

COMMITTEE ON STANDARDS IN PUBLIC LIFE

Issues and Questions

THE NOLAN COMMITTEE

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FOREWORD BY THE RT HON THE LORD NOLAN

The task which my Committee has been given is formidable. It is nothing less than to seek to ensure that the people of this country have confidence in the way in which public affairs are conducted.

A Committee, or a set of rules, can only do so much. In the end, high standards depend upon the beliefs, philosophy and self-discipline of individuals.

This country has long enjoyed a reputation for the honour and integrity of its public institutions. That reputation has been based upon a widely shared tradition of public service. All responsible individuals, including politicians, public servants of all kinds and journalists, have a duty to sustain this tradition, and not to undermine it for short term advantage.

This paper sets out the key questions and issues upon which we shall initially focus our attention. I hope that all who read it will reflect upon the issues raised and give us the benefit of their advice. If my colleagues and I are to achieve our objective, our recommendations must command the support both of the public and of those to whom we make them.

MICHAEL NOLAN

INTRODUCTION

About the Committee

1. The Committee on Standards of Conduct in Public Life (The Nolan Committee) was announced by the Prime Minister in the House of Commons on Tuesday 25 October 1994 (Official Report Cols 757-759).

2. The Committee's 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.'

3. For these purposes 'public life' is taken to include Ministers, civil servants and advisers, Members of Parliament, Members of the European Parliament elected in the UK, members and senior officers of all non-departmental public bodies and of National Health Service bodies, non-ministerial office holders, members and other senior officers of other bodies discharging publicly funded functions and elected members and senior officers of local authorities.

4. The Committee is not charged with examining individual evidence of misconduct.

5. Lord Nolan, a Lord of Appeal in Ordinary, chairs the Committee. The other members are Sir Clifford Boulton, Sir Martin Jacomb, Prof Anthony King, Pt Hon Tom King CH MP, Rt Hon Peter Shore MP, Pt Hon Lord Thomson of Monifieth, Sir William Utting, Dame Anne Warburton and Diana Warwick.

6. The Committee has been established as a Standing Committee, which will remain in being to advise the Government of the day. Members have been invited to serve for three years in the first instance. The Prime Minister has asked the Committee to produce a first report, covering the most important areas of current concern, within six months. The Committee then plans to consider other issues in a rolling programme.

Background

7. The Nolan Committee has been set up against a background of widespread concern about standards in public life. This concern has become more immediate as a result of recent widely publicised incidents which raise questions about standards in more than one area.

8. Suggestions that MPs have accepted cash for asking Questions in the House have highlighted growing concerns about the outside influences on and interests of MPs and Peers, and more generally about the role of lobbyists and their relationship with Parliament.

9. Allegations that Ministers and officials may have received hospitality from people working in the same fields as their Departments, although not substantiated, have also received wide publicity, and have demonstrated that the rules governing Ministers' and officials' conduct could usefully be re-examined. Among other matters, the mechanisms for policing the rules have been questioned. There has also been criticism of the involvement of former Ministers with companies with whom their Departments have had dealings while they were in office.

10. There has also been a growing concern about Quangos. Broadly, there has been criticism that the methods of appointment to Quangos are not sufficiently transparent, and

it has been suggested that appointments are made on the basis of politics or personal connections rather than solely on merit. This is associated with a wider concern about a perceived lack of accountability and lack of openness in such bodies.

11. The growth of criticism in all these areas at more or less the same time has created a widespread perception that standards in public life have declined. There have also been suggestions, however, that this decline may be more perceived than actual, and that changes in the nature and operation of the media, and a general tendency towards disillusionment with established institutions, may be relevant.

About this Paper Immediate tasks

12. The Committee's immediate tasks are to examine these concerns and to establish to what extent they are justified.

13. In the course of doing this we need to consider to what extent the rules and conventions underlying the various aspects of public life are adequate in modern circumstances, and whether and how they need to be improved.

14. We need to consider whether the pressures to break the rules have increased, and what if anything can be done to reduce these pressures.

15. We need also to consider whether the arrangements for policing the rules are the most appropriate in the light of current public expectations.

16. And we need to do this quickly and thoroughly if public confidence is not to be further eroded and, indeed, is to be restored.

Priorities within terms

17. We cannot hope within the first six months to consider fully of reference all the issues and areas which in principle fall within our remit. We therefore need to focus our attention closely on the matters of greatest immediate public concern. These are, broadly, those set out above.

18. At our second meeting, on 15 November, we therefore decided to produce this paper in order to focus the comments we hope to receive on the issues we have identified. The following sections set out in detail the issues and questions we will wish to consider in each area. These are not meant to be exclusive. If our attention is drawn to other issues and questions which are important and relevant within this broad framework, we will consider them too. But a number of other issues - some of which we have noted in Chapter Five - will have to fall into a later tranche of work.

19. We are well aware that this does not sit entirely comfortably with our invitation to the public, issued following our first meeting on 3 November, to submit initial views as soon as possible and not later than 16 December. We did consider waiting till after 16 December, assimilating all those views, and publishing this paper in the New Year. But we decided to proceed now for two reasons.

20. First, the diffuse nature of comments already received indicated clearly to us that it would be more helpful if we ourselves took the lead in quickly prioritising our initial work. We believe this will be helpful to all those who wish to submit considered evidence, and will allow them to concentrate straight away on the key issues.

