** Are the arrangements for standards in existing regional bodies satisfactory?

Part 2: Organisational culture

3.31 The Committee will examine whether, in relevant areas, the Seven Principles of Public Life are being embedded into organisational culture, and what steps are taken to ensure that this involves the appropriate use of induction, training and development and is more than a box-ticking exercise.

The Seven Principles of Public Life are:

Selflessness
Integrity
Objectivity
Accountability
Openness
Honesty and
Leadership⁷⁰

Issues about organisational culture

3.32 Both OCPA and the Standards Board have drawn on these principles to create operational rules consistent with their own mandates. For OCPA these are: Ministerial responsibility; Merit; Independent scrutiny; Equal opportunities; Probity; Openness and transparency; and Proportionality.⁷¹ The Standards Board has ten principles of “good conduct” prescribed for it by Parliament in 2001. These are: Selflessness; Objectivity; Openness; Duty to uphold the law; Stewardship; Honesty and integrity; Accountability; Respect for others; Leadership; and Personal judgement.⁷²

3.33 In another variation, the Standards Commission for Scotland has set out nine general principles upon which its Model Code of Conduct is based. These principles are: Public Service, Selflessness, Integrity, Objectivity, Accountability and Stewardship, Openness, Honesty, Leadership and Respect.⁷³

3.34 The recent Better Regulation Task Force report *Independent Regulators*⁷⁴ noted the clarity of role given to non-executive directors in the National Health Service. Key elements of the role included: attention to due process (stewardship); ensuring community perspectives are brought to the Board and that the organisation’s interests are represented in the community; ensuring that the direction, policies and values of NHS bodies are in accordance with national strategy; and

⁶⁹ Statutory Instruments made by the Welsh Assembly 2001. No.2286 (W.174) *Local Government, Wales*.

⁷⁰ *First Report*, Cm 2850-1, p.13.

⁷¹ Commissioner for Public Appointments, *Code of Practice*, 2001, pp.6-12.

⁷² *Standards Board Annual Report 2001-2*, p.10.

⁷³ *The Model Code of Conduct for Members of Devolved Public Bodies*, Standards Commission for Scotland, March 2002., para 2.1.

⁷⁴ Better Regulation Task Force, *op.cit.*, October 2003, Chapter 5, pp.25-28.

bringing experience to enhance the expertise of the Board.⁷⁵ In similar vein, the Commissioner for Public Appointments drew attention in her eighth annual report to the exemplary nature of the NHS Appointments Commission's standardised annual appraisal system with a detailed Code of Practice and training for those involved in the process.⁷⁶

3.35 In her annual report for 2002-2003, the Commissioner for Public Appointments also expressed concern about the absence of formal performance appraisal to support reappointments made by a number of departments.⁷⁷ This was in marked contrast to the operational practice of the NHS Appointments Commission. The Commissioner noted that, *"On-going assessment of board members is vital, not only for compliance with the Code of Practice, but also to meet best practice, to provide the board members with feedback...to motivate them, and, where necessary, to provide them with advice on improving their performance."*

Questions about organisational culture

Q14. What good practice exists to embed the Seven Principles of Public Life into the culture of public bodies? For example, good practice in:

(a) Training and development;

(b) Encouraging the challenge of inappropriate behaviour at all levels in the organisation; and

(c) Attempts to measure changes in the culture of public bodies.

Q15. Do boards of NHS Trusts and other public bodies have sufficiently rigorous arrangements for the governance of propriety?

Q16. What constitutes good practice in the performance appraisal of board chairs and members NHS Trusts and other public bodies?

