Standards matter

A review of best practice in promoting good behaviour in public life

Committee on Standards in Public Life

January 2013

Chair: Sir Christopher Kelly KCB

Fourteenth Report
Cm 8519

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Committee on Standards in Public Life

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Presented to Parliament
by the Prime Minister
by Command of Her Majesty

January 2013

Cm 8519

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Committee on Standards in Public Life

January 2013

Dear Prime Minister

I am pleased to present the report of the Committee on Standards in Public Life's review of best practice in promoting good behaviour in public life.

The Committee felt that the time was right to undertake a review of the key lessons that have been learnt since the Nolan Committee's first report was published in 1995 about how to improve ethical standards in public life – to stand back and reflect on what has been achieved and what still needs to be done.

The report argues that much of the basic infrastructure to improve standards is now in place. Statements of key principles and codes of conduct have been adopted by most public bodies, new regulators have been created or had their existing remits clarified, and awareness of principles such as integrity, accountability and openness has increased considerably.

We are in no doubt that as a result standards of behaviour in many areas of public life have improved.

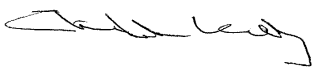
But it is disturbing that concerns continue to be raised about the integrity of so many of our key institutions or those within them; and the evidence of the last few years and months suggests that there is still much to do before the high standards in public life to which we all aspire are fully internalised in the cultures of all our public institutions.

The report concludes that the need now is not for more principles, codes or regulators but rather for the existing arrangements to be more consistently and actively implemented. The promotion of good behaviour can never be just about ticking boxes. It requires expected standards to be embedded throughout an organisation and its processes, with everyone taking ownership of high standards and regular monitoring of whether they are being met.

We have set out four main conclusions and a number of best practice points which we hope will be of assistance to those who find themselves having to grapple with these issues.

The report also identifies a number of existing and emerging risks which we believe need to be addressed more energetically if high standards in public life are to be maintained consistently.

High standards are a public good. They improve predictability and promote better outcomes for society, increasing public confidence and the functioning of the economy. I commend the report to you.



Christopher Kelly
Chair, Committee on Standards in Public Life

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Executive summary

Introduction

1. Standards of behaviour matter. They are particularly important where public money is being spent on public services or public functions. Citizens have a right to expect that holders of public office who take decisions which affect their lives should do so with impartiality, should be truthful about what they are doing and should use public money wisely. Society can expect better outcomes when decisions are made fairly and on merit and not influenced by personal or private interests. Organisations in every sector benefit from greater legitimacy when the public has confidence in their integrity. The UK economy benefits nationally and internationally from that confidence.

2. It is therefore disturbing that questions continue to be raised about the integrity of a number of our key institutions. The controversy which followed revelations about MPs' expenses in 2009 still casts a long shadow over Parliament. In the last five years there have also been issues relating to the expenses of members of the House of Lords, political donations for political access, inappropriate behaviour by local councillors, electoral fraud, concerns over lobbying, the "revolving door" between the civil service and private sector and the apparent failure of procedures for escalating concerns in a number of public bodies. In the last few months alone, issues have been raised about unethical (or in some cases possibly criminal) behaviour on the part of the police, the historical behaviour of the armed forces, police and Security Service in Northern Ireland, high profile problems in hospitals and care homes, the BBC, national journalists and banks.

3. Some of these institutions previously attracted high levels of public trust or professional respect, which has made the impact of recent events particularly marked. The fact that some of the inappropriate behaviour may also have been dishonestly covered up has been especially shocking to members of the public, many of whom rate truthfulness as one of the most important ethical standards. Even where there has been no apparent dishonesty, the leadership of some organisations has been seen to have failed to inculcate a culture of high standards in tune with public expectations.

4. Many of these issues have been or are being investigated elsewhere. Some do not come within our terms of reference. Journalists are not public office-holders, important though their impact is on many aspects of public life. The behaviour of the banks in contributing to the financial crisis or participating in the alleged manipulation of LIBOR occurred before the Government took significant public stakes in some institutions.

5. But public life does not take place in a vacuum. Public office-holders reflect the populations from which they are elected or recruited. Their behaviour in turn provides a model for those populations and is necessarily affected by the wider context in which it occurs. Moreover, the factors which influence behaviour in the public sector are likely to be very similar to those which drive high or low standards in other sectors.

6. So it is important to understand as much as we can about the factors that promote high standards. That has been the main purpose of our review – to take stock of what has been learnt over the two decades since this Committee was established.

7. This report sets out our key conclusions. We do not pretend to have all the answers. But we have drawn together the evidence from a growing body of experience and an expanding field of research. In doing so we have attempted to think through some of the theoretical issues around ethical standards and to make practical suggestions which we hope will be of assistance to those who find themselves having to grapple with these difficult issues on a daily basis. We have also identified a number of existing and emerging risks which we believe need to be addressed more energetically before we can be confident that high standards in UK public life are being consistently achieved.

8. Our key message is this. Much of the basic infrastructure to support high standards is now in place. Most public services and public office-holders have adopted statements of high level principles and codes of practice and are subject to some form of external scrutiny. But it is self-evident, not least from recent events, that these mechanisms by themselves are not enough. Many of those whose integrity has been called into question in recent months and years seem to have behaved inappropriately not because they were unaware of what was expected but because they did not find it expedient. High standards of behaviour need to be understood as a matter of personal responsibility, embedded in organisational processes and actively and consistently demonstrated, especially by those in leadership positions. This report presents some ideas about how this may be achieved.

9. We have been conscious throughout our review that a number of important issues of relevance to our work have, at the same time, been under examination elsewhere. We therefore sought to avoid overlap with the work of Lord Justice Leveson on the press and Robert Francis QC on Mid Staffordshire NHS Foundation Trust, for example. But when Lord Justice Leveson published his report we were not surprised to find that, where our areas of interest coincided, many of his findings resonated with our own – for example, in relation to the importance of standards regulators being both demonstrably independent and armed with robust sanctions.[1] We expect the same to be true of the Francis report when it is published in due course.[2]

Have standards of conduct in public life improved since this Committee first reported in 1995?

10. The infrastructure to support high standards in the UK has developed considerably since 1995 when this Committee published its first report. Awareness of the importance of principles like integrity and accountability has increased. Codes of conduct have been promulgated in most, if not all, public organisations and by many professional bodies. New regulators have been created and others have had their remits clarified. Transparency has increased markedly as a result of the development of electronic communications and the Freedom of Information Act, aided greatly by the media who, despite their shortcomings, have a key role in making transparency meaningful to the general public.

11. We have little doubt that standards of behaviour in many areas of public life have improved in consequence.

12. But there is still much to do. The evidence gives no grounds for complacency.

- **Inappropriate behaviour continues to be revealed** on a regular basis – not only the most recent issues involving the police, the BBC and other institutions, but also instances of more long-standing problems.

- Some of these incidents imply that **those in leadership positions in the organisations concerned have yet to internalise the principles of public life fully** or, that if they have, they are unwilling to demonstrate them in their own behaviour when it is inconvenient or not expedient to do so.

- Much of this inappropriate behaviour involves **deliberate attempts to get around codes of practice and conduct** rather than a failure to understand what is expected. The implication is that the principles of conduct in public life are some way from being universally accepted, whatever lip service may be paid to them. Individually and collectively people have a great capacity to find ways of acting within the letter but not the spirit of acceptable behaviour and to rationalise their reasons for so doing.

- **New situations continually arise which raise new standards issues**, including, at present, the development of new models of public service delivery.

1 Rt Hon Lord Justice Leveson, *An inquiry into the culture, practices and ethics of the press*, November 2012. This report is referred to throughout as the Leveson Inquiry.

2 Robert Francis QC previously undertook an initial inquiry into Mid Staffordshire NHS Foundation Trust, under the NHS Act 2006, published as *Independent inquiry into care provided by Mid Staffordshire NHS Foundation Trust January 2005 – March 2009*, HC 375, February 2010. His second investigation, a Public Inquiry under the Inquiries Act 2005, is due to be published in early 2013.

- **Responses to standards issues often come too late** and only in response to public scandals which by then have done a lot of damage.

- Such improvements as have occurred in standards of behaviour over the past two decades have not been accompanied by an improvement in public confidence. Instead there has been a **significant and consistent decline in levels of public trust and confidence** in the integrity of public office-holders and institutions.

13. Public office will always involve the distribution of resources among competing claims and politics will inevitably always be a competition for power. As a result, the opportunities for abuse of position are considerable. If the UK is to reap the benefits of maintaining high ethical standards in public life we need to remain vigilant about preserving them.

What do we now know about what works best in promoting high ethical standards in organisations providing public services?

The basic framework

14. The first conclusion of this review is that the basic elements of a strong ethical framework remain much as identified by this Committee under the Chairmanship of Lord Nolan in its first report.[3] Most organisations delivering public services are aware of these requirements and attempt to implement them, with varying degrees of enthusiasm and success. They are discussed in more detail in **Chapter 4**. The basic elements are as follows.

- A set of broadly expressed **principles**. These should be aspirational, rooted in the core purposes and values of an organisation or profession and easy to communicate and understand. The seven principles of public life fulfil that purpose. They have now been widely disseminated and in some cases adapted. We believe they remain broadly relevant. But we think it appropriate to revise some of the brief descriptions usually associated with each principle to bring them up to date and provide greater clarity, particularly in relation to honesty. We have set out new descriptions in **Chapter 3**.

- **Codes of conduct**. Experience suggests that there can quite reasonably be different interpretations of what concepts like integrity mean when applied to particular sets of circumstances. So public office-holders deserve some help. This is best provided in the form of a code which elaborates what the principles imply in the specific circumstances of the particular organisation. Such codes ensure that everyone in the organisation knows what is expected of them. So do those holding them to account. Codes now exist in most if not all public sector organisations. They need to be sufficiently detailed to provide helpful guidance. But if they become too elaborate people can lose sight of the principles on which they are based, and fail to exercise their judgement or take responsibility for their decisions (**Chapter 4**).

