

Independent Adviser on Ministers' Interests

Annual Report 2010-11

Foreword

This is the second of my reports as Independent Adviser to be published. The report is also my last as Independent Adviser, as I stepped down from the role on 31 October 2011. I undertook the role for over three and a half years (following a 6 year spell as the Parliamentary Commissioner for Standards).

During my period as Adviser, I believe that steady progress has been made in embedding the role to ensure that it functions as an effective aid to Ministers and officials in promoting good conduct in Government. I outline in this report my reasons for taking this view, as well as various improvements that have been made in the transparency attaching to related aspects of Ministerial life. The main achievements of the last 3 years include:

- Formalising the arrangements for recording Ministers' interests on their appointment to office
- Publication of the List of Ministers' Interests, as a supplement to the Registers of Interests maintained by both Houses of Parliament
- Development of procedures for the investigation of an allegation relating to the Ministerial Code of Conduct, and for publication of the Adviser's report to the Prime Minister on such an allegation
- Publication of the Adviser's reports to the Prime Minister on the overall operation of the Ministers' Interests arrangements.

The challenges and pressures facing Ministers and the officials who advise them on these complex matters are not going to diminish. Having someone as an independent point of reference can, in my experience, help Ministers and officials ensure that the public interest in fair and honest government is fully maintained. I am grateful for the opportunity I have had to help establish the Adviser's role and for the support I have received in it from both Ministers and officials.

Sir Philip Mawer

December 2011

Section 1: The Work of the Independent Adviser – (1) Advice

1.1 In my first report, I identified the two key aspects of the role of the Independent Adviser:-

- Advice to individual Ministers and their Departmental Permanent Secretaries on specific matters of conduct, including how best to avoid potential conflict between Ministers' private interests and their Ministerial responsibilities.
- Investigation - when the Prime Minister, advised by the Cabinet Secretary, decides that this would be appropriate - of allegations that an individual Minister may have breached the Ministerial Code of Conduct.

In this section of my report, I focus on the first and more consistent (if less public) aspect of these functions – advice. As this function is closely linked to the preparation of the List of Ministers' Interests, I also cover that aspect of my duties.

The Ministerial Code

1.2 Before I do so, however, I need to refer briefly to the Ministerial Code, which sets the context in which the Adviser's role is undertaken. The Code is personally approved and promulgated by each Prime Minister on coming into office. The present Prime Minister approved and published the Code covering members of the Coalition Government in May 2010. The new Code, whilst updated, continues to set out the principles expected to govern Ministers' behaviour, supplemented by practical guidance on the outworking of those principles. The text of the Code is available on the Cabinet Office website.¹

Avoiding Conflicts of Interest

1.3 Section 7.1 of the Ministerial Code states that:

“Ministers must ensure that no conflict arises, or could reasonably be perceived to arise, between their public duties and their private interests, financial or otherwise”.

This is a personal responsibility falling on every Minister. In handling such issues, Ministers are advised by their Permanent Secretary, who may in turn seek advice from officials in the Cabinet Office Propriety and Ethics Team and the Independent Adviser. However, it rests on each Minister to take whatever action is needed to avoid an actual or perceived conflict.

1.4 On first entering office, and after any subsequent move to a different department, Ministers are required to provide their Permanent Secretary with a full list in writing of all their interests which might be thought to give rise to a conflict. When I was first appointed, I took steps to ensure that a consistent approach was adopted by outlining the categories of interest that should be included. Following publication of the first List of the present Government in February 2011, Cabinet Office officials and I have reviewed the way in which returns are submitted by Ministers to ensure that they remain fit for purpose.

¹ <http://www.cabinetoffice.gov.uk/content/ministerial-conduct-and-guidance>

1.5 The effect of the simple changes made has been to help ensure that Ministers are reminded of the range of interests they need to consider and that there is improved consistency in the pattern of Ministerial returns. This greater consistency is also helpful in assisting the preparation of the published List of Ministers' Interests (see paragraphs 1.9 – 1.13 below).

1.6 Before completing their initial written return, Ministers may discuss their interests with their Permanent Secretary. Indeed the process of identifying potential conflicts may begin even earlier, when a Ministerial appointment is first being considered. Decisions made in these early stages are recorded and a Minister subsequently completes their written return. Their Permanent Secretary will then consider the Minister's return and offer further advice as necessary.

1.7 The returns are then forwarded to the Cabinet Office and examined by officials in the Propriety and Ethics Team and by me. Many raise no particular issues. Some prompt requests for additional information or views from the Department, and a dialogue follows. In some cases, further advice is given to the Minister and to departmental officials, in order to avoid any possibility of conflict.

1.8 This careful process takes place not only on the formation of a new Administration but upon major reshuffles of a government. All Ministers, not just those directly affected by such a reshuffle, are asked to confirm their interests. In addition, the twice yearly publication of the List of Ministers' Interests means that there is now a further and regular mechanism requiring all Ministers to review their relevant interests and to ensure that the full extent of these is continually disclosed. That is an additional welcome means of encouraging discipline in this important area.