21. Second, as we have noted we regard time as of the essence. We do not believe that publishing this paper will detract from the worth of comments already received, and we will be happy to accept comments based on this paper through into January and beyond if necessary. Following the receipt of written comments, we then plan to invite a number of respondents and others to give oral evidence. We believe that this process will be more effective if we proceed as openly as possible with regard to our developing thinking, and we intend, as far as possible, to have open hearings with press and television access.

Content of the paper

22. This paper is set out in five main sections:

Chapter One deals with issues affecting MPs and Peers, including the issues surrounding the question of Members' interests and the role of lobbyists;

Chapter Two deals with issues affecting Ministers and civil servants, including the acceptance of gifts, possible conflicts of interest, and employment on leaving office;

Chapter Three deals with Quangos, setting out the areas to which we are giving priority (the major spenders, and the NHS Trusts), and covering issues which include selecting members, avoiding conflicts of interest and standards of conduct of members and officers;

Chapter Four deals with the broader picture, considering whether there are common threads which run across all these areas, such as common principles, accountability, openness and independent scrutiny;

Chapter Five sets out some of the areas which we intend to consider at a later stage.

Responses to this Paper

23. The issues and questions set out in this paper are not meant to be comprehensive or exclusive; simply to give respondents a guide to the range of issues we shall need to consider. Nor do we suggest that any individual respondent should attempt to answer them all.

24. Submissions and further evidence in response to this paper should be sent to:
The Committee on Standards in Public Life
Horse Guards Road
London SW1P 3AL

25. We are not setting a specific deadline for receipt of responses. But respondents should be aware that we plan to begin taking oral evidence in mid-January and to conclude taking oral evidence by the end of February.

CHAPTER ONE MEMBERS OF PARLIAMENT AND FINANCIAL INTERESTS

BACKGROUND

The present position

1. There is no general rule or presumption that Members of Parliament should have no other income than their Parliamentary salaries. This is not particularly surprising since for several centuries (until 1911) they were expected to perform their functions without any payment at all.
2. Indeed the introduction of salaries for MPs was itself a controversial issue at the time. It was argued that salaried MPs would become professional politicians, and that an MP would perform better if his income did not depend on his election to Parliament, and if he had substantial outside interests and knowledge of the world.
3. There are, however, many paid positions which an MP may not hold. These are generally public offices. Put broadly, MPs may not be civil servants, members of the regular armed forces, members of the police service or members of most Quangos and publicly owned industries, and they may not hold judicial office. This prohibition derives mainly from the perceived incompatibility between posts involving judicial or executive functions on behalf of the Crown and the role of an MP
4. In contrast with some other countries, Ministers of the Crown, who do have executive functions, are expected to be MPs or Peers. A maximum of 95 MPs may be Ministers at any one time, but their salaries as Members of Parliament are abated while they are Ministers. Peers are not salaried, but both MPs and Peers who are Ministers receive separate Ministerial salaries.
5. Since the end of the 17th century there has been a prohibition on Members accepting any 'fee, compensation or reward in connection with the promotion of or opposition to any Bill, resolution, matter or thing submitted or intended to be submitted to the House or any Committee thereof'.

Register of Members' interests

6. This blanket prohibition, however, needs to be set beside the definition of registrable (and therefore arguably acceptable) interests, originally arrived at in 1985. The 1994 'Rules on the Registration and Declaration of Financial Interests' set out the requirement on MPs to register private financial interests in a Register which is open for public inspection. The main purpose of the Register is to give public notification on a continuous basis of those pecuniary interests held by MPs which might be thought to influence their parliamentary conduct or actions.
7. The Register sets out nine categories of interest which must be declared, together with a miscellaneous category. The nine categories are:

Directorships - whether remunerated directly or indirectly

Remunerated employment, office or profession - including membership of Lloyd's

Clients - the names and business of organisations which MPs deal with under the previous two categories

Sponsorship - both sponsorship during an election campaign, and sponsorship as an MP including provision of research assistants or accommodation, and certain donations to

constituency parties

Gifts, benefits and hospitality from UK sources - gifts or hospitality received by MP or spouse, related to membership of the Commons, over a value of £125 for gifts and £160 for hospitality

Overseas visits - visits by MP or spouse, related to membership of the Commons, where an outside body or person bears some or all of the costs, but excluding party visits and certain official Parliamentary visits

Overseas benefits and gifts - as for gifts and hospitality from UK sources

Land and Property - other than MPs homes, which have a substantial value or from which substantial income is obtained

Shareholdings - with a nominal value greater than either £25,000 or 1 % of the issued share capital

8. The 'miscellaneous' category is meant to catch all other relevant interests. The activities in respect of which these interests are relevant 'include as well as any action connected with any proceedings in the House or its Committees, the sponsoring of functions in the Palace, making representations to Ministers, civil servants and other Members, accompanying delegations to Ministers and the like'.

Declarations of interest

9. The concept of a declaration of interest is much longer established than that of the Register. A declaration of interest is made at the time when an MP is speaking in the House or in Committee, and is to ensure that other MPs and the public are made aware at the time of a relevant pecuniary interest.

Pecuniary interests whether past, present or future must be declared. The existence of a paid consultancy must invariably be declared in relevant debates, as should membership of a profession whose financial interests are under discussion.

Peers

10. The House of Lords has no register of Peers' interests, although some thought is being given to whether one should be established. It is relevant that Peers do not receive a salary - only an attendance allowance - and it is therefore implicit that a Peer has other sources of income. The question of Peers' outside interests must therefore be approached from a quite different starting point.