- **Independent external scrutiny**. Prime responsibility for upholding high standards should always rest first with the individual and then with the organisation. However, history shows self-regulation often to be ineffective without some form of external involvement. It is essential that someone is able to hold up a mirror to those in public office to remind them of the standards to which they should aspire. An important part of this scrutiny can come from the media. But press scrutiny can be superficial, incomplete or undertaken in the service of particular interests or agendas. It is inevitably often retrospective and better at revealing problems than making careful judgements or pointing to a constructive way forward. Self-regulation needs therefore to be reinforced in other ways – by peer review or by a specifically appointed regulator. Such regulators need to be established with care and remain forward-looking, focused on their core purpose and not over-burdensome. They also need to be given adequate powers, independence and recognition for their efforts; and there needs to be clarity and widespread agreement about their role, functions and resources if they are to avoid being drawn into political controversy (**Chapter 5**).

3 Committee on Standards in Public Life, *Members of Parliament, ministers, civil servants and quangos* (First Report), May 1995, Cm 2850.

Active governance

15. Our second key conclusion is that rather than introducing new principles, more codes or additional regulators, the current requirement is instead to ensure that ethical standards are addressed actively at an organisational level across the public sector, and indeed more widely. In addition to the requirements set out in the previous paragraph, two other elements are needed.

    - **Embedding of ethical principles** in the policies, practices and culture of each organisation, reinforced by peer pressure. High standards cultures constantly convey the message that behaving ethically is essential and failing to live up to principles is unacceptable. Banking is not the only sector with examples of organisations with superficially commendable codes of conduct which bear little relation to the behaviour actually encouraged and rewarded by organisational culture. Codes need to be supported by appropriate induction and training, reflected in appraisal and reinforced by rewards and sanctions. A striking finding from our focus groups is the importance which people attach to the imposition of timely and effective sanctions for poor behaviour and their belief that this seldom occurs.[4]

    - Robust, effective **leadership**. It is the leaders of any organisation who are best placed to set an appropriate tone and promote the right culture. Elected representatives, board members and managers at all levels should exemplify the high standards of behaviour they require of others. Organisations need to make sure they grow or recruit leaders with the necessary values. One focus group participant put it thus:

      "Codes of conduct are necessary like policies and procedures... but to carry them out you need effective motivational leadership."[5]

16. This conclusion should not detract from the principle that the maintenance of high standards is primarily the personal responsibility of individuals. However, individuals need to be supported by the culture of the organisations of which they are a part. Ethical standards should be deeply embedded in governance and other organisational processes so that they become an integral part of "the way things are done around here" and so that individual behaviour which does not meet those standards is challenged.

17. Many public service organisations believe they do this already. We think there is scope for most to do it more systematically. We make some suggestions about how they might do so in **Chapter 4**. All organisations should monitor and regularly review how well they measure up to best practice in ethical behaviour. They should ensure that standards issues feature regularly on board agendas; and they should make certain that standards risks feature appropriately on their risk registers, with mitigating strategies in place and actively monitored. Simply ticking boxes is unlikely to be enough, unless organisations and their leaders also genuinely take responsibility for their own standards and maintain an appropriate degree of vigilance to ensure they are upheld. In our view permanent secretaries and chief executives of all organisations delivering public services should take personal responsibility for ethical standards in their organisations and certify annually in their annual report or equivalent document that they have satisfied themselves about the adequacy of their organisation's arrangements for safeguarding high standards.

18. The risks of failure to anticipate problems in advance are obvious. Every unresolved issue takes its toll on public confidence. Measures put in place in the face of a media frenzy risk being disproportionate.[6] It is preferable for individuals and organisations to take responsibility for acting before being forced to do so.

4 TNS BMRB, *Qualitative research on public perceptions of ethical standards in public life*, report to the Committee, 2012.
5 Ibid.
6 Lord Justice Leveson made this point in paragraph 99 of the executive summary of the Leveson Inquiry.

What needs to be done by whom to continue to embed high standards in public life?

Current and emerging ethical risks

19. Our third key conclusion is that a significant number of important standards issues currently require attention (figure 1). We examine these in detail in **Chapter 7**.

20. Some of these issues are longstanding. Others reflect the fact that changing circumstances continually create new risks. In particular, a combination of political philosophy and economic pressure is currently driving the development of a number of new ways of delivering public services – clinical commissioning groups, elected mayors and police and crime commissioners, academy schools, and private, voluntary sector, mutual or citizen-led provision in areas ranging from prisons to hospitals, social housing and libraries. Often these new models are intended to deliver greater efficiency, effectiveness or responsiveness. Many of these approaches involve people either new to public service, or faced with different demands and challenges, often with reduced resources. Careful thought needs to be given in each case as to how best to maintain high standards of ethical behaviour under the new circumstances they present.

Figure 1: Key standards issues requiring attention

Issues which the **Committee** is likely to investigate in the near future include:

- *how best to maintain high standards as new models of delivering public services are developed*;
- *lobbying* (concerns about unequal access to decision-makers and inadequate transparency); and
- *interchange between the public and private sectors* (suspicions of impropriety in relation to people moving between the public and private sectors).

Issues over which the **Committee** intends to keep a watching brief, and investigate if necessary include:

- *local government standards* (concerns about the impact of the regime introduced by the Localism Act 2011);
- *behaviour and conduct of the police* (concerns arising from recent incidents and reports, some of which are currently the subject of further investigation elsewhere);
- *electoral arrangements* (concerns about electoral fraud, particularly in relation to the electoral register and postal voting);
- *the role of the media in the public sector's promotion and maintenance of standards* (including its effects on public confidence, in the light of the Leveson Inquiry); and
- *the impact of austerity on support for maintaining high standards.*

Issues which need to be addressed by the **Government** include:

- *the Prime Minister's Independent Adviser on Ministers' Interests* (the lack of a power for the Adviser to initiate his own investigations);
- clarification of some of the aspects relating to the arrangements for *Special Advisers*; and
- *the House of Lords* (by facilitating the efforts of the House itself to address its own powers to sanction the most severe breaches of the Lords' Code of Conduct).

An issue which needs urgently to be resolved by the **political parties** is:

- *political party funding* (suspicion about the motivation behind large donations and what is received in return).

Public confidence

21. Our fourth key conclusion is that low and declining levels of confidence in the integrity of public institutions should remain a matter of concern.

22. Confidence in public institutions is affected by many factors other than perceived or actual standards of behaviour. It would be wrong to draw the conclusion that there is nothing that can be done to improve it, however. Visibly high standards of behaviour by public office-holders may not be a sufficient condition for high levels of public trust. But they are a necessary one. There can be little doubt that current levels of trust would be considerably higher had the problems of the last decade not occurred. Confidence in Westminster and in the nation's public life took a particular knock over revelations about MPs' expenses. Party funding is another source of suspicion. Research for our last report showed that more than a third of respondents thought that individuals or organisations making large donations to political parties "very often" received special favours in return. Almost a further half thought they did "sometimes".[7] The often partisan approach of the political parties to many standards issues feeds public cynicism. These are self-inflicted wounds.

Conclusions and best practice points

23. Our conclusions include some practical steps which organisations can take to help ensure that they establish and maintain high standards. Our key message is that unless individuals and organisations genuinely take responsibility for their own standards, remaining vigilant to ensure they are upheld, they risk failing to meet the standards to which they aspire.

Conclusion 1

The basic building blocks for promoting high standards remain much as identified by the original Nolan Committee – a set of broadly expressed values which everyone understands, codes of practice elaborating what the principles mean in the particular circumstances of an organisation, effective internal processes to embed a culture of high standards, leadership by example and proportionate, risk-based external scrutiny.

- Many organisations delivering public services, including those voluntary, private sector, mutual or social enterprise organisations taking on contracts from the public sector, already regularly assess how well they measure up to best practice in ethical governance. All organisations need actively to review their current practices as a matter of routine, making sure that they consider all those factors affecting individual behaviour, including recruitment processes, appraisal and reward structures, leadership and contemporaneous prompts to good behaviour alongside formal codes and sanctions for poor behaviour.

Conclusion 2

The need now is for ethical standards issues to be addressed actively at organisational level. High standards do not occur automatically. Nor should they be taken for granted. High standards are everyone's personal responsibility. But personal behaviour is shaped by organisational culture. High standards need to be driven actively by leadership and example.

- Ethical issues should feature regularly on the agendas of the boards of public bodies and, where appropriate, on risk registers. All such boards should consider whether ethical risks have been adequately addressed and actively monitor standards of behaviour throughout their organisations, either themselves, or through their audit and risk committees.

- Permanent secretaries and chief executives of all organisations delivering public services should take personal responsibility for ethical standards in their organisations and certify annually in their annual report or equivalent document that they have satisfied themselves about the adequacy of their organisation's arrangements for safeguarding high standards.

7 Committee on Standards in Public Life, *Political party finance: Ending the big donor culture* (Thirteenth Report), Cm 8208, November 2011, p.22.

Conclusion 3

New ethical risks are being created by the development of new models of service delivery. There is a growing area of ambiguity occupied by people contracted to deliver public services who may not be public office-holders. We strongly believe that the ethical standards captured by the seven principles should also apply to such people.

- In all cases where new methods of delivering public services are being created, commissioners and providers should give careful thought to the mechanisms necessary to maintain expected high standards of behaviour and promote the seven principles of public life.
- Public servants designing and commissioning services should, in a consistent and proportionate way, address ethical issues throughout the procurement process. Contractors and others should acknowledge the particular responsibilities they bear when delivering public services, paid for by public money, to individuals who may not have the choice of going elsewhere.
- Where powers to regulate standards are devolved to promote local responsibility and leadership, care should always be taken to ensure that there is independent scrutiny, that the results of such scrutiny are made publicly available and that those who have responsibility for imposing sanctions have adequate legal or other powers to do so.