The List of Ministers' Interests

1.9 The Ministerial Code promulgated by the present Prime Minister in May 2010 contained the commitment that "a statement covering relevant Ministers' interests will be published twice yearly".² The first List covering the interests of members of the Coalition Government was published in February 2011.

1.10 The introduction to the List explains fully the basis on which it is prepared. The List does not aim to supplant, but rather to complement the separate Registers of Interests produced by either House of Parliament. Since the obligations on Ministers to disclose relevant interests are wider (because of their executive role) than those falling on Parliamentarians, the List includes all those interests Ministers currently hold which are additional to those in the Parliamentary Registers and which the Minister concerned, after advice from officials, considers are, or could reasonably be perceived to be, directly relevant to that Minister's particular responsibilities in government. The effect of the List's publication is thus to put additional information, over and above that contained in the Parliamentary Registers, into the public domain.

² Ministerial Code, Section 7.5.

1.11 When beginning preparation of the List, the Cabinet Office takes the opportunity to ask all Ministers to submit a return of all their interests. Each return is carefully examined by departmental and Cabinet Office officials, and by me. A number of queries are resolved. The resulting List is prepared by Cabinet Office officials in consultation with me. Ministers each approve their own entry in the List. At the end of the day, the accuracy of the List depends on the information provided by Ministers. I am grateful to Ministers, supported by officials, for the effort they have put into making sure that the information in the List is an accurate account of the position at the point of the List's publication.

1.12 In its First Report of Session 2008-09, published in January 2009³, the Public Administration Select Committee of the House of Commons welcomed the publication of the List but pressed for it to be maintained on-line with a view to it being regularly updated. The Committee continued:

*"In our view, the register should be inclusive, not exclusive.... If in doubt, an interest should be included. The test needs to be whether a reasonable person could consider that an interest is relevant."*⁴

1.13 The test urged by the Committee is in fact that which has been adopted by successive Governments in compiling the List. As regards the manner and frequency of the List's publication, the present Government has, as already noted, committed itself to up-date and publish the List, on-line, twice a year.⁵ A further edition of the List has been published alongside my report.

³ HC 36-1, *Lobbying: Access and Influence in Whitehall*.

⁴ *Ibid*, paragraph 84.

⁵ Ministerial Code, Section 7.5.

Section 2: The Work of the Independent Adviser – (2) Investigation

2.1 The second key aspect of the Independent Adviser's role is the investigation of alleged breaches of the Ministerial Code. Such investigations can only be undertaken by the Adviser at the Prime Minister's request. I have not been asked to undertake any such inquiry in respect of a member of the present Government.

2.2 In May 2009, the then Prime Minister, following consultation with the Cabinet Secretary, did make such a request of me. As the first such investigation, the case set a number of important precedents. First, I was able to define the process I would follow when investigating an alleged breach of the Ministerial Code. In my first Annual Report, I mentioned⁶ that I was already giving thought to this, drawing on my previous experience as the Parliamentary Commissioner for Standards. I set out the procedure I intended to follow in a note which I gave the then Minister concerned at the start of my inquiries. In view of its general, procedural character and in the interests of transparency, I am publishing a copy of that note as an Appendix to this report.

2.3 I also take this opportunity to record that, having received my report, the then Prime Minister immediately decided to publish it in full (save only for such redactions as were necessary to protect personal information relating to witnesses to my inquiry). The public were thus able to see the basis on which I had reached my conclusion, including the relevant evidence. This too was an important step forward in terms of transparency, as well as meeting, in full, wishes earlier expressed by the Public Administration Select Committee.

⁶ Paragraph 5.9.

Section 3: Other Developments of Interest

3.1 A number of other significant developments have taken place since the publication of my first report which, although they are not within my area of personal responsibility, I believe it right to mention as, taken together, they further strengthen transparency and accountability in related aspects of the conduct of government.

3.2 The Ministerial Code provides that no Minister should accept gifts, hospitality or services from anyone which would, or might appear to, place him or her under an obligation.⁷ The same principle applies if gifts, etc. are offered to a member of a Minister's family.

3.3 Gifts of small value – currently £140 – may be retained by the recipient but those of a higher value should be handed over to the Minister's Department for disposal, unless the recipient wishes to purchase the gift for its value abated by £140.

3.4 Section 7.22 of the Ministerial Code published by the Prime Minister in May 2010 provides that Departments will publish, at least quarterly, details of gifts received and given by Ministers valued at more than £140.

3.5 Similarly, Departments now publish on a quarterly basis details of hospitality received by Ministers in a Ministerial capacity. Ministers are required by the Code to notify their Permanent Secretary if they accept hospitality in a Ministerial capacity.⁸

3.6 Finally, under the provisions of the Code, Departments also publish, on a quarterly basis, information about all overseas travel by Ministers.⁹

3.7 Further steps towards greater transparency and accountability taken since the publication of my first report include the publication, online and on a quarterly basis, of information about Ministerial meetings with outside interest groups.

