

GOVERNANCE PROJECT



THE RECOMMENDATIONS

Theme 1: Ethics and Conduct in Public Life

1

Ministerial standards of conduct and the Ministerial Code

- R.1.1. Issues of ministerial conduct have been particularly prevalent in recent years. The response to allegations of wrong-doing has sometimes generated as much controversy as the allegations themselves. Polling and related research has shown that public trust has reduced as individuals and systems have failed to respond effectively to these challenges. This has been compounded by an unclear Ministerial Code, lack of understanding about the obligations that apply, and the fact that the system of monitoring and enforcement is controlled by the very people it is meant to hold to account.
- R.1.2. The Commission seeks to clarify the standards and improve the effectiveness and independence of monitoring and enforcement mechanisms while preserving the constitutional position that the Prime Minister retains the final say. This should lead to better behaviours and improve public trust in ministerial conduct.
- R.1.3. There is broad consensus that (i) the Ministerial Code should be put on a statutory basis, clarified, and strengthened, and (ii) that the Independent Adviser should have greater powers of oversight and enforcement, and a much greater degree of independence.
- R.1.4. The Code has become unwieldy over time as more has been added to it. The current Code covers many administrative aspects of the conduct and operation of Cabinet Government alongside Ministerial private office and travel arrangements as well as core ethical and behavioural topics. It would be unhelpful and unnecessary to give the whole document as it stands a statutory underpinning. Moreover, the current Code is drafted ambiguously, leading to strained interpretation by those seeking to make an argument one way or another. Additionally, insufficient attention has been given to the treatment of financial interests where there is a lack of clarity and transparency about what is acceptable.
- R.1.5. The spirit and intent of this Recommendation is to affirm the privilege and significance of holding office as a Minister of the Crown, to recognise the very high standards of conduct upheld by the vast majority of those holding such offices and to make changes to the current regime that are likely to increase public confidence that this is and will remain the case.

We recommend that:

The Ministerial Code should be significantly revised and clarified

- R.1.6. The Ministerial Code should be clarified and simplified to instil a refreshed understanding of the duties and responsibilities that come with Ministerial office. These parts of the Code should be split from the Government and administrative parts and given a statutory underpinning.
- R.1.7. These current parts of the Ministerial Code (i) relating to the Ministers' relationships with Government and (ii) other, more administrative aspects of obligations on Ministers should be the subject of separate and clearer guidance on expectations on Ministers which would include guidance and clarity on rules for the operation of Private Offices and special advisers. These should be made public.

R.1.8. The Statute would not prescribe the revised Code itself but would specify the topics that it would cover which would encapsulate the core responsibilities of a Minister of the Crown. The precise terms (and supporting Guidance) would be determined by the Prime Minister having consulted with the Code Commissioner. Our recommendation is that the core elements for this revised Code should be as follows:

- a. Ministers have a duty to act in the national interest and to protect and enhance the reputation of the United Kingdom.
- b. They should behave with professional integrity, treat others with consideration and respect, and follow the Nolan Principles of public life.
- c. They have a duty to account to Parliament, not to mislead Parliament and to be transparent with Parliament and the public about their decision making.
- d. They have a duty to ensure that Civil Servants interacting with Parliament on their behalf do so fully, truthfully and accurately in accordance with the Civil Service Code.
- e. They have a duty to ensure that SpAds reporting to them observe the SpAd Code;
- f. They should uphold the political impartiality of the Civil Service and support the effective operation of the Civil Service and the Civil Service Commission.
- g. There should be no actual or perceived conflict between Ministers' public duties and their private interests (and they should observe the Conflicts of Interest rules that we recommend in Recommendation 2).
- h. They should act with independence and impartiality (e.g., no special treatment to personal interests or that of connections, no acceptance of gifts that may be seen to compromise judgment or independence).
- i. They should ensure the proper use of Government and public resources (e.g., not for party political purposes).
- j. They should observe the law and uphold the rule of law, the administration of justice and the independence of the judiciary.

R.1.9. On taking office, Ministers should be asked to swear an oath or affirmation to confirm that they understand and will abide by the Code. This oath would also be an opportunity to underline the Minister's broader duties to use their office to maintain and improve the security of the country and the prosperity of those who live and work here and to uphold the rule of law and the constitutional settlement of the UK.

A Ministerial Code Commissioner should be appointed, with statutory enforcement powers

R.1.10. The statute should provide for a fully independent, properly resourced enforcer of the relevant elements of the Code (the Ministerial Code Commissioner) with powers to initiate and conduct investigations, make findings about failures to meet the standards set by the statutory Code, and to recommend sanctions.

R.1.11. The final decision on sanctions would still rest with the Prime Minister but they would have to publish the decision and to justify publicly any departure from the Commissioner's recommendation.

R.1.12. The Commissioner should be jointly appointed by the Prime Minister and the Chairman of the Public Administration and Constitutional Affairs Committee (PACAC).

R.1.13. The role of the Commissioner would be to receive complaints about breaches of the Code (which could be made by any person) and to decide whether to commence investigations (whether or not on receipt of a complaint, without requiring the PM's consent and irrespective of whether the individual(s) the subject of the investigation continued to occupy any particular office or post) and whether to make public the existence and/or the findings of any investigation. The Commissioner would have the discretion to decide not to investigate any complaint which they regard as frivolous or vexatious, or any alleged breach which they regard minor in nature.

- R.1.14. To create public confidence, the Commissioner should be as transparent as possible about their work. They should publish an annual report including confirmation that they have had the resources, access and information necessary to fulfil their role, including reporting on compliance with requests for information (for example access to relevant phone and email records). The Commissioner should make periodic reports to parliament, and account to and appear before PACAC as required.
- R.1.15. As set out in Recommendation 2, duties relating to financial interests and conflicts of interest for Ministers would be within the jurisdiction of the Commissioner who would have the power to make changes to those rules. The Commissioner would also have this power and jurisdiction in relation to conflicts of interest for special advisers.
- R.1.16. There should be appropriate quality training for Ministers on taking office which would include: (i) the role and duties of the Civil Service; and (ii) the relationship between the Civil Service and Parliament (including how the two Houses of Parliament operate).

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