Conclusion 4

Low and declining levels of confidence in the integrity of public institutions remain a matter of concern. While trust is a complex phenomenon, there is scope for trying to increase public confidence in public office-holders and public institutions by addressing the outstanding standards issues identified in this report and by being more attentive to, and active in, addressing emerging issues rather than waiting until pressures for reform become irresistible.

- Public office-holders and organisations should seek to improve their own trustworthiness by consistently and reliably exemplifying high standards of ethical behaviour, openness and accountability and establishing and promulgating robust mechanisms for detecting and dealing with wrongdoing. They should endeavour to increase public understanding of their role and work and should aim to create a culture which harnesses the power of the media to promote high standards and deter or expose misconduct.
- The outstanding ethical issues identified in this report should be addressed actively before they become even more problematic and further undermine confidence in our public institutions.

Chapter 1: Introduction

Ethical standards in the UK

1.1 This Committee was set up in October 1994, following revelations about paid for advocacy in the House of Commons. Our predecessors produced their first report in May 1995. Much has changed since then in terms of the infrastructure created to support standards. The context has also altered and continues to evolve. The systems and practices of public organisations, the culture and behaviour of public office-holders and the expectations of the public are constantly subject to new influences and constraints, causing them to develop in new and sometimes unexpected ways. Efforts to ensure the highest standards of conduct require constant monitoring and adjustment.

1.2 We believe it is a good time to stand back and take stock. On previous occasions when the Committee has done this the intention was mainly to assess the extent to which its previous recommendations had been implemented and what had happened as a result.[8] This review is broader in scope. Our intention has been to identify the key lessons which have been learnt over the last 18 years to establish what we now know about what works best in promoting high standards.

Structure of the report

1.3 **Chapter 1** of the report is this introduction. **Chapter 2** describes the context. **Chapter 3** outlines changes to the descriptions previously given of the meaning of the seven principles. **Chapter 4** describes key aspects of best practice for organisations seeking to maintain high ethical standards. **Chapter 5** discusses the role of regulators in maintaining high standards. **Chapter 6** addresses the issue of trustworthiness and public confidence. **Chapter 7** identifies the key standards risks which, in our view, currently require attention. **Chapter 8** draws some broad conclusions.

Methodology

1.4 The findings of this report are based on four strands of inquiry:

- a review of a number of reports produced since 1995 by this Committee under its five successive chairs, by the Public Administration Select Committee and by other bodies looking at standards issues (appendix 2);
- an invitation to the public to contribute their views, including through a blog on the Committee's website;
- a number of focus groups examining public attitudes towards the ethical standards of public office-holders and factors affecting their trust in public organisations and office-holders (appendix 3); and

8 Four of the Committee's previous reports have been stock-taking exercises in whole or part: *Review of standards of conduct in NDPBs, NHS Trusts and Local Public Spending Bodies* (Fourth Report), November 1997; *Reinforcing standards* (Sixth Report), January 2000, Cm 4557; *Standards of conduct in the House of Lords* (Seventh Report), November 2000, Cm 4903; and *Standards of conduct in the House of Commons* (Eighth Report), November 2002, Cm 5663.

- a series of seminars with invited participants from across the UK exploring issues relating to ethical regulation in specific spheres of public life (appendix 4). The subjects of these seminars included the Westminster and devolved legislatures, central government and the civil service, local government, the wider public sector, private sector organisations delivering public services and the media. The Committee also visited Belfast, Edinburgh and Cardiff to hold discussions with those involved in standards issues (appendix 5).

1.5 We are grateful to all those who engaged with our review in one or more of these ways.

Chapter 2: Context

Why ethical standards are important

2.1 High standards of behaviour in public life are important for a number of reasons.

- Outcomes for society are better when the decisions of public office-holders are made fairly and on merit and not influenced by personal and private interests.
- Low levels of corruption, confidence in the rule of law and belief in the safety of the trading and operating environment are crucial factors in the functioning of advanced economies. We can see what happens in other countries when these factors are not present.
- High standards also benefit the economy through their effect on international confidence in British institutions and the willingness of overseas residents to invest or hold assets here. Some Russian or Middle Eastern companies stipulate that English law and courts should be used to resolve any disputes.
- Impartiality and objectivity increase predictability, which improves economic efficiency.
- Governments which are not perceived to uphold high standards tend to have less legitimacy, reducing the authority they need to govern effectively without recourse to coercion. Basic public institutions such as tax and benefit systems rely on public trust to function effectively.

2.2 High standards are therefore in the interests of society as a whole, which justifies incurring costs in promoting and maintaining them.

What the Nolan Committee said

2.3 It is worth returning briefly to the Committee's first report, produced under the chairmanship of Lord Nolan. The Nolan report was produced at a time of high levels of public concern about poor behaviour in public life and in the wake of a number of issues seen as symptomatic of a widespread problem of "sleaze".

2.4 It also followed a period of considerable change in the public sector, including privatisation of a number of industries and the contracting out of many public services. More general cultural change was characterised by increasing individualism, decreasing deference to authority and cultural diversification.

2.5 At the core of the report was a statement of the general principles of conduct which the Committee believed ought to underpin public life. These principles – selflessness, integrity, objectivity, accountability, openness, honesty and leadership – have become known as the seven principles of public life. Lord Nolan did not believe that he was inventing them. He thought they had been implicit for some time, but were at risk of being lost and needed to be reaffirmed. A broader range of people were being brought into the delivery of public services whose values did not necessarily reflect the conventional public sector ethos.

2.6 The seven principles were accompanied by a number of practical recommendations. These recommendations reflected a strong preference for non-statutory solutions, on grounds of flexibility. The Nolan Committee identified three essential strands:

"***Codes of Conduct***. *All public bodies should draw up codes of conduct incorporating these principles.*

Independent Scrutiny. *Internal systems for maintaining standards should be supported by independent scrutiny.*

Education. *More needs to be done to promote and reinforce standards of conduct in public bodies, in particular through guidance and training, in particular induction training."*[9]

Parallels with today

2.7 There are strong parallels with today.

- In addition to the 2009 revelations about MPs' expenses, a series of issues relating to the police, the BBC and wider media, the NHS, banks and other organisations have damaged the reputations of some of our most important institutions or created doubts about the behaviour of some of those within them.
- Budgetary pressures and political philosophy are again bringing about fundamental changes in the way public services are delivered. New structures – including clinical commissioning groups, elected police and crime commissioners, free schools and academies – each create new situations with associated risks and challenges to standards. There is no reason to think that the many individuals from the voluntary and private sectors now becoming involved in the delivery of public services for the first time will behave better or worse than traditional public servants. However, some will be facing ethical dilemmas of a kind they may not previously have encountered – like GPs newly involved in decisions about whether to provide certain healthcare services themselves or to commission them externally.
- Developments in methods of service delivery, for example in the penal and care sectors, have blurred the boundaries of our understanding of public services and public office-holders.
- The drive towards greater local responsibility and leadership has created scope for greater diversity in dealing with standards issues.

Developments in standards since Nolan

2.8 Much has happened in relation to standards since 1995.

- The seven principles have been widely accepted as the basis of good practice throughout the public sector. They are mentioned explicitly in the UK, Scottish, Welsh and Northern Irish Ministerial Codes, included in the corporate documentation of a large number of public sector organisations,[10] and form the basis of the codes of conduct required of all local authorities. Some organisations, including the civil service, have adapted the principles to their own particular context.[11] Overall, there has been a substantial increase in awareness of the importance of standards issues.

9 First Report, p.3.

10 Including the *Charity Commission governance framework*, 2005 (reviewed annually); HM Treasury, *Corporate governance in central government departments: Code of good conduct,* 2005 (revised 2011); and the Commissioner for Public Appointments, *Code of practice for ministerial appointments to public bodies*, 2009 (revised 2012).

11 Minister for the Civil Service, *Civil Service Code*, November 2010.

- Significant progress has been made in each of the three strands which Lord Nolan thought essential. Most public sector organisations now have codes of conduct based on the seven principles, adapted to their own circumstances. A number pay greater attention than before to standards of behaviour in their internal systems, including recruitment, induction and training. Many have improved mechanisms for bringing lapses in standards to light, though people who raise or escalate concerns are not yet consistently treated with the respect they deserve.[12] There is now extensive documentation about values and conduct in the NHS;[13] and, among others, the Chartered Institute of Public Finance and Accountancy (CIPFA) and the Society of Local Authority Chief Executives (SOLACE) have issued ethical guidance for their members.[14]

- This increased focus on ethics has been replicated beyond the public sector. Many private sector corporations have adopted codes of conduct or statements of values with which their staff are expected to comply. In professional services there have been major efforts to improve the quality of self-regulation. Examples of professional regulatory bodies established during this period include the Bar Standards Board (2006), the Solicitors' Regulatory Authority (2007) and the General Pharmaceutical Council (2010). Other existing bodies have taken forward work on ethical standards. These include the Institute of Chartered Accountants in England and Wales which has published two revisions of a new code of ethics (in 2006 and 2011) and the General Medical Council which is currently reviewing its guidance on *Good Medical Practice* (last published in 2006).

- A number of regulators have been created, reformed or had their remits or powers changed or enhanced. New regulators include the Electoral Commission, the Parliamentary Commissioner for Standards, the Lords Commissioner for Standards, the Independent Parliamentary Standards Authority and the Prime Minister's Independent Adviser on Ministers' Interests. One (the Standards Board, latterly Standards for England) has gone through a full cycle of creation, reform and abolition. One pre-existing body, the Audit Commission, is in the process of abolition.