Ministers

11. The rules on registration and declaration of interests apply equally to Ministers who are Members of the House of Commons. Ministers who are Peers are required to make a declaration of interest, but are not subject to any general requirement to register interests.

Enforcement

12. The rules on registration and declaration of interests derive from resolutions of the House (and conventions in the House of Lords) and not from statute or common law. The rules are therefore enforced not by the courts, but by the House itself, particularly through the Committee on Members' Interests and the Committee of Privileges.

Committee on Members' Interests - First Report

13. In its Report published in March 1992 the Select Committee on Members' Interests reviewed the arrangements for the Register. This led to the arrangements which are now in place. The Committee considered a number of associated questions:

local authority councillors are subject to very strict rules on disclosure of interest, may take no part in business where a financial interest exists, and are subject to criminal sanctions. It was concluded that such rules would not be appropriate for MPs, who do not have executive functions, and need to be free to debate questions of public policy on behalf of their constituents;

suggestions that Ministers and backbench MPs were in a broadly comparable position and should be subject to variants of the same rules were rejected on the basis again that Ministers have executive power while the powers of backbench MPs as individuals are limited to the exercise of influence;

suggestions that the regulation of Members' interests, and thus any related sanctions, should be made subject to statute law were rejected on the basis that such a change would have major constitutional implications. It should only be contemplated should self-regulation by the House fail, and there was no evidence that such was the case.

Committee of Privileges

14. On 12 July 1994, following an article in 'The Sunday Times' alleging that MPs had taken payments for asking Parliamentary Questions, Madam Speaker announced proposals for the Committee of Privileges to investigate the matter. This investigation is still in progress. Madam Speaker said (Official Report col 829):

"It is relevant to the issue that I should remind the House of a paragraph in the first report of the Select Committee of Members' Interests of the Session 1991-92 which reads as follows:

'There is a danger that some Members may make the mistake of believing that correct registration and declaration adequately discharge their public responsibilities in respect of their private interests. Such a mistake could have serious consequences both for the Member concerned and ultimately for the House. As the Speaker reminded the Committee "a Member must be vigilant that his actions do not tend to bring the House into disrepute" and in particular, "Members who hold consultancy and similar positions must ensure that they do not use their position as Members improperly." A financial inducement to take a particular course of action in Parliament may constitute a bribe and thus be an offence against the law of Parliament'

It is because I consider that there is an urgent need to clarify the law of Parliament in that area that I am prepared to grant precedence to a motion [asking the Committee of Privileges to investigate]."

ISSUES AND QUESTIONS

15. This Committee will wish to consider the present arrangements for registering and declaring the interests of Members of both Houses of Parliament. Whether there has been an increase in departures from the rules or a deterioration in the standards of declaration,

the effectiveness of the restrictions necessary to minimise conflicts of interest once an interest has been declared, and the means of enforcement of the rules.

16. We will also wish to consider the extent to which the growth of lobbying techniques, involving not only professional lobbyists but also special interest groups of all kinds, commercial or otherwise, has increased the pressures on Members of Parliament and whether further action is necessary to regulate this.

17. A range of points we will want to look at is set out on the following pages.

MPs' income

18. The level of MPs pay in itself is not a matter for us, but under the present rules they are entitled to have other paid interests. Our task is to consider whether the present relationship between MPs' Parliamentary responsibilities and their outside interests gives rise to difficulties, and if so whether changes are needed.

19. Is there any need to constrain paid outside interests at all, so long as they are declared and the overriding rules referred to in paragraph 14 above are observed? Do paid outside interests work against the public interest? MPs represent constituencies, but is there not also a case for them being allowed to continue to represent groups which are not constituency based? Does not the acceptance of a fee by an MP who agrees to take a special interest in a particular area (e.g. teachers, police) further the public interest? If it does, is there any difference when an MP takes a fee from a commercial organisation? A major exporter? A trade association? Sponsorship by a Trade Union? Fees for lectures, broadcasting, newspaper and magazine articles?

20. In some countries MPs are permitted no earned income other than their Parliamentary salaries. Is this practicable or desirable? Should the list of paid posts prohibited by statute be extended into other fields? What would be the consequences of going down that route?

21. What are the disadvantages? Would the quality of MPs decline, both in terms of who sought to become MPs and their contribution to the House? Could any problem be addressed solely in terms of raising Parliamentary salaries? Are wider issues involved, such as breadth of experience and up to date knowledge of specialised sectors of the economy and society? Would a House of wholly professional politicians be more or less dependent on lobbying?

22. What are the advantages? Would MPs who were not allowed to have paid outside interests spend more time on Parliamentary and Constituency work? Is there a need to spend more time on this? Would the quality of their contributions improve? Would they be likely to behave with greater propriety? Would unpaid interests need to be addressed too? Would the benefit be real, or simply one of public perception?

23. Are there half-way houses, involving some restriction on paid outside interests but not outlawing them altogether? Could a valid distinction be drawn between a Member's trade or profession (which might be permitted) and a paid consultancy on behalf of an interest group (which might be forbidden)? Might MPs whose paid outside interests exceed a certain amount be paid less, on the analogy with Ministers' Parliamentary salaries which are abated to take account of the reduced time they can devote to their work as an MP?