Issues about whistle-blowing

3.36 The Committee has a long-standing interest in whistle-blowing. The *First Report* (1995) noted that staff concerns about fraud and malpractice in NDPBs and NHS bodies come to light *"despite rather than because of the system."*⁷⁸ What was needed was *"sound internal procedures backed by an external review"*.⁷⁹ The Committee recommended that *"each executive NDPB and NHS body that has not already done so should nominate an official or board member entrusted with the duty of investigating staff concerns about propriety raised confidentially. Staff should be able to make complaints without going through the normal management structure, and should be guaranteed anonymity. If they remain unsatisfied, staff should also have a clear route for raising concerns about issues of propriety with the sponsor department."*⁸⁰

3.37 The Committee returned to the theme in its *Second Report* (1996) arguing that *"Placing staff in a position where they feel driven to approach*

⁷⁵ Ibid. The study recommended [Recommendation 10] that the Cabinet Office should review whether independent regulators are following its [Cabinet Office] guidance on the induction and appraisal of Board members. If necessary the guidance should be revised, by April 2004, 'to make sure it can be followed in a proportionate way.' The NHS Appointments Commission has set these policies out in detail in *Governing the NHS: A guide for NHS Boards*, 2003.

⁷⁶ *Eighth Report 2002-3*, OCPA, p.30.

⁷⁷ Annual Report, p.27.

⁷⁸ *CSPL First Report*, para 4.113.

⁷⁹ *CSPL First Report*, para 4.114.

⁸⁰ *CSPL First Report*, Recommendation 53, para 116, p.92.

*the media to ventilate concerns is unsatisfactory for both the staff member and the organisation.*⁸¹ This might help to avoid cases *“when the first reaction of management faced with unwelcome information has been to shoot the messenger.”*⁸² In consequence, a general recommendation of the *Second Report* (1996) was that *“local public spending bodies should institute codes of practice of whistle-blowing, appropriate to their circumstances, which would enable concerns to be raised confidentially inside and, if necessary outside the organisation.”*⁸³

3.38 In the Committee’s *Third Report* (on Local Government) the Committee noted that *“The essence of a whistle-blowing system is that staff should be able to by-pass the direct management line, because that may well be the area about which their concerns arise, and that they should be able to go outside the organisation if they feel the overall management is engaged in an improper course.”*⁸⁴

3.39 By the time the Committee returned to looking at Executive NDPBs, NHS Trusts and Local Spending Bodies in its *Fourth Report* (November 1997) responses on whistle-blowing were still *“patchy”*.⁸⁵

3.40 The Public Interest Disclosure Act 1998, which came into force in 1999, provides whistle-blowers with statutory protection against dismissal and victimisation. The Act applies to people at work raising genuine concerns about crime, civil offences, miscarriage of justice, and danger to health and safety or the environment. It applies whether or not the information is confidential and extends to malpractice overseas. The Act distinguishes between internal disclosures (a disclosure in good faith to a manager or the employer is protected if the whistle-blower has reasonable suspicion that the malpractice has or is likely to occur), regulatory disclosures and wider disclosures. Regulatory disclosures can be made in good faith to prescribed bodies such as the Health and Safety Executive, the Inland Revenue and the Financial Services Authority. Wider disclosures (e.g. to the police, the media, and MPs) are protected if, in addition to the tests for internal disclosures, they are reasonable in all the circumstances and they

meet one of three conditions. Provided they are not made for personal gain these conditions are that the whistle-blower: reasonably believed he would be victimised if he raised the matter internally or with a prescribed regulator; reasonably believed a cover-up was likely and there was no prescribed regulator; or had already raised the matter internally or with a prescribed regulator.

3.41 In the first three years of the Act, employees lodged over 1,200 claims alleging victimisation for whistleblowing. Two-thirds of these claims were settled or withdrawn without any public hearing. Tribunals reached full decisions in 152 cases.⁸⁶ A study of 2,000 staff in the National Health Service by Unison (together with Public Concern at Work) published in 2003 found that 90 percent of staff who had a patient safety concern ‘blew the whistle’. All raised their concern internally, with two-thirds reporting no reprisal and half stating that the concern was dealt with reasonably.⁸⁷ The remaining third reported some form of reprisal or ‘grief’. Twenty-five per cent of staff reported that the culture was better now than it was three years ago.⁸⁸

Questions about whistle-blowing

Q17. What are the key elements of good practice likely to deliver effective whistle-blowing policy and practice in public bodies?