- There has been a marked increase in openness and transparency, as a result of the Freedom of Information Act 2000, the use made of the Act by the media and others and various other changes. Some of these changes, such as the publication of information about political donations, were made at the instigation of this Committee. Public sector organisations are now required to be both reactively open (responding to requests for information held) and proactively transparent (producing publication schemes detailing the information which they publish).

- Over the same period, information recording, supply and storage have been revolutionised by the development of the internet and other technologies. The speed and informality of communication have increased vastly through email, texting, social networking and other technological tools. These developments have affected personal interactions and the operations of organisations in a number of ways. Our focus group participants, for example, talked about the new challenges for teachers posed by social media, when photographs of them socialising could be uploaded and tagged by anyone with a social network profile.[15] Other examples of new hazards include individuals whose unprofessional comments sent by email to a few colleagues have ended up being rapidly distributed across much wider networks. It is possible that over time people may become more careful about how they behave in the knowledge that even private behaviour can suddenly appear on Facebook and semi-private conversations be re-tweeted around the world. The wider environment is still in the process of catching up with the implications of some of these developments.[16]

12 A YouGov survey for Public Concern at Work (PCAW) in 2011 found that 19 per cent of respondents viewed the word "whistleblower" negatively and 35 per cent neutrally.

13 For example, an NHS Constitution, setting out six core NHS values, was originally published in January 2009 and subsequently revised in March 2011, and the Professional Standards Authority for Health and Social Care (PSA) (formerly the Council for Healthcare Regulatory Excellence (CHRE)) has published new standards for members of NHS Boards and CCG governing bodies in England (November 2012).

14 CIPFA/SOLACE, *Delivering good governance in local government: Framework – addendum*, December 2012.

15 One focus group participant who was a teacher said: *"I think you have to be aware that you're not necessarily in the public eye, but there are people who could be seeing you and the way you behave, so I do think you have to be aware of how you behave"* (*Qualitative research on public perceptions of ethical standards in public life*).

16 The Director of Public Prosecutions has recently, for example, issued new guidelines on the application of the criminal law in cases involving communications sent via social media.

2.9 In some sectors effort has already been put into thinking about the new challenges posed by these developments and addressing problems before they emerge. One example is the new *Standards for members of NHS boards and Clinical Commissioning Group governing bodies in England*, prepared by the Professional Standards Authority (figure 2).

Figure 2: Standards for members of NHS boards and clinical commissioning group governing bodies in England

Following a request from the Secretary of State for Health in July 2011, the Professional Standards Authority for Health and Social Care (PSA) developed a new set of high level ethical *Standards for members of NHS Boards and Clinical Commissioning Group governing bodies in England*. The development of the standards, which involved widespread consultation, was a response to public concern about changes in the model of NHS delivery and, in particular, the creation of new bodies, with the aim of increasing their accountability and driving up standards.

The standards draw on the seven principles but amend and augment them. "Responsibility" which encompasses accountability for collective decisions made by boards as well as individual decisions has been used instead of the narrower "accountability". Additional standards of "respect" and "professionalism" have been included while "selflessness" and "objectivity" have not been specified separately.

The standards go beyond broad ethical principles by addressing personal behaviours, technical competence, and business practices. As well as highlighting collective responsibility they emphasise individual responsibilities by being framed in the first person.

[Source: PSA, *Standards for members of NHS boards and Clinical Commissioning Group governing bodies in England*, November 2012.]

2.10 In many organisations, in both the public and private sectors, the debate on ethical standards has shifted from an emphasis on personal standards to an approach which places greater stress on managing risks to standards in an organisation as a whole. This change in approach has added a focus on collective responsibility for standards to the previous emphasis on personal responsibility for individual behaviour. In the private sector there have been numerous corporate governance initiatives. Guidelines for good governance laid out in the Cadbury Report,[17] the Hampel Report,[18] and others were brought together first as the Combined Code,[19] and more recently as the UK Corporate Governance Code.[20] While such guidelines inevitably focus primarily on maximising shareholder value, the risks to reputation of low standards of behaviour are increasingly acknowledged.

Have standards improved?

2.11 The activity described above (with its associated cost) invites one obvious question: have standards of behaviour in the public sector improved since the first Nolan report?

2.12 In some areas we think they have, although it is difficult to demonstrate this conclusively. Counting the numbers of scandals revealed or numbers of criminal prosecutions successfully concluded proves little. Such information may simply reflect the robustness or otherwise of regulators or the ease of using relevant legislation. The Committee was told during its last inquiry, for example, that the police can be reluctant to press charges relating to breaches of the rules about election finance because of the difficulty of proving such allegations. The relatively low number of cases brought to trial does not necessarily reflect the extent of such abuse.

2.13 On the other hand, a number of practices that allegedly used to be widespread, such as paid-for advocacy in Parliament or the effective purchase of honours, have been significantly curtailed. There have been

17 Sir Adrian Cadbury (Chairman), *The Financial Aspects of Good Governance*, December 1992.
18 Sir Ronald Hampel (Chairman), *Committee on Corporate Governance: Final Report*, January 1998.
19 Financial Reporting Council, *The Combined Code on Corporate Governance*, July 2003.
20 Financial Reporting Council, *The UK Corporate Governance Code*, June 2010 (revised September 2012).

significant improvements in areas like centrally regulated public appointments (though the efficacy of recent changes in this area has yet to be demonstrated) and in the treatment of expenses in some organisations. Conflicts of interest in local government seem to be much better handled than before. Increases in transparency have almost certainly both reduced the likelihood of poor behaviour and increased the chances of it being detected when it does occur.

Continuing grounds for concern

2.14 There are, however, still a number of grounds for continuing concern.

- Examples of poor behaviour continue to be revealed, on a regular basis. We have already drawn attention to recent concerns involving the police, the BBC and other media, the security forces in Northern Ireland and other bodies. In addition, in the last five years there have been issues relating to the expenses of MPs and members of the House of Lords, cash for questions in the House of Lords, political donations for political access, inappropriate behaviour by local councillors, electoral fraud, concerns over lobbying and the "revolving door" between the civil service and private sector, bribery of public officials by the media, apparent failure of procedures for escalating concerns in a number of public bodies, problems in hospitals and care homes and contractual payments to individuals who leave office after high profile failures.

- A number of these incidents involve what look like deliberate attempts to get round the rules (as with loans rather than donations to political parties), rather than inadvertence or a failure to understand what is expected. Individuals and groups have a great capacity to rationalise their own inappropriate actions when it is to their advantage to do so.

- Few such incidents come as a complete surprise, which suggests more could have been done to prevent them. The weaknesses in the MPs' expenses system were fairly common knowledge in Westminster, but it took the determined efforts of a journalist to make use of the Freedom of Information Act and a leak of un-redacted data before anything was done. The risks created by the current dependence of political parties on large donations are well acknowledged. Yet there seemed little appetite for the difficult decisions required to address them until the "cash for access" incident involving the Conservative Party co-treasurer in 2012. The Prime Minister's assertion before the last election that lobbying was the "next scandal waiting to happen"[21] has not yet given the Coalition Government sufficient impetus to resolve the potential problems.

- A number of significant problems remain to be addressed. There are some obvious gaps or shortcomings in existing arrangements (discussed in **Chapter 7**). There is a risk that public sector organisations find themselves in the same position as some banks of possessing superficially robust codes of practice which are not reflected in actual behaviour. Some arrangements, like those for escalating concerns, which ought to provide a key plank of maintaining high standards, have not been fully accepted. Not all of the mechanisms which have been designed to promote accountability and transparency have been self-evidently very intelligent. The potential downsides of some of the principles – like the misuse of published information by the media to imply wrongdoing where none exists – have become more apparent. Confidence in the integrity of many public office-holders has decreased even as standards may have improved.

- At a time of austerity the temptation may be for organisations to reduce support for governance activities or for individuals otherwise to cut corners. Faced with budget cuts, regulators risk becoming overstretched unless they become sharper and better focused.

2.15 So, much remains to be done. It too often appears that a major failure is needed before difficult standards issues are addressed. The system tends to be reactive when it should be proactive – though the things that do not happen because of effective regulation are often of their nature invisible.

21 Rt Hon David Cameron MP, *Rebuilding trust in politics* (speech), 8 February 2010.

2.16 The slowness of the system to anticipate problems could reflect sensible caution. The case for regulation needs to be established each time. But a reluctance to address politically sensitive issues before they become major problems creates obvious risks. Every scandal, or apparent scandal, takes its toll on confidence in the integrity of our public institutions and office-holders. Reputation is easily lost, much harder to regain.

2.17 Failure to anticipate problems can also create a risk of subsequent over-reaction. A prominent example was the over-engineered arrangements to regulate standards in local authorities originally created with the establishment of the Standards Board for England in 2000 (figure 3). In evidence to the Leveson Inquiry Lord Condon spoke of ethical issues being addressed in twenty year cycles through "scandal, inquiry, remedial action, relaxation, complacency, scandal, inquiry".[22] There might be a temptation to think of an overreaction to standards challenges as preferable to an inadequate one. But as memories of past failures fade and excessive bureaucracy becomes more apparent there is a risk that necessary controls will be dismantled along with everything else.

Figure 3: Local government standards

The Committee's Third Report in 1997 addressed ethical standards in local government. The report called for a restructuring of the framework of standards in local government with the aim of achieving clarity about standards of conduct while devolving greater responsibility to local government for devising and regulating those standards.

The Local Government Act 2000 went well beyond what had been proposed. It created a statutory code of conduct for local authority members, independently chaired statutory standards committees for each principal local authority, an independent regulator of local authority standards (the Standards Board for England) and a separate independent body (the Adjudication Panel for England) to which the most serious cases could be referred. These arrangements did much to improve the conduct of elected members.