24. Should the same rules apply to all MPs who are not Ministers? Should Government backbenchers be treated differently from Opposition backbenchers, on the grounds that they have more influence? Do similar considerations apply to the Opposition Front Benches

or to MPs who hold Party offices, or who Chair Select Committees?

25. To what extent do different principles apply to Peers? Members of the House of Lords receive attendance allowances, not salaries. And they are often given Peerages because they have achieved prominence in particular fields of activity, whose interests they can be expected to represent. They have no constituencies. Peers are therefore likely to have outside interests and income from non-Parliamentary sources: should they be regulated in any way beyond the need to make a declaration of interest when speaking or voting?

Regulation of MPs' outside interests

26. If outside interests are not to be forbidden or constrained, is there a need to review and tighten the present system of regulation?

27. Is registration enough? Should the period allowed before registration be altered in any way? Is it right that the value of a financial interest is not registered? Should the precise terms of any commitments or arrangements entered into be registered, instead of simply the name of the interest concerned? Are the present rules on what shareholdings should be registered the right ones? Should unpaid commitments to certain types of bodies be registered?

28. Is there a danger that something which is registered is seen as acceptable even when it is not? And that something which is not registered is seen as dubious even when it is not?

29. Should there be a more precise definition of 'conduct below the standard that the House is entitled to expect of its Members', or do such definitions have the effect of appearing to legitimise everything they specifically fail to condemn? Should there be a published code of conduct for MPs, which spells out what is and is not acceptable behaviour?

30. Should MPs be required to observe stricter rules about participating in business where they have an interest? Should they have to declare an interest when asking Questions? Or is it the case that their role as a national legislature, rather than an executive body, demands that such restrictions do not apply, and indeed would make Parliament less effective?

31. Are the sanctions against MPs who breach the rules adequate? Is there a case for putting the rules, and thus the sanctions, into statute? The Salmon Committee recommended that bribing or attempting to bribe an MP should be a criminal offence. And in a recent court case Mr Justice Buckley concluded 'That a Member of Parliament against whom there is a prima facie case of corruption should be immune from prosecution in the Courts of Law is to my mind an unacceptable proposition at the present time. I do not believe it to be the law'.

32. On the one hand, would this prejudice the sovereignty of Parliament? Would it lead to an increase in the role of the unelected judiciary (or of a quango) at the expense of the elected legislature? Is there any reason to believe that the House cannot itself regulate and enforce sanction on its Members?

33. On the other hand, would it not be fairer to MPs if the rules were administered by an impartial body? Both to those who were under scrutiny, who would know that political considerations were not involved, and to other MPs who would be freed from acting as judge and jury on their colleagues. Would it not place Parliament in line with the current trend towards impartial external scrutiny, and so increase public confidence?

34. If there was an outside body, how would it be constituted? Would there be an appeal mechanism? How could it be reconciled with Parliamentary privilege?

Regulation of lobbyists

35. Is there evidence that lobbyists have brought pressures which are in principle undesirable? Can the increased pressures arising from modern lobbying techniques and practices be addressed solely by rules governing the actions of MPs and Ministers, or is there a case for regulating lobbying, either through voluntary codes or by statute? Could a way be found to make voluntary codes mandatory?

36. There are many forms of lobbying and lobbyists: professional political lobbyists, who specialise in this field, public relations firms who include lobbying among their activities, legal firms who provide a lobbying service, voluntary and special interest groups who often employ paid lobbyists, commercial firms and trade associations who do the same. Should any distinctions be made among these categories?

37. Is it legitimate for any interest group, commercial or otherwise, to lobby in any way it wants short of committing criminal offences (e.g. bribery or blackmail)? Can there be any justification for preventing any person or body from seeking to persuade MPs of its case by any legal means?

38. The professional lobbyists claim (Association of Professional Political Consultants) that their Code requires that no payment of any nature should be made to any MP by any member firm. Yet MPs clearly receive retainers from other bodies. Why should there be a difference?

39. Is there a case for creating a Code which applies across the board? If there was such a code, should there be any exceptions? And if there was a code, ought it to be statutory? How would such a code, if statutory, be enforced? What sanctions would there be against breaches? Would there be any difference in principle between charities which transgressed the Code and multi-national companies which did so?

40. Influence is a subtle matter: hospitality and social contacts even on a small scale can create an atmosphere of goodwill or the potential for undue influence. They can be valuable as a means of exchanging information. The creation of good relationships and personal understanding can be an important way of achieving public goals. To what extent should this approach be encouraged, and to what extent should it be discouraged? Where do the boundaries lie between legitimate influence and improper, but not illegal, influence? And as they are probably different for different individuals, how can common principles be established? How can the value to the recipient of hospitality provided by lobbyists, and the cost to the provider, be assessed? How can genuine personal hospitality based on personal friendship be safeguarded while improper hospitality is constrained?

CHAPTER 2 MINISTERS AND CIVIL SERVANTS

1. The evidence we have seen so far about the standards of conduct of Ministers and civil servants seems to show that the public is most concerned about the following two areas:

(i) the acceptance of gifts and hospitality by Ministers which might call into question the impartiality of their judgement while in office;

(ii) the movement of Ministers and civil servants (including special advisers) to private sector companies with which they have had dealings while in office, or of whose industry or field they have privileged knowledge.