⁷ Ministerial Code, Section 7.20.

⁸ Ibid, Section 7.24.

⁹ Ibid, Section 10.3.

Section 4: Conclusion

4.1 In my first Annual Report, I noted that the introduction and development of the Independent Adviser's role had the potential to represent a valuable strengthening of the arrangements for ensuring high standards of conduct in government. I hope that this report, along with my earlier one, illustrates how the role of Independent Adviser has been established and how it can add value to the way these matters are managed in government. I take this opportunity to express my gratitude for the opportunity I have had to be part of this development, and in particular to thank those officials in the Cabinet Office with whom I have worked and whose professionalism, fortitude and dedication I have come greatly to admire.

Sir Philip Mawer

December 2011

The Ministerial Code

Procedure for Investigation of alleged Breaches of the Code by the Independent Adviser on Ministers' Interests

1. Ministers are personally responsible for deciding how to act and conduct themselves in the light of the Code of Conduct for Ministers (the *Ministerial Code*). They are also responsible for justifying their actions and conduct to Parliament and the public.
2. However, Ministers only remain in office for as long as they retain the confidence of the Prime Minister. He is the ultimate judge of the standards of behaviour expected of a Minister and the appropriate consequences of a breach of those standards.
3. If there is an allegation about a breach of the Code, and the Prime Minister, having consulted the Cabinet Secretary, feels that it warrants further investigation, he will refer the matter to the Independent Adviser on Ministers' Interests for inquiry.
4. The purpose of an investigation by the Independent Adviser is to establish the facts relating to the allegation and to enable the Prime Minister to decide whether there has been a breach of the *Ministerial Code* and, if so, what action to take in consequence.
5. It is the duty of all Ministers and officials who may be involved in an inquiry to cooperate fully with the Independent Adviser in order that he can report the outcome of his inquiries fully and speedily to the Prime Minister.

Detailed Procedure

6. When an allegation is referred to the Independent Adviser by the Prime Minister, the Adviser will write immediately to the Minister concerned setting out the nature of the allegation and the provision(s) of the *Ministerial Code* which appear relevant to its determination, along with any other relevant material available to the Adviser.
7. The Adviser will, if necessary, question the person who has made the allegation to ensure that its precise nature and the evidence on which it is based are clear to all concerned.
8. The Adviser will then ask the Minister to respond in detail to the allegation either in

writing or orally. What is asked of the Minister at this stage is a full and open account of the matters in question.

9. It may be that the information provided by the person making the allegation and the Minister will enable the Adviser to report to the Prime Minister at this point.

10. However, the Adviser may judge that further inquiries are required. These may involve other Ministers, officials, or people or organisations outside Government. Those approached or interviewed by the Adviser will be expected to cooperate fully and to observe the confidentiality of their dealings with the Adviser, although they should give their evidence on the assumption that it is likely to be made public in the context of the Adviser's Report. The Adviser will share with anyone interviewed a draft record of the interview so that the accuracy of the record can be confirmed.

11. Any person interviewed by the Adviser may be accompanied, at their own expense, by a friend or legal adviser, if they so wish. However, they will be expected to answer for themselves (and not through their adviser) any questions put to them.

12. If in the course of his inquiries, the Adviser comes across evidence which suggests that a criminal offence may have been committed which may more appropriately be investigated by the police or another investigatory agency, he will report this to the Cabinet Secretary.

13. Once he has assembled the facts relating to the allegation(s), the Adviser will put to the Minister concerned any material evidence which is at variance with the Minister's account of events.

14. Before concluding his investigation, the Adviser will also share with the Minister the draft of those parts of his report which deal with issues of fact, so that the Minister has an opportunity to comment on them. It will be helpful if any comments are made in writing so that the Adviser can give a precise account of the Minister's response in his report.

15. The Adviser will then finalise his report. In doing so, he will include his assessment as to whether or not the allegation(s) against the Minister are supported by the evidence and whether any breach of the *Ministerial Code* has occurred.

16. The Adviser will form his assessment on the basis of the balance of probabilities, although in cases where the alleged breach of the Code is more serious, a higher standard of proof may be appropriate.

17. Having completed his report, the Adviser will submit his report to the Prime Minister through the Cabinet Secretary. He will also copy it to the Minister concerned.

18. Taking into account any representations by the Minister, it will then be for the Prime Minister, advised by the Cabinet Secretary, to decide whether he accepts the Adviser's findings and, if so, what action to take. In order to help him reach a decision, the Prime Minister may ask the Adviser to conduct any further inquiries he considers relevant.

Confidentiality

19. In the interests of fairness to all concerned and of the effective conduct of his inquiry, the Adviser will not comment on the progress of his investigation.

Cabinet Office

May 2009