A number of adjustments were made in 2007, following recommendations from the Committee in the light of criticism of the system as bureaucratic and bogged down with trivial complaints. The Standards Board (which became Standards for England) was made more strategic. Local standards committees and monitoring officers were given responsibility for filtering complaints.

The Localism Act 2011, abolished Standards for England, removed the ability of local authorities to suspend members as a sanction for poor behaviour and disbanded local standards committees. It introduced a new offence of failing to declare or register a pecuniary interest. Following amendments to the original Bill during its passage through Parliament it also required local authorities to develop their own code of conduct based on the seven principles of public life and to appoint an Independent Person to be consulted during the investigation of any complaint.

The new, slimmed down arrangements have yet to prove themselves sufficient for their purpose. We have considerable doubt that they will succeed in doing so and intend to monitor the situation closely. The arrangements place a particular onus on the Local Government Association to provide leadership for the sector and to ensure that they work in practice.

[Sources: Committee on Standards in Public Life, *Standards of conduct of local government in England, Scotland and Wales* (Third Report), Cm 3702, July 1997; Committee on Standards in Public Life, *Getting the balance right: Implementing standards in public life* (Tenth Report), Cm 6407, January 2005, chapter 3; and ODPM: Housing, Planning, Local Government and the Regions Committee, *The role and effectiveness of the Standards Board for England*, HC 60-I, April 2005.]

22 The Leveson Inquiry, executive summary, paragraph 99.

International comparisons

2.18 The UK is not alone in encountering issues about standards in public life. It is worth noting, however, that some practices ruled out by the seven principles would pass unnoticed in many parts of the world. Their prohibition might even be seen as bizarre in countries where it is regarded as natural to use public office to support one's own family, tribe or religious grouping. There are obvious implications from this cultural relativity which need to be taken into account in considering risks in an increasingly diverse culture in parts of the UK.

2.19 In assessing the quality of standards of behaviour in the UK relative to other countries the most appropriate set of comparators is other mature democracies which broadly share the same values. There are two main sources of information about such countries.

2.20 The first source is the evaluation reports produced at periodic intervals by the Group of States against Corruption (GRECO) established under the Council of Europe. These reports use questionnaires and discussions with senior individuals to evaluate a country's compliance with the provisions laid down by GRECO's *Twenty Guiding Principles* and other associated provisions. The GRECO reports on the UK contain very limited criticisms compared with those made in their reports on other Council of Europe countries. The most recent UK reports in 2007 focused on the transparency of party funding and on "incriminations" (meaning bribery).

2.21 Both reports were broadly positive. The former, while identifying various points for action, stated that:

> *"The existing legal system and organisational framework regarding the transparency of political financing, its supervision and the available sanctions for infringements of financing rules is generally of a high standard in the United Kingdom."*[23]

2.22 The latter report identified the potential for the UK's legislation on corruption to be reformed. A follow up report in 2010 welcomed the introduction to Parliament of what became the Bribery Act 2010.[24] A further compliance report has been produced but not yet been made public. A new round of evaluations focusing on Members of Parliament and the Judiciary is currently under way.

2.23 The second main source of information about the UK's relative standing on standards issues is Transparency International's annually published Index of Perceptions of Corruption. Somewhat uncomfortably, the most recent index placed the UK joint seventeenth out of the countries surveyed in 2012, well into the top quartile, but below a significant number of others in the developed world.[25]

2.24 The index is based on measures of perceptions of corruption in the countries surveyed. Perceptions are important for confidence reasons. But they may diverge from underlying substance. It is probable that, in the UK as in other countries, they will be influenced by a wide range of factors that may have little or nothing to do with actual evidence of corruption – the way the media reports stories, for example, or dissatisfaction with the substance of the policies being pursued by the government of the day.

2.25 It is also possible that effective regulation could have perverse effects on perceptions, by uncovering nefarious practices which might have previously occurred without anyone being aware of them. During our inquiry into party funding we were told that the relative absence of concerns relating to political finance in Sweden (one of the countries ranking above the UK in the Transparency International index) could be caused by a different political culture in which cheating is less likely. Or it could be explained by the limited nature of regulation there.

23 Group of States against Corruption (GRECO), *Third evaluation round: Evaluation report on the United Kingdom on transparency of party funding (theme II)*, February 2008, paragraph 133.
24 GRECO, *Third evaluation round: Compliance report on the United Kingdom*, March 2010, paragraph 10.
25 Countries ranked above the UK include Denmark, Singapore, Australia, Canada, the Netherlands, Germany and Hong Kong (Transparency International, *2012 Corruption Perceptions Index*).

2.26 Measuring perceptions of standards cannot give a reliable indication of actual standards of behaviour, either in relative or in absolute terms. Difficulties in measuring them should not, however, be used as an excuse not to pursue high standards.

Summary

- High standards of behaviour are in the interests of society as a whole, which justifies spending public money to promote them.
- There are strong similarities between the pressures on and trends in the public sector at the time of the Committee's First Report and today, including the current moves towards increased private sector involvement and localism.
- Standards in many areas of the public sector have improved, and some notorious malpractices have become less common.
- There is still much work to be done. There are some obvious shortcomings within the current arrangements, and change is often too reactive.
- Difficulties in measuring actual standards (rather than perceptions of standards) should not be an excuse not to pursue high standards.

Chapter 3:
The seven principles of public life

Introduction

3.1 Any values system needs to be based on clear, broadly expressed principles which are aspirational, rooted in the core purposes of an organisation or profession and easy to communicate and understand. These values should underpin an organisation's governance and be embedded in all its processes:

> *"A hallmark of good governance is the development of shared values, which become part of the organisation's culture, underpinning policy and behaviour throughout the organisation, from the governing body to all staff. These are in addition to compliance with legal requirements..."*[26]

Seven principles of public life

3.2 The seven principles of public life have been an influential example of the values with which organisations seek to underpin their ethical framework. They have been adopted by a significant proportion of public sector organisations in the UK.

3.3 Many of these organisations have chosen to adapt the principles for their own purposes. We welcome this development as evidence of active consideration by those organisations of the way in which key values can best be expressed to be most relevant to their own work. In all the cases of which we are aware the underlying sentiments are recognisably the same.

3.4 The civil service, for example, has chosen to promote four values – integrity, honesty, objectivity and impartiality.[27] The Scottish Commission for Ethical Standards in Public Life has nine principles, adding "duty and public service" and "respect". They have also amended "accountability" to "accountability and stewardship".[28] The Welsh code of conduct for local councillors has ten principles, adding "duty to uphold the law", "stewardship" and "equality and respect" and amending "integrity" to "integrity and propriety".[29] The detailed definitions are recognisably similar in both the latter two cases. The voluntary code of conduct for local councillors in Northern Ireland does not make any reference to the seven principles as such, but includes versions of a number of them in its description of the "general duties" of a councillor (including "accountability and openness", "selflessness and stewardship", "objectivity and propriety" and "integrity". Honesty and leadership are not mentioned specifically.[30]

3.5 The fact that other organisations have felt the need to adapt the seven principles raises the question of whether the principles should be reformulated. A number of participants in our seminars suggested that they should.

3.6 Our view is that changing the principles now would be both pointless and unnecessary. It is clear to us that they can be criticised on a number of philosophical, semantic or other grounds. We doubt that if we were

26 The Independent Commission on Good Governance, *The good governance standard for public services*, 2004, p.13.
27 *Civil Service Code*, paragraph 3.
28 Commission for Ethical Standards in Public Life in Scotland, *Annual report 2011–12*, September 2012, inside front page.
29 Public Service Ombudsman for Wales, *The code of conduct for members of local authorities in Wales: Guidance from the Public Service Ombudsman for Wales*, March 2012, pp.8–9.
30 Department of the Environment, *The Northern Ireland code of local government conduct: A code of recommended practice for the guidance of local councillors*, April 2003, pp.3–8.

inventing them for the first time today they would look exactly the same. But we see no advantage, and the risk of some possible confusion, in seeking to alter them now. As with many ethical principles, their value lies not in their exact formulation but in the behaviour which they stimulate when – adapted or not – they become part of an organisation's culture.

Amending the descriptions

3.7 Leaving the principles as they are does not mean that we cannot change the words used to describe them. Since the seven principles were first formulated our understanding of the meaning of certain words has developed. This does matter. As the Chair of the Committee's Research Advisory Board has put it:

> *"Most people are not professional philosophers and while they may have very strong intuitions about certain things, those intuitions are not easily turned into analytically precise principles. But that is one reason why principles in the public domain should be clear, and should depart as little as possible from their ordinary meanings. Too much divergence breeds misunderstanding, and misunderstanding exacerbates mistrust*."[31]

3.8 Comments made to us during the course of this review, and previously, suggest there are a number of areas where the descriptions of the seven principles could usefully be brought up to date.

- The description of the present formulation of honesty refers to holders of public office having a duty to declare any conflicts of interest. The avoidance of conflicts of interest fits more obviously into our current understanding of integrity. Most people today would expect honesty to have a much broader meaning, focusing on truthfulness. This has particular resonance at the present time since a number of issues of current concern have involved allegations of inappropriate behaviour being covered up.

  A focus group participant demonstrated a nuanced understanding of honesty:

  "It may not be appropriate to give complete truth on something, as long as you're not directly lying or misleading... Like you wouldn't necessarily want to hear about the complete plans for anti-terrorism in the run up to the Olympics, so concealing that is appropriate to do so, but you wouldn't lie about something."[32]

- Discussion around the importance of public office-holders making decisions on merit, including in our focus groups, tends to refer more frequently to impartiality than to objectivity. We think it would be helpful to include impartiality in the description of the meaning of objectivity.

- Equality of opportunity has become even more of a central tenet of thinking about ethics and values in the period since the principles were first established. We think it would be helpful to make clearer that objectivity requires giving full regard to the importance of equality of opportunity and fair treatment, irrespective of individual characteristics such as disability, race, gender or sexual orientation.