The Acceptance of Gifts and Hospitality by Ministers

2. The present rules governing gifts in cash and kind to are set out in 'Questions of Procedure for Ministers' (QPM), which is now a public document. They are based on the general principle of Ministerial discretion set out in paragraph 1:

'It will be for individual Ministers to judge how best to act in order to uphold the highest standards. Ministers will want to see that no conflict arises or appears to arise between their private interests and their public duties.'

3. On gifts specifically, QPM states (paragraphs 126-127):

'126. It is a well-established and recognised rule that no Minister or public servant should accept gifts, hospitality or services from anyone which would, or might appear to, place him or her under an obligation. The same principle applies if gifts etc are offered to a member of their family

127. This is primarily a matter which must be left for the good sense of Ministers. But any Minister in doubt or difficulty over this should seek the Prime Minister's guidance. The same rules apply to the acceptance of gifts from donors in this country as to those from overseas.

4. The rules on overseas gifts referred to are set out in detail in paragraph 81 of QPM:

'81. If a gift is accepted (whether or not a gift is offered in exchange) the following rules apply -

(a) Its receipt should, in all cases, be reported to the Permanent Secretary.

(b) Gifts of small value (currently this should be put at up to £125) may be retained by the recipient.

(c) Gifts of higher value should be handed over to the Department for disposal, except that

(i) The recipient may purchase the gift at its cash value (abated by £125).

(ii) If the recipient wishes to reciprocate with, and pay for a gift of equivalent value, the gift received may be retained.

(iii) If the Department judges that it would be of interest, the gift may be displayed or used in the Department. (iv) If the disposal of the gift would cause

offence or it might be appropriate for the recipient to use or display the gift on some future occasion as a mark of politeness, then the gift should be retained in the Department for this purpose for a period of up to five years.

5. Ministers' Private Secretaries have a responsibility (which is not formally set down in QPM) to advise Ministers in this area, consulting the Permanent Secretary as necessary. Where any doubt arises, the matter is to be referred to the Prime Minister for decision.

The Acceptance of Gifts and Hospitality Civil Servants

6. It is relevant to compare these rules with those relating to civil by servants, which are set out in the Civil Service Management Code. In paragraph 4.1 .3(c), the general principle is set out that:

'civil servants must not make use of their official position to further their private interests, or receive gifts, hospitality or benefits of any kind from a third party which might be seen to compromise their personal judgement or integrity.'

7. It is then left to individual departments and agencies to set detailed rules which reflect this principle. Those in force in the Cabinet Office, for example, permit the acceptance of gifts of trivial value and 'conventional hospitality provided it is normal and reasonable in the circumstances (e.g. the isolated acceptance of a meal or an invitation to the annual dinner of, for example, a trade organisation).' If there is any doubt as to the propriety of a gift or item of hospitality, it is to be refused. In a number of Government departments, all offers of hospitality have to be reported to management or recorded in some form of register.

Issues and Questions

8. The Committee will want to consider the present arrangements for receiving and declaring gifts and hospitality, the advantages or otherwise of introducing more openness into the system, and the proper way of monitoring standards.

9. On hospitality in particular, the Committee will have to examine what the merits are of Ministers accepting hospitality from those who might be affected by their decisions.

10. A range of points we will want to look at is set out below.

11. Is it right that Questions of Procedure for Ministers places such emphasis on Ministerial discretion? Might it be better to concentrate on the value, nature, and openness of the hospitality, rather than simply its acceptance or rejection? Perhaps all hospitality or gifts above a nominated value should be refused or declared in public?

12. What should be the value and how should disclosure be made? A public register? A minute to the Prime Minister? Would this not be very cumbersome in practice? Should there be a cut-off point below which Ministers' should decide the matter for themselves?

13. If restrictions were introduced on the acceptance of hospitality or gifts, what would be the effect of them on the effective work of Government? Is it wrong for Ministers to accept hospitality overseas when they are promoting the interests of the United Kingdom and to refuse would give offence? What about at home? The people from whom Ministers might accept hospitality are often those who have an interest in their work. Is this wrong in principle? Are Ministers to be prevented from making contacts in case it creates public comment? How else are they to make judgements for themselves, as opposed to relying on

civil service advice?

14. Are there any forms of gifts and hospitality which always have to be refused? Money? Or holidays? Or flight tickets? Should these categories be listed in OPM? Is there any evidence of a link between official preference and donations to political parties? Is there any need for specific rules in this area? To what extent would greater openness help public confidence? Will it be easy to give a monetary value to all types of hospitality?

15. Should Ministers take an extreme line and refuse all gifts and hospitality so that they are above suspicion? Or should providers be reimbursed automatically by their departments? What about gifts and hospitality only indirectly related to Ministers' departmental responsibilities? Is it true that all offers of hospitality to Minister can be defined as relevant to his or her duties? What about events at which business will not be discussed?

16. Where there are allegations of impropriety, who should investigate them? Should it be a civil servant, like the Cabinet Secretary? Is it appropriate for the Cabinet Secretary to adjudicate on politically sensitive areas of Ministerial propriety? What about the Chief Whip? Or the Government's law officers? Does the system need to be formalised at all? Or should there be an independent figure/body? Does the level of public disquiet demand a radical step along those lines? How would that cut across Ministers' responsibilities to Parliament and to the Prime Minister?

17. Should the details of any investigation be made public? Would that allow smears to get a public hearing which they do not deserve?

