

# GOVERNANCE PROJECT



## 2

### Conflicts of Interest

- R.2.1. It is critical, in a good governance system that commands public confidence, that conflicts of interest (which are natural and inevitable) are properly and effectively managed in a way that balances the legitimate privacy interests of the individuals (and limits the prospects for abuse of disclosures) with the need to ensure that decision-making operates in the national, rather than the private, interest.
- R.2.2. It is particularly important that this is seen, and believed, to be done even when, as appears to be the case, actual examples of UK decision making being skewed by private interest are limited. The lack of confidence is, itself, corrosive and undermines trust in Government.
- R.2.3. Extensive processes (administered by the Parliamentary Commissioner for Standards and the House of Lords Commissioners for Standards (the Parliamentary Commissioners)) already exist for MPs and Peers, covering disclosure of sources of income or funding, employment, lobbying etc. The Recommendation does not seek to interfere with those established processes although it does offer some limited specific suggestions for their development and suggests an enhanced degree of coordination with the Code Commissioner. Rather, this Recommendation focusses on Ministers and Relevant Officials (as defined in Paragraph (R.2.27 below) in relation to their executive (rather than legislative) roles which carry higher levels of conflict risk than the position of an individual legislator.
- R.2.4. It would not be realistic or reasonable to eliminate all interests that officials might have outside public life. Good conflict management requires: (i) an effective system of disclosure based on clear criteria with sanctions; (ii) support on close judgement calls on disclosure or behaviour; and (iii) behavioural measures where disclosure does not, in itself, resolve the conflict and further steps are needed. This requires confidential, skilled and trusted intervention.
- R.2.5. This Recommendation does not address whether “second jobs” for MPs should be permitted (a wider political issue). Similarly, this Recommendation does not address the complex issue of lobbying which has been considered extensively elsewhere (not least in the recent work of Sir Nigel Boardman).

#### **We recommend that:**

#### **A coherent and independent system be established for conflict management**

- R.2.6. There must be a coherent, and consistent, system for Ministers and Relevant Officials to declare potential conflicts of interest; this should be enshrined in the Ministerial Code (which currently contains minimal provisions), the SpAd Code and the Civil Service Code.
- R.2.7. There must be clear accountability for administering conflicts which should be vested in the Code Commissioner (for Ministers and SpAds) and the CSC for civil servants (with the Parliamentary Commissioners maintaining their current responsibilities) – collectively referred to as the Commissioners in this Recommendation. All Commissioners would be able, and in some cases be obliged, to hold information in confidence.
- R.2.8. As regards Relevant Officials:
- a. they should have basic disclosure obligations reflecting those for MPs;
  - b. they should be responsible for making full and frank proactive disclosure of interests (seeking guidance where necessary), updating for changes promptly;
  - c. it would be the responsibility of the Code Commissioner/CSC to maintain an accurate register, transparent to the Relevant Official but otherwise confidential, and to clarify any areas of doubt with the Relevant Official; and