- Public office-holders sometimes need to show courage in speaking up about difficult issues, speaking "truth to power" and making or sticking by difficult decisions.[33] We see this as a key element of ethical leadership and have amended the description of leadership accordingly.

3.9 In the course of our review a number of people suggested to us that a public organisation could have high standards yet deliver neither an effective service nor value for money. This may be true in principle. But we doubt that an organisation delivering poor service or value for money could really be described as having integrity. We also suspect that there may often be a positive empirical relationship between high ethical

31 Mark Philp, *The seven principles of public life: What they say and what they mean*, report to the Committee, 2002 (revised 2012), p.10.

32 *Qualitative research on public perceptions of ethical standards in public life.*

33 One focus group participant described the resignation of a Chief Constable because he felt that due to spending cuts he was no longer able to provide an adequate level of service as a courageous act which he attributed to the individual's high level of personal ethical standards: *"He was ambitious in the –shire police and he was a very, very fine police officer, now he's recently stepped down because he has decided that with the money that I'm now being given I can't provide a service to the people of –shire and he said I'm not putting my name to this... he's walked away from it and all credit to the guy for doing that"* (*Qualitative research on public perceptions of ethical standards in public life*).

standards and high service standards. More to the point perhaps, while public office-holders should certainly be held to account for their use of public money, it is not the role of ethical regulators to do so.

3.10 The revised descriptions of the seven principles which the Committee will use in all future publications are set out in figure 4 (for the original descriptions see appendix 6). The revisions include some clarifications reflecting earlier research carried out for the Committee.[34]

Figure 4: The seven principles of public life

Principle	Revised description
Preamble	The principles of public life apply to anyone who works as a public office-holder. This includes all those who are elected or appointed to public office, nationally and locally, and all people appointed to work in the civil service, local government, the police, courts and probation services, NDPBs, and in the health, education, social and care services. All public office-holders are both servants of the public and stewards of public resources. The principles also have application to all those in other sectors delivering public services.
Selflessness	Holders of public office should act solely in terms of the public interest.
Integrity	Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.
Objectivity	Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.
Accountability	Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.
Openness	Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.
Honesty	Holders of public office should be truthful.
Leadership	Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.

To whom should the seven principles apply?

3.11 There is a growing area of ambiguity occupied by people contracted to deliver public services who may not be public office-holders. We strongly believe that the ethical standards captured by the seven principles should also apply to such individuals and their organisations. Like traditional public servants they are being paid public money to provide services on behalf of the community to individuals who may not have a choice about going elsewhere.

3.12 Principles are what matters in determining what people "should" do as opposed to what they might "get away with". But the more ambiguous the circumstances (that is the less the principles might seem to an individual to be clearly applicable) the less purchase they are likely to have. This seems likely to be

34 TNS BMRB, *Review of the descriptors of the seven principles of public life: Report from stage three*, report to the Committee, November 2006.

particularly important in the case of non-traditional suppliers of public services. Unless the principles are clearly translated into contracts and clear guidance, it is unlikely that private contractors in particular will believe that they are unambiguously applicable to them (given the likelihood of conflicts between the motives of private profit and public service), or spend time deducing from the principles how they are supposed to behave. There is therefore a responsibility on public office-holders to specify particular and proportionate ethical requirements in the contracts they let on behalf of the public sector.[35] This is a difficult area, the implications of which will require some effort to work out in practice. It is an issue of possible future inquiry for the Committee.

The private behaviour of public office-holders

3.13 The seven principles specifically apply to public life. Public office-holders do, of course, also have private lives, which are affected by a whole range of emotions and other factors in which the seven principles of public life are unlikely to be a major consideration.

3.14 It is important both for reasons of principle and to prevent unnecessary inhibitions on willingness to perform public roles that the privacy of the personal lives of public office-holders should be respected. The legal protection of the right to privacy under the Human Rights Act 1998 applies to public office-holders as well as to other citizens.

3.15 On the other hand, the separation between the public and private lives of public office-holders can never be absolute. There are circumstances in which private behaviour can legitimately affect an individual's employment in public office because of its impact on the reputation or integrity of the organisation concerned.

3.16 Some of these circumstances are recognised in law. If an individual is declared bankrupt or insolvent, for example, they cannot stand as a Parliamentary candidate and can be denied employment in a wide number of public posts. Others are incorporated in specific codes. The General Teaching Council for Scotland's ethical guidance to teachers, *Code of professionalism and conduct*, states that:

> *"You should avoid situations both within and without the professional context which could be in breach of the criminal law, or may call into question your fitness to teach... you must uphold standards of personal and professional conduct, honesty and integrity so that the public have confidence in you as a teacher and teaching as a profession... you should maintain an awareness that as a teacher you are a role model to pupils*."[36]

These guidelines are clearly intended to apply to teachers' private as well as public lives. The code is not statutory. But any serious breach or series of minor breaches of it could lead to an adverse "fitness to teach" finding and possible sanctions.

3.17 Whatever the law or principle might imply, the public are likely to draw conclusions about an individual's public behaviour from what they know of their private behaviour. History provides numerous examples of apparently scandalous behaviour, usually of a sexual or financial nature, casting such doubt on the suitability of politicians or others for public office that they have resigned or been removed from their posts. This is not necessarily an irrational reaction to media pressure – though it can sometimes be. It is not unreasonable for people to think that individuals who display poor behaviour or bad judgement in their private lives are at risk of doing the same in their public lives. Moreover, people's own willingness to behave well can be critically affected by what they see of the behaviour of those in leadership positions. There is no reason to think that in doing so they discriminate between behaviour in public and in private roles. One focus group participant expressed this as follows:

35 See Chapter 7, paragraph 7.7.
36 General Teaching Council for Scotland, *Code of professionalism and conduct*, May 2008 (revised April 2012), p.6.

"At the end of the day, if you're in a place of power, you've got to be honourable no matter what – whether you're at home in bed, or sitting and having tea with the Queen."[37]

3.18 We are not seeking to impose public morality on private life. But it is important to recognise that there are occasions when public and private lives can overlap and where private acts that become known can damage public confidence in office-holders and institutions. There are therefore circumstances in which it is appropriate to take account of the private behaviour of public office-holders in judging their suitability for office. Such intrusions should be exceptional, always proportionate, and only happen where the public interest clearly requires it. The Parliamentary Commissioner for Standards recently expressed it thus in recommending a revision to the code of conduct for MPs:

"I recognise the House's concern about any intrusion into a member's private and personal life. Like anyone else, Members are entitled to a private and personal life and for that to remain private. Any intrusion into that should be both necessary and proportionate. There needs to be a very clear public interest in such intrusion, recognising, as a rule in the Code says, that any conflict between the private and public interest must be resolved in favour of the public interest."[38]

3.19 In our view instances where an individual's private behaviour might affect their public life need to be looked at case by case. They should be addressed not by a lengthy philosophical debate but by clarity about acceptable behaviours and possible sanctions.

Summary

- The seven principles of public life remain broadly relevant, but there is scope for updating what they mean in practice, particularly in respect of honesty and integrity.
- There is a growing area of ambiguity occupied by people contracted to deliver public services who may not be public office-holders. The ethical standards captured by the seven principles should also apply to such people. There is therefore a responsibility on public office-holders to specify requirements about standards of behaviour in the contracts they let on behalf of the public sector.
- Public office-holders are entitled to privacy in their personal lives. But it is important to recognise that there can be circumstances in which private behaviour can affect the reputation and integrity of a public institution, and which require an appropriate response. Such intrusion should only happen where there is a clear public interest to justify it, and should always be proportionate.

37 *Qualitative research on public perceptions of ethical standards in public life*.
38 Parliamentary Commissioner for Standards, *Annual report 2011–12*, HC 311, June 2012, p.9.

Chapter 4:
Best practice in promoting high ethical standards

Introduction

4.1 This chapter sets out the key lessons we have identified about how organisations have succeeded or failed in promoting high ethical standards. It also outlines some practical steps which organisations can take to increase their chances of successfully achieving or maintaining high standards in future. The lessons are relevant to organisations across the public sector, including the police, civil service and NHS and publicly funded institutions such as the BBC, as well as to political institutions. They are also likely to have application beyond the public sector. We consider best practice in a number of key areas: codes of conduct, internal processes for embedding standards within organisations, and leadership. The next chapter considers the role in maintaining high standards played by external scrutiny.

4.2 The key message is that simply ticking boxes is not enough. Individuals and organisations must visibly and unambiguously take responsibility for their own standards and maintain an appropriate degree of vigilance to ensure they are upheld.

4.3 Our focus in this chapter on the promotion of standards within organisations should not detract from the key principle that the maintenance of high standards is primarily the personal responsibility of individuals. This principle remains valid whatever frameworks and codes are or are not put in place. But organisations also have a collective responsibility. Our focus here is on how best they can meet that responsibility, including through techniques which can help individuals to internalise the right values and demonstrate the right behaviours.

Codes of conduct

4.4 Principles alone are often not enough as a guide for behaviour in everyday life. Research undertaken with the public demonstrates that there can be genuine disagreement about what they imply in specific circumstances.[39] Organisations need their ethical principles to be elaborated in codes which contextualise and expand on their practical implications. Holders of public office can then be clear what is expected of them, particularly in grey areas where the application of principles may not be self-evident. Those holding them to account can also be clear. The then Archbishop of Canterbury expressed the importance of codes of conduct during a House of Lords debate when this Committee was first set up, as follows:

> *"But since the right motivation is not enough by itself, all of us need guidelines and codes to help us realise the good intentions in practice. Such codes are vital for institutions as well as individuals, mobilising authority and peer pressure behind ethical norms and translating general values into specific expectations."*[40]

4.5 Codes should never, however, over-ride principles. Behaviour can technically be within the rules set out in a code and yet still offend against underlying principles and values as judged by peers or the general public

39 TNS BMRB, *Review of the descriptors of the seven principles of public life*.
40 Rt Rev and Rt Hon Lord Carey of Clifton, Hansard (HL) 22 November 1994, col 175.