Appointments after Leaving the Public Service

18. There is a difference in the approaches taken to the acceptance of appointments after leaving public service. There are no explicit restrictions governing the conduct of Ministers. Paragraph 105 of OPM states:

'On leaving office, there is no formal restriction, other than the normal rules on Members' interests, on former Ministers taking up posts or other private sector interests, although they should naturally avoid any course which would reflect adversely on their or the Government's reputation for integrity or the confidentiality of its proceedings.'

19. The rules on the acceptance of outside appointments by Crown servants ('the business appointments rules'), are in contrast detailed and extensive. They are set out in the Civil Service Management Code. The most salient points are that all senior civil servants (those at or above Grade 3) have to seek Government approval for any post they wish to take up within 2 years of leaving the civil service; similar applications have to be made by civil servants at all grades who have had repeated or recent dealings with their prospective employer, or with its competitors, or if they were involved in taking decisions benefitting the employer, or bring some special knowledge of Government policy applying to the employer's field.

20. The Government then has the option to impose some form of waiting period on the appointment, or to attach some behavioural condition to it. The level at which the decision is taken depends on the seniority of the applicant: the most senior applications are decided by the Head of the Home Civil Service or referred to an independent body, the Advisory Committee on Business Appointments, which advises the Prime Minister on whether a waiting period or other condition is necessary, although the final decision is the Prime Minister's. Individual decisions remain private.

21. Although special advisers are civil servants on temporary contracts, they are at present exempt from these rules.

Issues and Questions

22. The Committee will wish to consider whether this system of rules is suitable for reassuring the public that whatever the relationship that might exist between Ministers or officials and outside companies with which they have dealings, an offer of employment cannot be construed either as a reward for past favours done while in public service, or as giving the prospective employer an advantage through access to confidential knowledge of government plans. On the other hand, we are also aware that a greater degree of understanding between the public and private sectors, including interchange of personnel, is generally agreed to be in the interests of the country.

23. A range of the points which we want to consider is set out below.

24. Is it right that there should be a completely different approach to Ministers (and special advisers) and civil servants generally? Is it valid to draw a distinction between Ministers, who have no security of employment, and civil servants who do? Will this be changed by redundancies in the civil service? Can the present system be adapted to maintain public confidence? Should it be replaced? How else could public confidence in standards of conduct be maintained? Should special advisers with access to confidential information be included? Or is this unfair to special advisers wishing to pursue their former careers?

25. The maximum waiting period for a civil servant is two years. Is this long enough? Would it be long enough for Ministers? Should there be a power to impose an outright ban?

26. The rules at the moment are designed to maintain public confidence in standards, not to detect or punish corruption. Does this amount to an unfair restraint of trade? Should there be clear contractual terms which set out what can and cannot be done after leaving office? Would that work for Ministers too?

27. How open should the system be? Would it help public confidence if the waiting period or conditions attached to a move were published? What about the infringement of personal privacy involved? Could the proceedings of the Advisory Committee be published after the event?

CHAPTER 3 QUANGOS

What is a Quango?

1. For at least a hundred and fifty years governments have appointed groups of people to advise them or to carry out executive functions on their behalf. The idea was to keep their functions away from the day-to-day running of central Government while focusing on the particular service to be provided or advice to be given.
2. The term Quango - Quasi Autonomous Non-Governmental Organisation - is a broad one. In the UK, bodies which are officially recognised as having a role in the process of Government, but which are not Government departments or part of a Government department, are known as "Non-Departmental Public Bodies" (NDPBs).
3. These fall into three categories:
 - Executive Bodies: between them these carry out a wide range of operational regulatory functions, various scientific and cultural activities and some commercial or semi-commercial activities.
 - Advisory bodies: usually composed of a group of experts in a particular sphere advising the government on one narrow issue.
 - Tribunals: these as their name suggests have a judicial or semi-judicial function.
4. Since 1979, the Government has published information on NDPBs in an annual report "Public Bodies". The latest issue published in 1993 lists a total of 1,389 NDPBs of which 358 are Executive Bodies with a total expenditure of £1 5.4bn. Departmental expenditure in support of all bodies including advisory bodies and tribunals was a further £1 70m. By far the bulk of expenditure is therefore by and on behalf of Executive Bodies.
5. However there are many bodies outside these categories which fall within this Committee's remit. We have been asked to consider National Health Service bodies such as Regional Health Authorities, District Health Authorities, Family Health Service Authorities and individual health service trusts. We have also been asked to consider the position of members and senior officers of other bodies discharging publicly-funded functions. Bodies in this category would include, for example, Training and Enterprise Councils (TECs), Housing Associations and the Boards of Grant Maintained schools.

Focusing our work

6. In principle, therefore, we are asked to consider issues affecting some 1,400 NDPBs, some 600 NHS bodies, and perhaps 3,000 or more other bodies spending public funds. The NDPBs and NHS bodies alone involve over 42,000 appointments. We clearly need to focus our initial efforts on the areas of greatest current concern. We have therefore taken as our key criteria that the body is involved in substantial public expenditure and that Ministers are directly or indirectly involved in the appointment of the Chairman and members. We propose to concentrate for the moment on:
 - the executive Non-Departmental Public Bodies, particularly the top spending ones;
 - National Health Service Trusts.
7. Our purpose will be, as with MPs, Ministers and Civil Servants, to consider the

existing practices, rules and safeguards and whether they need to be improved. Within the limits imposed by the number and diversity of bodies involved we will be seeking to establish principles which will be widely applicable.