Q18. Is there evidence that the organisational cultures of the National Health Service, local government and other public bodies have become more open and accountable as a result of the Public Interest Disclosure Act?

⁸¹ CSPL *Second Report*, para 42, p.22.

⁸² CSPL *Second Report*, para 43, p.22.

⁸³ CSPL *Second Report*, para 43 Recommendation 2.

⁸⁴ CSPL *Third Report*, para 194, p.48.

⁸⁵ CSPL *Fourth Report*, para 66, p.22.

⁸⁶ Public Concern at work: Whistleblowing Case Summaries: www.pcaw.co.uk/policy_pub/case_summaries.html

⁸⁷ *Is Whistleblowing Working in the NHS? The Evidence*, Unison Health Care and Public Concern at Work, www.pcaw.co.uk/policy_pub/nhs.html, May 2003, p.2.

⁸⁸ *Ibid*, p.3.

CHAPTER 4 SUMMARY OF QUESTIONS

Part 1: Proportionality

The Committee will examine administrative procedures which flow from the implementation of the various recommendations of the Committee. The Committee is concerned to know whether implementation based on the common threads of Codes of Conduct, Independent Scrutiny and Guidance has been effective, proportional and not excessive to the objects of the exercise. The selected areas for inquiry include:

- Appointments and reappointments to public bodies (not to the civil service); and
- The management and enforcement of Codes of Conduct including declarations of interest across local government, the National Health Service, and other public bodies.

Questions about public appointments

- Q1.** What lessons can be learned by comparing the way in which appointments and reappointments are made to different public bodies? For example, are there any lessons to be learned from the way in which the NHS Appointments Commission – which has responsibility for significant numbers of public appointments – operates?
- Q2.** The inquiry will ask a number of questions about how government departments deal with public appointments:
- (a) Is the public appointments process managed with due attention to proportionality in Departments so that over-regulation and box-ticking are avoided?
- (b) Are the key stages of the appointments process managed with a professionalism which exhibits the necessary skill and expertise to make excellent appointments?
- (c) Do staff responsible for public appointments in Departments have sufficient knowledge and experience of what public bodies do, and therefore of what are the key skills that candidates need to operate successfully?
- Q3.** Are the measures currently in place in the OCPA Code of Practice robust enough to safeguard the requirement for appointment on merit and independent scrutiny? For example:
- (a) Is the practice of consulting Ministers at the short-listing stage compatible with the merit principle?
- (b) What are the most appropriate arrangements for the recruitment, training and management of independent assessors?
- Q4.** Is there any evidence that good candidates have been discouraged and/or that the calibre and diversity of appointments made has changed as a result of the existing processes?
- Q5.** Should appointment panels for public bodies have access to the Political Activity Questionnaire submitted by candidates?
- Q6.** What contribution should Nominating Bodies make in the appointments process?
- Q7.** Does OCPA have adequate powers to deal with abuses of the Code? If not, should the Commissioner's powers be increased?
- Q8.** Is the accumulation of multiple public appointments by a small number of individuals a matter for legitimate public concern?

Questions about the management and enforcement of Codes of Conduct

- Q9. What lessons can be learned from comparing the content and operations of Codes of Conduct across NHS bodies, local government and other public bodies?**
- Q10. Should the Local Government Model Code of Conduct apply to all tiers of local government?**
- Q11. Should there be a general requirement in Codes of Conduct to register membership of any society which though not a charity or directed to charitable purposes might be perceived to constitute a conflict of interest?**
- Q12. Are the requirements in the various Codes of Conduct proportionate or a disincentive to public service?**
- Q13. Are the arrangements for standards in existing regional bodies satisfactory?**

Part 2: Organisational culture

The Committee will also examine whether, in relevant areas, the Seven Principles of Public Life are being embedded into organisational culture, and what steps are taken to ensure that this involves the appropriate use of induction, training and development and is more than a box-ticking exercise.