(whose views may, of course, differ). Adherence to a code of conduct may not, therefore, always provide an adequate defence of poor behaviour. Nor should it. The lack of transparency of financial loans to political parties, for example, while technically within the political donation rules of the time offended against the principle of openness which the rules had been designed to reflect. This was readily acknowledged by the political parties themselves when the practice came to light in 2006.

4.6 It may sometimes seem unfair to those who believe they have followed the letter of the rules to be judged subsequently to have been offended against principles. This can give rise to the perception that what is appropriate behaviour is being reinterpreted after the event. The alternative, however, would be to absolve people from personal responsibility for moral judgements about their own behaviour. It might also create an incentive to expand codes to attempt to cover every eventuality. Neither would be desirable.

4.7 Principles and codes should therefore be viewed as complementary rather than as alternatives. It is essential to get the right balance between the two. That balance may change over time.

4.8 Codes of conduct can be powerful. They give guidance in clarifying the right thing to do for those who are unsure. They can encourage and support those doing the right thing; and they can act as valuable contemporaneous prompts in promoting positive behaviour. Interestingly, some recent research suggests that people for whom the Ten Commandments have no religious significance still cheat less frequently when they are asked to recall them before completing a task.[41]

4.9 To be effective codes need to be:

- seen as **relevant every day** and not exceptional.
- **proportionate** – giving enough detail to help guide actions without being so elaborate that people lose sight of the underlying principles. Over-elaboration can lead to codes being resented and ignored, or encourage creative compliance. Good practice suggests that every code should be reviewed from time to time with this in mind. The Commissioner for Public Appointments, for example, has replaced a 120 page code of practice for ministerial appointments to public bodies with a simplified, risk-based, eight page version. The Public Appointments Commissioner for Scotland recently replaced a code of practice of over 80 pages with a plain English version of 25.
- **adapted to the needs and context** of each organisation. The *Civil Service Code*, for example, elaborates on four key values to set out the behaviour expected of all civil servants.
- **clear about the consequences** of not complying with the code, both for the individual and others. One study has shown that people are much less likely to lie to someone else for personal financial gain if the impact on other participants is high. This implies that inappropriate behaviour may be discouraged if its possible consequences for other people are made explicit.[42]
- wherever possible, **framed positively**. A trial by the Cabinet Office's Behavioural Insights Team supported experimental findings that making people explicitly aware of other people's good behaviour is more effective than telling them what not to do. The trial involved a number of different messages included in letters sent to 140,000 tax payers. Letters informing recipients that nine out of ten people in their local area had already paid their tax resulted in a 15 per cent increase in payments compared with the control group.[43]
- **personalised**. Active personal commitment can have a big impact on encouraging people to behave in the right way. The new NHS standards are framed in the form of personal commitments: "As a member I commit to...".[44]

41 Dan Ariely, *The (honest) truth about dishonesty: How we tell lies to everyone – especially ourselves*, 2012, pp.39–40.
42 Uri Gneezy, "Deception: The role of consequences", *The American Economic Review*, 95(1), 2005, pp.384–94.
43 Cabinet Office Behavioural Insights Team, *Applying behavioural insights to reduce fraud, error and debt,* February 2012, p.22.
44 Professional Standards Authority, *Standards for members of NHS boards and Clinical Commissioning Group governing bodies in England,* November 2012.

- **reinforced by positive leadership** and embedded in the culture of the organisation.

4.10 The last point is critical. Research by the Institute of Business Ethics (IBE) indicates no direct relationship between the existence of codes and actual standards of behaviour in companies in the private sector.[45] There are numerous examples of organisations with apparently rigorous ethical codes still demonstrating unacceptable behaviour. Leaders need to understand, use, monitor, regularly re-evaluate, and most importantly exemplify codes through their behaviour. We examine the role of leaders in more detail later in this chapter.

Embedding ethical principles

4.11 Principles and rules are necessary but not sufficient to ensure that an organisation maintains high ethical standards. People's awareness of rules does not necessarily make them more motivated to follow them. A key lesson of the past 18 years is that consistently high standards of behaviour have to be part of the everyday culture of an organisation with any breaches robustly challenged. People need not only to know what acceptable behaviour should look like, but also to understand the principles behind it and internalise them.

4.12 A key question is how to achieve this? How can organisations embed ethical principles so that they become part of their culture? Promotion and reinforcement of standards needs to go well beyond formal training. Organisations need to reflect their principles in all their policies and practices.

4.13 What we have been told during this review suggests that in many parts of the public sector there is considerable scope for improvement in this area. The majority of public sector organisations have now established a basic ethical framework, including a code of conduct and perhaps some staff training. Some have gone further by making demonstrable efforts to reflect their ethical principles across their whole organisation. We do not as yet have robust evidence to demonstrate conclusively that these efforts have resulted in higher standards. But we are confident that following best practice in the areas discussed in the following sections will increase the likelihood of organisations achieving and maintaining high standards.

Recruitment

4.14 A good place for organisations to start is at the beginning, by employing people, including on their boards, whose values are a good fit with their own. At the most basic level employers need to ensure that applicants understand what the organisation stands for and what that means in practice. Some organisations have gone further in attempting to probe the values of potential staff at interview (figure 5). For example, a representative from a large private sector firm told us that his company attempted to recruit frontline staff with the right ethical values to deliver its welfare-to-work programme by asking value-related questions at interview. Potential employees who understand and accept an organisation's ethical principles in the course of their recruitment are more likely to be comfortable reflecting those principles in their work. This may both increase their potential contribution and help to reinforce the wider culture of the organisation.

45 Simon Webley, *Developing a code of business ethics: A guide to best practice Including the IBE illustrative code of business ethics*, October 2003.

Figure 5: Value based interviewing

A number of organisations do attempt to take account of values in their recruitment. One example is the NSPCC, which has developed a technique called "value based interviewing". In 2004 (following the Warner Report, *Choosing with Care* (1992), and the Bichard Report (2004) into the events at Soham) the NSPCC embarked on a project to develop a form of interviewing based on values, behaviours and suitability to work with children. Value Based Interviewing (VBI) aims to probe candidates' values and behaviours in a structured, consistent and job-relevant manner to help organisations make better recruitment decisions about the suitability of applicants.

The NSPCC undertook an extensive exercise to develop a set of values and behaviours which were reflective of the organisation. An interview model was then created which looked at the interaction between the organisation's values, individual values and how people were expected to behave in their roles. It was based on the theory that it was desirable not only to understand how someone would behave but why and hence how their behaviour might change in different situations.

A bank of interview questions and assessment criteria were designed to draw out examples of past behaviour in candidates. Using the SOAR probing technique (Situation, Objective, Action taken, Results and reflections) follow up questions were then used to elicit information about candidates' behaviour, attitude and values. A practical two day training course was developed.

The VBI technique has since been employed in a range of other organisations including the NHS, Connexions, local authorities and voluntary organisations. The NSPCC's quantitative evaluation of its own use of the technique has shown that VBI is effective at predicting an interviewee's behaviour at work once recruited into post. Qualitative analysis of the use of the technique in other organisations has supported this finding.

[Sources: Kerry Cleary and Vika Golokoz, *NSPCC value based interviewing: Report into the development and evaluation of the effectiveness of a value based interviewing method used in recruitment and selection of individuals to work with children and young people*, 2008; and Kerry Cleary, "Safer recruitment: guidance for organisations" in Marcus Erooga (ed), *Creating safer organisations: Practical steps to prevent the abuse of children by those working with them,* 2012.]

4.15 There is considerable scope to explore the relevance of value based interviewing to the varying contexts of different public services and public offices, including elected offices.

Induction

4.16 Induction training is the next obvious opportunity an organisation has to provide new employees with an understanding of expectations about their behaviour.

4.17 These opportunities are not always taken up. We heard, for example, from those responsible for ethical standards at all the UK's four legislatures about their efforts to induct newly elected members on standards issues. All provided copies of codes of conduct to new members at an early stage and some arranged meetings to discuss requirements for the registration of interests. All identified difficulties, however, in persuading newly elected members to attend induction training on ethical issues. Research covering the induction provided for new members of the House of Commons after the 2010 election suggests that this reluctance may result from a number of factors, including the seductive belief that good conduct is an intuitive matter rather than something learned by conscious instruction.

4.18 The research also found a widespread sense among Members of the House of Commons that the main inhibition to improper behaviour is electoral accountability: that MPs are answerable to their constituents for their behaviour, and that it is for their constituents alone to judge. The judgement of electors is clearly a very important dimension of accountability for MPs, as for other elected office-holders such as local councillors, elected mayors and police and crime commissioners. But it is not the only dimension. Nor should it be acceptable to infer approval for conduct solely from continuing electoral success. Some MPs widely believed to have behaved inappropriately have been able to survive quite significant episodes of adverse publicity where they had large majorities and enjoyed good relationships with their constituency parties. Decisions about who to vote for are made on the basis of a number of considerations. It would be undesirable for the electorate to have to set aside the opportunity to express their wider political views at election time simply to express a view on a standards issue.

4.19 It is important that legislatures, like other organisations, take ethical training seriously. Political parties have a clear interest in impressing on their members the importance of attending such ethical training as is provided. Members aware of the standards expected are less likely inadvertently to behave inappropriately in ways which could lead to damaging publicity and loss of reputation for their party or the institution as a whole.