8. There are two separate areas of concern in relation to Quangos. The first is the process by which members and senior officers are appointed, and its impartiality. The second is the process by which standards of conduct of members and senior officers are maintained and scrutinised.

The public appointments process

9. The process of appointments to NDPBs and Health Service Bodies is this. Each Department is responsible for making its own appointments. The role of the Treasury and the Office of Public Service and Science is limited to issuing guidance and gathering and maintaining a list of potential candidates.

10. Within the Office of Public Service and Science (OPSS) the Public Appointments Unit (PAU) produces a "Guide on public appointments procedures". It actively seeks nominations (and self-nominations) to its list. It produces a leaflet on the process and holds seminars with representative organisations, including those of minorities and women's groups, but does not advertise. We understand that the PAU quite regularly receives nominations from Whips and MPs of various parties, and has recently begun a formal rolling programme of writing to business, trade union, professional and party organisations inviting the nomination of names.

11. The PAUs standard application form asks for particular areas of interest, referees and a CV. It does not specifically ask for political allegiance, but where details of a person's political experience (e.g. as an officer of the local party) are offered these are held on file. Details of those with experience judged suitable for holding national office are put on a computer database at the Public Appointments Unit; others are advised to seek office at a local level.

12. The majority of individual Departments maintain their own lists of potential candidates for appointment. Although they are recommended to consult the Public Appointments Unit where necessary, they are not required to do so. The PAU database acts merely as a central resource.

13. There are formal and published arrangements within the system for political consultation. Departments are advised to consult the Chief Whip's office before Ministers make or recommend appointments to "significant" organisations. Para 50 of OPM says:

"In all cases involving political considerations, submissions to the Prime Minister by an appointing Minister should be copied to the Chief Whip. The Chief Whip should invariably be consulted before a member of the House of Commons is approached about the appointment to an office which would result in the vacation of a Parliamentary seat."

This procedure has been in existence for many years.

14. A variety of guidance is produced by the OPSS and the Treasury about the process of making public appointments and the duties of board members. For the most part this guidance is not mandatory on Departments and they may adopt their own internal procedures. But it appears either to be followed by Departments or to form the basis of their own procedures.

Issues on appointments

15. Over 42,000 appointments are made by or on behalf of Ministers. Is this a necessary administrative consequence of good government? If so, is it a politically neutral process? Should it be a politically neutral process? Or does the Government in power have a right to make at least senior appointments to people who endorse its policies? Should there be a class of appointments which are explicitly political, whose holders leave office on a change of government?

16. For appointments more generally, are the safeguards adequate for ensuring that merit rather than political reward, financial contribution, family connection or social acquaintance is the main criterion? Is there a case for taking some appointments out of the hands of Ministers altogether? If not, should individual Ministers be obliged to declare a connection, and withdraw from the process, when a relative is being considered? Should the practice of consulting the Chief Whip end, except in specified cases?

17. Is it best to leave responsibility for appointments on a decentralised basis, or should the Public Appointments Unit have stronger powers to oversee the process? Should the guidance to Departments be mandatory? Should there be a system for monitoring compliance with the guidance? Even if the system is wholly decentralised, should there be an independent monitoring body? If so, should it be a specialist unit, or a task of the normal financial audit bodies?

18. In addition to the central Public Appointments Unit register, individual departments hold their own lists of potential candidates. Should these be amalgamated in some way? Should all departments holding lists of potential appointees be required to advertise the existence of their registers and have an open process (similar to that in the PAU) for nomination and self-nomination? Who should assess applications and make recommendations? Should there be advisory bodies - especially for appointments to local quangos - or would those just be yet more quangos themselves?

19. For key appointments e.g. Chairmen of all Executive Bodies and membership of the more important ones should there be a requirement to advertise the individual posts? Should there be a formal independent selection procedure for these appointments? Should Departments be required to publish and regularly update the lists of all bodies to which they make appointments; their terms of reference; the methods of selection of members; and to publish regularly lists of members? Generally, should steps be taken to create greater transparency in all stages of the process?

20. How can openness and impartiality best be secured without losing efficiency and creating an excessive bureaucracy? Is there a trade-off between accountability and effectiveness in making appointments? Is it possible to have consistent overall rules, or are different approaches necessary depending on the importance of the post, its political sensitivity, the extent to which technical or specialist expertise is needed?

Standards of conduct

21. The Treasury and the Cabinet Office produce two documents to guide Departments and NDPBs. 'Non-Departmental Public Bodies: A Guide for Departments' advises Departments on how to set up Quangos, how to abolish them when they are no longer needed, and how to ensure they deliver value for money. There is also a 'Code of Best Practice for Board Members of Public Bodies'. Similar documents exist in respect of the NHS.

22. It is not necessary to set out these documents in detail. Broadly, they are in principle similar to the requirements placed on the civil service itself, and are consistent with the

highest standards of public administration and propriety. Departments responsible for Quangos have to ensure that strict requirements are in place with regard to financial responsibility and accountability, responsibilities of the chief executive, responsibilities of Board Members, rules on conflict of interest, rules on acceptance of gifts and hospitality.

23. While we will certainly consider any points put to us about the adequacy or otherwise of the rules and guidance, it seems likely that the main issues which will arise in respect of the operation of Quangos will relate to public perceptions of the standards maintained and in particular to the implementation of the rules, the assurance of propriety, both on the part of Board members and officers, and the extent to which external safeguards may be needed.