Questions about organisational culture

- Q14. What good practice exists to embed the Seven Principles of Public Life into the culture of public bodies? For example, good practice in:**
- (a) Training and development;
 - (b) Encouraging the challenge of inappropriate behaviour at all levels in the organisation; and
 - (c) Attempts to measure changes in the culture of public bodies.
- Q15. Do boards of NHS Trusts and other public bodies have sufficiently rigorous arrangements for the governance of propriety?**
- Q16. What constitutes good practice in the performance appraisal of board chairs and members of NHS Trusts and other public bodies?**

Questions about whistle-blowing

- Q17. What are the key elements of good practice likely to deliver effective whistle-blowing policy and practice in public bodies?**
- Q18. Is there evidence that the cultures of the National Health Service, local government and other public bodies have become more open and accountable as a result of the Public Interest Disclosure Act?**

Appendix 1

Defining the relevant institutional and policy areas

- A1.1** In following a thematic approach, and to be as helpful as possible to those wishing to make written submissions and/or give evidence, the Committee has decided to define the institutional and policy areas relevant to this Inquiry.
- A1.2** The criterion used to make a judgement about a particular institutional and policy area is that: **mechanisms in an institutional and policy area which have been subjected to rigorous scrutiny in a recent Committee Report or in the report of another authoritative body should be excluded from scrutiny.**
- A1.3** **The regulation of civil servants includes relationships with Ministers.** These were the subject of the Committee's *First*, *Sixth* and *Ninth Reports*. As the subject of the most recent, *Ninth Report*, mechanisms in this area are excluded.
- A1.4** **The House of Commons and House of Lords.** These were the subject of the Committee's *First*, *Sixth*, *Seventh* and *Eighth Reports* and led to the creation of the Parliamentary Commissioner for Standards (1995). As the subject of the Committee's recent *Seventh* and *Eighth Reports* mechanisms in this area are excluded.
- A1.5** **Public bodies, including the National Health Service, outside the Civil Service.** These were the subject of the *First*, *Fourth* and *Sixth Reports* and led to the creation of the Office of the Commissioner for Public Appointments (1995). These areas have not been subject to a *substantial* review by the Committee since its *Fourth Report* in 1997. However, the mandates of the Commissioner for Public Appointment were addressed in the *Fourth Report of the House of Commons Public Administration Select Committee* (PASC), published in July 2003.⁸⁹
- A1.6** The PASC Report comments on the administrative procedures of OCPA. The system is said to lack public confidence. This is because of a perception of ministerial interference (cronyism) and also unrepresentative outcomes in terms of diversity of appointments. However, what interests PASC in its report is less a reform of the procedures themselves than the creation of a new institutional framework (termed a Public Appointments Commission) which would remove Ministers from making individual appointments altogether.
- A1.7** The Committee will want to draw on the extensive evidence submitted to PASC about administrative procedures for public appointments without necessarily subscribing to its institutional solutions. In this sense, public bodies outside the Civil Service are not excluded on grounds of the criterion set out above.
- A1.8** **Local Public Spending Bodies (LPSBs)** including local authorities, institutions in further and higher education and in what became social registered housing were the subject of the Committee's first four reports. These areas have not been subjected to scrutiny by the Committee since its *Fourth Report* (1997). Since the publication of this report, institutional developments in this field – the application of the Model Code of Conduct to parish councils, the new legal framework set out for maintained schools in the School Standards and Framework Act 1998 – make a re-visit of this area entirely appropriate.
- A1.9** **The Funding of Political Parties.** The Electoral Commission was established following the Committee's *Fifth Report*.⁹⁰ It has a wide-ranging remit covering the registering of political parties; the regulation of political donations and campaign spending; the publication of party accounts; handling UK referendums; and promoting awareness of electoral and democratic systems.⁹¹ These are subjects of national importance. However, some are currently the subject of a review by the Electoral Commission itself. Accordingly, the Electoral Commission is excluded from scrutiny in the current inquiry.

⁸⁹ *Public Administration Select Committee's Fourth Report of Session 2002-2003 "Government by Appointment: Opening Up the Patronage State" (HC165)*, July 2003.