- d. the Code Commissioner/CSC would then consider whether:
    - i. (exceptionally) any public disclosures were necessary by a Relevant Official; and
    - ii. any measures were necessary for the management of any conflict of interest in accordance with paragraph R.2.22 below.
- R.2.9. The Commissioners should issue (i) regular general public guidance on the interpretation and application of the disclosure rules and (ii) confidential, case specific, guidance on whether any dispensation from public disclosure would be appropriate in particular circumstances supported by private disclosure to them and case specific conflict management measures to resolve a conflict in exceptional cases.
- R.2.10. Where an individual legislator has relationships (including professional relationships, e.g. clients for practising lawyers) which impose confidentiality obligations, their arrangements with the counterparties to those relationships must make it clear that, as a concomitant for having the relationship with someone who is a legislator, they need to consent to that relationship being disclosed, in confidence, to the relevant Commissioner. The Commissioner would not publish, or require the publication of, aspects of that relationship that were confidential but would prescribe processes that reflected the appropriate management of the conflict and respected the confidentiality.
- R.2.11. The Code and Parliamentary Commissioners and the CSC should be supported by a common resource structure, including the ability to store data confidentially, administer disclosure registers, conduct investigations (with internal processes to respect Parliamentary Privilege where appropriate). That common resource structure would permit coordination between the Commissioners to ensure consistency in approach and the common identification of any emerging issues. The Commissioners would be responsible for keeping the disclosure requirements under review and adjusting them to reflect experience, inflation, examples of evasion etc.
- R.2.12. The Commissioners must record (but not necessarily publish) the arrangements made and directions given for resolving any conflict of interest. A copy of this record shall be made available to the person to whom it relates. This would enable the individual to demonstrate, if necessary, that (s)he has done all required of them to enable a specific conflict to be appropriately identified and managed. The Commissioner concerned shall be responsible for monitoring compliance.
- R.2.13. The Code Commissioner should be responsible for investigating any alleged breaches of disclosure or conflict of interest rules as a breach of the relevant Code and making a report to the appropriate authorities including a recommended sanction for any failure to comply with any requirements stipulated by the Commissioner in a decision as to the resolution of any conflict. The final decision on sanction of any Minister, as with other breaches of the Ministerial Code, would rest with the Prime Minister, who would need to justify publicly any departure from the Ministerial Commissioner's recommendation. Sanctions for Relevant Officials would reflect the procedures in their respective codes.
- R.2.14. The disclosures for individual Members of the House of Commons and of the House of Lords should be as regards the assets (or interests) in which they are beneficially interested, including held by nominees, but should not extend to family members beyond their spouses. We think this is a sufficient standard for legislators, on a risk-adjusted basis.
- R.2.15. As regards financial assets:
- a. it shall be sufficient to disclose the existence of assets above the applicable threshold, without a requirement to specify the actual value of the assets. This is in order to limit invasion of privacy to what is needed to disclose the conflict of interest: any asset holding above the applicable threshold creates the potential for conflict, irrespective of whether the excess above the threshold is material or not;
  - b. in relation to assets which are difficult to value, including illiquid assets, disclosure shall be required if there is a material risk that a valuation would be above the applicable threshold; in case of any uncertainty in this respect the individual owner of the asset in question should consult with the relevant Commissioner;

- c. to be comprehensive, an interest should include all forms of beneficial interest and debt obligations as well as assets; and
  - d. MPs and Peers would be free to make further voluntary disclosure into the system if they so wished.
- R.2.16. Respecting the separate jurisdictions of each House, it seems unattractive that a legislator in one House should be subject to different disclosure rules from a legislator in the other House. The current systems are closely aligned but it would support public confidence if they were converged as much as possible (a particular example in that respect is the disclosure of shareholdings, which are currently at materially different levels).
- R.2.17. Moreover, it is recommended that, subject to some analysis as to the exact level, the threshold is substantially reduced. The current levels will seem high to most voters. The Commission's thinking in proposing a lower level is based mainly on the following three considerations:
- a. lower levels seem likely to command wider public respect (and reduce the chance of individuals being subject to public criticism for not making disclosure at a value which will seem high to many members of the public);
  - b. lower levels seem unlikely to trigger materially higher volumes of disclosure (but this can be tested as part of the process of evaluating the proposal for a reduced threshold and setting that threshold); and
  - c. by applying the principle as described above (that only the fact of the threshold being passed is disclosed, and not by how much) and applying this disclosure at a relatively low level, the privacy of parliamentarians is preserved to a substantial degree by taking the prurient public interest out of it and making the position routine.
- R.2.18. The Commissioners should implement anti-avoidance measures should it appear that aspects of the disclosure requirements, are subject to abuse (classically, warehousing assets in a nominee). Disclosure should expressly be required on a good faith basis (in the context of preventing any appearance of conflict of interest) without any resort to avoidance techniques.
- R.2.19. The Code Commissioner should be accountable to the Public Administration and Constitutional Affairs Committee for the role described in this Recommendation in relation to Conflicts of Interest.

### **Additional duties should apply to Ministers and Relevant Officials**

- R.2.20. Ministers and Relevant Officials should be subject to additional responsibilities to disclose to the Code Commissioner in the following areas (with the precise details to be developed by the Code Commissioner):
- a. interests relevant to procurement (e.g., relationships, or potential future relationships after leaving office (of any kind), with companies that may bid for work or sales) or serious discussions about future employment generally;
  - b. material personal relationships with individuals that engage with public institutions (e.g., journalists, public officials, parliamentarians etc.); and
  - c. any similar financial interests to those required under current House of Commons rules which are more widely held but which could still be thought materially to influence conduct (e.g. by their parents, siblings, or children).
- R.2.21. The Code Commissioner should, promptly and in any event within one month of receiving the corresponding declaration, publish those interests of a Minister which (s)he has determined to be sufficiently relevant to the role performed by that Minister, and which it is appropriate to publish, taking account of the nature of the conflict and the likely effectiveness of any conflict management measures.
- R.2.22. Ministers and Relevant Officials must cooperate with the Code Commissioner to ensure that any continuing (or perceived) conflicts of interest are resolved or managed. This may include

adopting any one of the following measures, as may be directed by the Code Commissioner, in relation to any relevant interest:

- a. divestment of the interest (with capital gains tax relief, if necessary);
- b. use of a Blind Trust (as defined below) in order to remove relevant assets from the control or knowledge of the individual;
- c. recusal from involvement in a given affected decision-making process;
- d. restriction of access to particular information;
- e. re-arrangement of duties and responsibilities;
- f. resignation from the conflicting private-capacity function; and/or
- g. subject to consultation by the Code Commissioner with the Prime Minister for Ministers and SpAds, and the Civil Service Commission for Civil Servants, and a joint determination that no other course is reasonably available in relation to the relevant interest, resignation from the particular office (i.e. in cases where the conflict is not reasonably manageable).

R.2.23. Ministers and Relevant Officials must promptly inform the Code Commissioner of any steps they are taking (while in office) to obtain future interests (such as those listed in the MP disclosure rules) or for their employment (if outside Government service) after leaving office (in the case of Ministers) or (for Relevant Officials) the role that they currently hold. These conflicts shall be managed and resolved in accordance with the preceding paragraph.

R.2.24. The Cabinet Secretary and Permanent Secretaries shall cooperate with the Code Commissioner (who shall in turn consult with them) in relation to:

- a) what amounts to a conflict or potential conflict in relation to the likely activities that the role concerned will involve and where these conflicts can be identified; and
- b) development of monitoring mechanisms to detect emerging issues or potential breaches of the rules.

R.2.25. So far as the positions of the Cabinet Secretary and Permanent Secretaries are concerned, the Code Commissioner shall consult with the Minister concerned and the First Civil Service Commissioner.

R.2.26. There must be substantial consequences for any failure on the part of any Minister or Relevant Official to comply with conflict-of-interest measures prescribed by the Code Commissioner, irrespective of whether it can be shown that the conflict actually affected any given outcome: the fact of a conflict is a sufficient issue. These should include:

- a. proportional disciplinary sanctions (which may include private reprimand in case of a technical and non-substantive breach, through public apology and change of role or scope of responsibility or, ultimately, for egregious failings, dismissal); and
- b. measures to prevent and disincentivise benefitting (directly or indirectly) from a breach. This should not include any retroactive cancellation of affected decisions unless this can be achieved without any material adverse impact on innocent third parties.

R.2.27. Relevant Officials include those holding the following roles:

- a. Cabinet Secretary;
- b. Permanent Secretary;
- c. Director General;
- d. special adviser;
- e. any other Civil Servant of whatever seniority who is playing a material role in relation to public procurement, as determined in the case of any uncertainty by the Code Commissioner in consultation with the relevant Permanent Secretary and/or as the case may be the Cabinet Secretary; and

- f. those determined by the Code Commissioner to be Relevant Officials because they have analogous powers and responsibilities by virtue of their appointment as a “Tsar” (or equivalent) in relation to a given area.

R.2.28. Ministers’ disclosure under the above procedures should also be disclosed on their relevant Parliamentary register.

### **The use of Blind Trusts should be regulated consistently**

R.2.29. There should be greater consistency and detail in the House of Commons rules on blind trusts and the same rules should apply to MPs, Peers, Ministers and Relevant Officials.

R.2.30. Any trust or comparable arrangement in relation to which the requirements specified in the following paragraphs have been satisfied (a “Blind Trust”), shall be disregarded in relation to the disclosure or other obligations of any beneficiary in relation to the assets held by the trust. Similarly, any assets held within a Blind Trust shall be disregarded in assessing the disclosure or other conflict management obligations of any Minister or Relevant Official who is a beneficiary of such Blind Trust.

- a. The instructions to the Trustee/Managers in relation to any Blind Trust must not stipulate an investment strategy which requires a focus on any specific assets or industries and must offer no opportunity for any of the interests in the Blind Trust to be reasonably discoverable by, or known to, the individual subject to the conflict of interest rules (directly or indirectly).
- b. In relation to any Blind Trust which is being relied on to justify a derogation from the usual disclosure or other conflict management measures, the individual should supply the Commissioner with the following information:
  - i. the full list of interests transferred into the Blind Trust, which list shall be published on the relevant register, if and to the extent that (a) such interests if held outside the Blind Trust would be published; and (b) the Commissioner requires such publication;
  - ii. a copy of the instructions given to the Trustees/managers for its management;
  - iii. the list of beneficiaries; and
  - iv. the contact details for each trustee/manager.

*Certain additional, background material for this Recommendation is available on the website for the Commission (<https://www.ukgovernanceproject.co.uk>).*