Issues on propriety

24. While in principle there are clear lines of responsibility for NDPBs through Ministers to Parliament, does the sheer number of bodies, and the relatively closed nature of the relationship between NDPBs and their sponsor Departments, create a situation in which lax standards may pass unnoticed or unchallenged? Does there need to be a more immediate source of external scrutiny? If so, should this be done by auditors, with their scope widened as necessary? Or should other mechanisms be considered? Should all major bodies have public watchdogs with rights of access?

25. In respect of Board members, should issues of conflict of interest be matters for internal decision, or for external review? Should the advice to publish a register of interests be mandatory? Should failure to declare a conflict be made subject to sanctions? Are the processes by which Board members are excluded from decisions in which they have an interest satisfactory? Is the guidance available to them sufficiently comprehensive?

26. In respect of officers, many of the same issues arise. In particular, given the largely non-executive nature of many Boards, are sufficient safeguards in place to ensure the propriety of staff actions? Are proper codes of conduct in place? Are there mechanisms by which staff can draw attention to improprieties? Are there arrangements for complaints from both staff and the public to be independently considered? Are there safeguards in place with regard to recruitment by merit?

CHAPTER FOUR COMMON THREADS

1. As well as considering the individual areas of concern set out in the preceding chapters, we will also want to consider whether there are common threads which can be drawn across the whole area of standards in public life.
2. There are two aspects to this. First we need to seek an overall view of the problem. As we have noted, there appears to be a widespread perception that standards in public life have fallen. Yet our preliminary work clearly indicates that scandals in political life are not new. The Marconi and Poulson cases are the most quoted British twentieth century scandals, and each was far more serious than any of the cases which have been publicised over recent months. It is also clear that corruption scandals in many other countries far outstrip anything which has been identified in Britain, and that in some cases far-reaching controls have been introduced elsewhere in response to these bigger problems.
3. So we need to consider not only whether standards have fallen, however difficult this may be to measure, but also the degree of concern there needs to be about any fall, and the proper balance between establishing safeguards and leaving room for initiative. We need to consider whether these problems arise equally across all sectors of public life, or whether some areas are under greater pressure than others. We need to consider whether there are situations where conduct unrelated to public office itself nevertheless undermines public confidence in the office-holder.
4. The media, as such, do not fall within our terms of reference. But public knowledge and concern about the issues which we face are almost entirely derived from newspapers, radio and television. Should we address ourselves to the reliability and fairness of media reports and comment upon the behaviour of those in public life?
5. Second, we need to consider whether there is one overall answer to be found. Standards are enforced or encouraged at present by a wide mixture of measures and codes. For example, there is legislation to prevent corruption; judicial supervision of Ministers' use of their powers; Parliamentary scrutiny via Select Committees of the actions of MPs; independent monitoring of expenditure in local government; codes of ethics in business; and an administrative code governing Ministers' and civil servants' behaviour.
6. We need to consider whether this multiplicity of arrangements is the best way to deal with the different circumstances which arise in different areas, or whether there are common principles of conduct which can be applied, adapted as necessary to suit particular circumstances, across all parts of the public service.
7. We also need to take account of the tendency in recent years in various parts of the public sector to create independent authorities to monitor standards of conduct or administration. There are the Ombudsmen - statutory for Central Government, the Health Service and Local Authorities, non-statutory for a number of bodies, such as Housing Associations. There is the Police Complaints Authority. There are the Audit Commission, the National Audit Office, the Public Accounts Committee and the Select Committees scrutinising individual government departments.
8. There are undoubtedly lessons to be learned from these bodies in relation to standards of conduct. And roles for some of them to play. We need to consider whether independence or openness, or a combination of both, are the most important factors.
9. For the civil service, accountability to Ministers and through them to Parliament is a long-established principle. Yet we note that a formal code of conduct (with statutory backing) has recently been proposed by the Treasury and Civil Service Committee of the

House of Commons (Fifth Report: the Role of the Civil Service). We await the Government's response to that aspect of the Report with great interest.

10. Fundamental constitutional issues apply to any proposal which would limit the right of the two Houses of Parliament to regulate their own internal affairs. Only compelling circumstances would call for such a proposal. Have these circumstances now arisen?

11. The principle of independent scrutiny itself raises the question of appointment and supervision of the scrutineers. Can external mechanisms for ensuring standards of conduct in public life be set up in such a way that they do not discourage public spirited people from coming forward to serve their fellow citizens? To what extent do voluntary rather than statutory mechanisms offer a way forward?

CHAPTER FIVE QUESTIONS TO CONSIDER AT A LATER STAGE

1. As we noted earlier in this paper, we have been asked to produce an initial report within six months, and thereafter to act as a standing body to advise on standards of conduct in public life. We have decided to reserve some issues, which although important, are not as pressing as those already set out, for second and subsequent tranches of work.

We intend to look at that stage at standards of conduct in:

- (i) local government. We are engaged on some preliminary work on this already, although primarily to learn what lessons we can from the changes introduced following the Salmon and Widdecombe reports. We will then turn to local government as a substantive issue;
- (ii) those quangos and NHS bodies not covered by our initial work as detailed in chapter 3;
- (iii) UK members of the European Parliament, in the light of the recommendations we will make about Members of the UK Parliament;
- (iv) non-Ministerial office holders, especially their appointment and rules on their employment after leaving office;
- (v) such other areas of the public service as appear to be a matter of public concern, (e.g. universities, honours, TECs) or which the Government may invite us to consider.