⁹⁰ *Standards in Public Life: The Funding of Political Parties in the United Kingdom*, Cm 4057-1, Oct 1998.

⁹¹ *Electoral Commission Annual Report and Accounts 2000-1*, p.3.

Appendix 2

Previous reports by the Committee on Standards in Public Life

The Committee has published reports on the following subjects:

- Members of Parliament, Ministers, civil servants and quangos (First Report (Cm 2850)) (May 1995)
- Local public spending bodies (Second Report (Cm 3270)) (June 1996)
- Local government in England, Scotland and Wales (Third Report (Cm 3702)) (July 1997)
- A review of recommendations contained in the First and Second Reports relating to standards of conduct in executive Non-Departmental Public Bodies (NDPBs), NHS Trusts and local public spending bodies (Fourth Report) (November 1997)
- The funding of political parties in the United Kingdom (Fifth Report entitled *The Funding of Political Parties in the United Kingdom* (Cm 4057)) (October 1998)
- A review of recommendations contained in the First Report relating to Members of Parliament, Ministers, civil servants and ‘proportionality’ in the public appointments system (Sixth Report entitled *Reinforcing Standards* (Cm 4557)) (January 2000)
- Standards of Conduct in the House of Lords (Seventh Report (Cm 4903)) (November 2000)
- A stock-take of the action taken on each of the 308 recommendations made in the Committee’s seven reports since 1994 (The First Seven Reports – A Review of Progress) (September 2001)
- Standards of Conduct in the House of Commons (Eighth Report (Cm 5663)) (November 2002)
- Defining the Boundaries within the Executive: Ministers, Special Advisers and the permanent Civil Service. (Ninth Report (CM5775)) (April 2003).

Appendix 3

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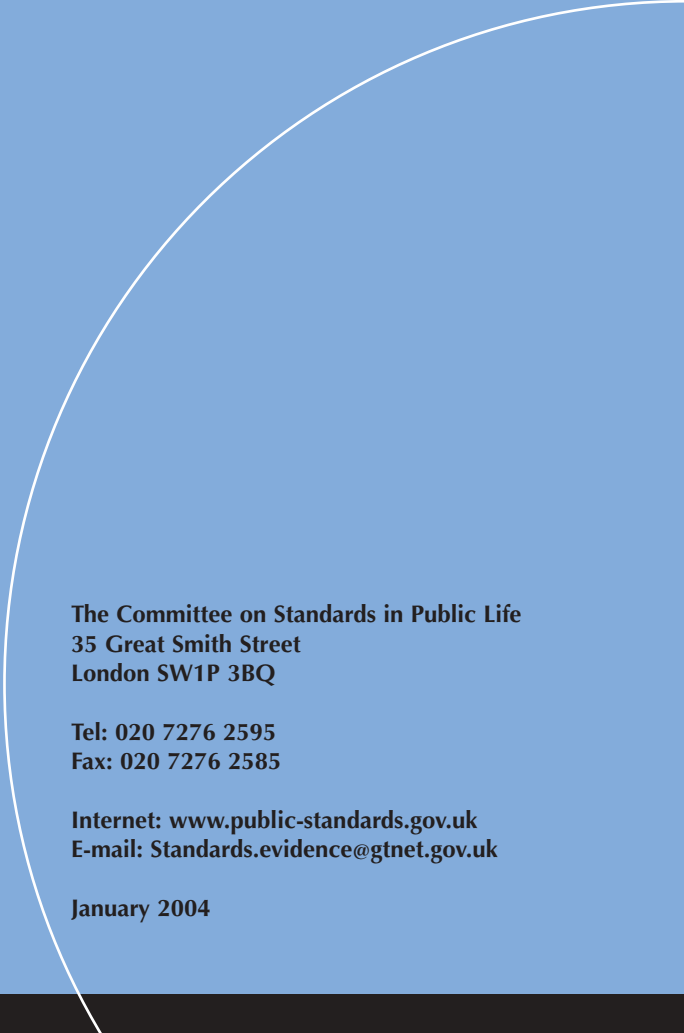
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January 2004