Figure 6: Induction of newly elected MPs

Research with MPs newly elected to the House of Commons in 2010 found that few had taken up any formal ethics training. While some felt that such training would have been helpful, many more took the view that ethical conduct was "common sense", a matter for individual integrity, or something that could not be learned through formal training:

> *"I can't think of any formal ethics training. Err, but, an ethical approach has just always been part of what I would do. I'm not quite sure what I would have learned from ethics training."*
>
> *"I've always been very clear with myself, that I don't do things which I think would appear to be dubious. And I think in some ways that's the main thing, you know principles, public life and so forth just ought to be embedded."*
>
> *"I don't think there's a need for more* [training or discussion forums on ethics] *to be honest with you. I think the main thing is that communication should be effective between the people making the rules and the ordinary backbench MP."*

[Source: Elizabeth Barratt-David and David Hine, "New MPs and their experience of Westminster Politics", draft research paper, December 2012]

Training

4.20 The effects of induction can wear off quickly. So it is important that learning about ethical issues is reinforced from time to time by appropriate training. Such training is particularly important where an organisation experiences rapid movement of staff – as seems likely to be the case in the civil service given the Coalition Government's emphasis in its *Civil Service Reform Plan* on increasing interchange with the private sector.[46]

46 HM Government, *The Civil Service Reform Plan*, June 2012, pp.22–4.

Figure 7: Civil Service anti-fraud and bribery training

Formal training is one way to remind staff of their individual responsibility for ethical leadership. We welcome, for example, the recent development of an online Civil Service Learning module on avoiding, identifying and reporting fraud or bribery, which some government departments, including the Cabinet Office, have made mandatory for all staff.

4.21 The best forms of training give individuals the opportunity to imagine themselves making decisions in real situations using case studies and examples, rather than lecturing them on the "right" thing to do. The IBE advocates such scenario-based business ethics training.[47] Useful case studies may be created from grey areas identified by staff themselves.[48] It is impossible to instruct people on what to do in every conceivable situation. Appropriate training helps people to learn how to exercise their own judgement. It should also stimulate awareness of how easy it is to drift into inappropriate behaviour. People rarely make an explicit decision to behave inappropriately.

4.22 Contemporaneous prompts can also be important. It is easy to mock ethical gestures such as visible displays of statements of values. There is, however, some evidence that they can have a significant effect on behaviour. The Cabinet Office's Behavioural Insights Team explains this as follows:

> *"Most people are honest most of the time. And most people, rightly, think of themselves as honest individuals. This is important because individuals have an inherent desire to be consistent with the images they have of their own moral values, which means that it is possible to encourage greater honesty by reminding individuals of their own desire to be honest through prompts*."[49]

4.23 Research studies which have identified a positive effect from the use of contemporaneous prompts to honesty have included experiments with moving signature boxes testifying to the truthfulness of declarations to the beginning of forms so that people have this in mind when filling them in, rather than signing at the end when they have already completed the task,[50] and designing questions which force people to lie actively in order to make a mis-declaration rather than just failing to fill in a box (as actively lying is more difficult than lying by omission).[51] There may be lessons which public sector organisations could learn from such research.

Incentives and sanctions

4.24 Appraisal and incentive systems also need to be aligned with organisational values. The recent alleged manipulation of the London Interbank Offer Rate (LIBOR) in the UK banking system provides a good example of what happens when an organisation's incentive systems and culture are not aligned with its stated values. Staff are quick to see the kind of behaviour which is really valued in an organisation, whatever the training manual may say.

4.25 People need to see poor behaviour punished as well as good behaviour rewarded, although it is, of course, better for people to internalise the principles behind the right behaviour, and to want to do the right thing, than to do so only because of the fear of getting caught and punished. Timely, appropriate sanctions can only be applied if they are available.

47 Katherine Bradshaw, *Good practice guide: Developing and using business ethics scenarios*, November 2012.
48 Elizabeth Filkin identified a number of possible scenarios faced by police officers dealing with the media as "ideas for practical guidance" in an annex to her report *The ethical issues arising from the relationship between the police and media: Advice to the Commissioner of Police of the Metropolis and his management board*, January 2012, appendix A.
49 *Applying behavioural insights,* p.14.
50 Lisa L. Shu, Nina Mazar et al., "When to sign on the dotted line?: Signing first makes ethics salient and decreases dishonest self-reports", working paper (Harvard Business School), 2011.
51 Nina Mazar, On Amir and Dan Ariely, "The dishonesty of honest people: A theory of self-concept maintenance", *Journal of Marketing Research*, 45(6), 2008, pp.633–44.

4.26 All organisations should make sure that they have appropriate procedures in place to deal with low-level inappropriate behaviour such as bullying and harassment, as well as more dramatic transgressions of ethical codes. The Advisory, Conciliation and Arbitration Service (ACAS) notes that:

> *"Bullying and harassment are not only unacceptable on moral grounds but may, if unchecked or badly handled, create serious problems for an organisation including: poor morale and poor employee relations; loss of respect for managers and supervisors; poor performance; lost productivity; absence; resignations; damage to company reputation;* [and] *tribunal and other court cases and payment of unlimited compensation."*[52]

4.27 At our seminar on local government participants told us that those local authorities who dealt most robustly with instances of bullying and harassment were also those who managed to avoid more serious ethical problems. A number of those present told us of their concerns that the new arrangements for maintaining standards in local authorities did not include appropriate sanctions to deal with this sort of low-level behaviour. We do not believe that the theoretical sanction of the ballot box is an adequate deterrent to inappropriate behaviour by elected members within a term of office.

4.28 The issues involved in cases of bullying and harassment and other complaints may be particularly complex when they involve elected members or members of boards. In these circumstances there are often marked power imbalances between complainants and those about whom they make allegations. Organisations need to be particularly careful to ensure that their procedures take account of these potential complexities, for example making clear to whom board members may complain when their complaint is about another board member. The chair of the audit committee or the senior independent director (if there is one) can often play a role in these circumstances, particularly where the complaint involves the chair. Organisations where elected members work alongside employed staff need to have agreed procedures in place establishing who has the authority to investigate and adjudicate on complaints, what sanctions can be applied and by whom.

4.29 For political office-holders the right to freedom of speech under the European Convention on Human Rights places some restriction on the extent to which some behaviour which might otherwise be perceived as inappropriate can be sanctioned. Two high profile cases illustrate the point. The first involved a complaint made to the Standards Board for England in 2005 about comments made by the then Mayor of London, to a reporter. The High Court upheld, on a number of grounds, the Mayor's appeal against the finding of the Adjudication Panel for England that he had brought his office into disrepute. These grounds included the finding that the original finding was contrary to the Mayor's rights of freedom of speech (which did "extend to abuse") under the common law and Article 10 of the Convention. More recently, in May 2012 the Queen's Bench, Administrative Court (Wales) found that the Adjudication Panel's decision that a council member's comments made on his website had broken the council's code of conduct had been a disproportionate interference with his rights under Article 10. Although the comments were "sarcastic and mocking" they fell "within the term 'political expression' in the broader sense".[53]

Identifying problems

4.30 It is important for organisations to cultivate an open culture, in which staff can discuss potential or actual ethical issues and play an effective role in identifying problems without needing to escalate concerns formally. Staff need to know to whom they can go with concerns and feel that they will be listened to and supported if they do so. The initial Francis report on Mid Staffordshire NHS Foundation Trust and the Serious Case Review into abuses at Winterbourne View hospital for vulnerable adults document the risks in the health service when such a culture is not present (figure 8).

52 ACAS, *Bullying and harassment at work: A guide for managers and employers*, July 2011, p.3.

53 On a related point, the Director of Public Prosecutions (DPP) recently published new guidelines for the prosecution of people who misuse social media which aim to set a high threshold for prosecution in cases where people post "grossly offensive, obscene or false" messages. Launching the guidelines, the DPP urged "considerable caution" before bringing charges to avoid a chilling effect on free speech.

Figure 8: Examples of inappropriate ethical cultures

Mid Staffordshire NHS Foundation Trust

> "[The] *culture is characterised by introspection, lack of insight or sufficient self-criticism, rejection of external criticism, reliance on external praise and, above all, fear. I found evidence of the negative impact of fear, particularly of losing a job, from top to bottom of this organisation... Such a culture does not develop overnight but is a symptom of a long-standing lack of positive and effective direction at all levels*."

Winterbourne View Hospital

> *"There is little doubt that some staff were scared of the patients and of their peers with some adopting the behaviour of their peers. However, not everyone did so. Some opted to leave having disclosed their concerns to their managers, to patients' relatives and/ or to their own relatives... It is dismaying that the ordeals and concerns of such staff as well as those who chose to leave were not harnessed as a catalyst for improvement. It is dismaying too that the staff's personal sense of what was the right thing to do in delivering safe and effective care did not prevail. To its cost, Winterbourne View Hospital did not nurture a culture in which staff were encouraged to do the right thing."*

[Sources: Robert Francis QC (Chairman, *Independent inquiry into care provided by Mid Staffordshire NHS Foundation Trust January 2005 – March 2009*, HC 375-I, February 2010, vol.1, p.184; and Margaret Flynn and Vic Citarella, *Winterbourne View Hospital Serious Case Review*, July 2012, p.141.]

4.31 For situations where staff feel they have exhausted any informal means of raising their concerns and have not succeeded in resolving them, organisations need to establish and publicise formal routes for raising and escalating concerns.[54] A study by the University of Leeds found that effective whistle blowing procedures had a significant positive effect on the perceived integrity of organisations.[55] According to Public Concern at Work (PCAW), those who raise or escalate concerns are often stigmatised rather than rewarded.[56] This happens despite the Public Interest Disclosure Act 1998 which was intended to protect individuals who make disclosures of information in the public interest. It is difficult to assess the impact of the Act because of the confidentiality of cases taken to Employment Tribunal.

Monitoring

4.32 It is easy for the boards and senior management of organisations to mislead themselves about the standards of behaviour exhibited by their staff. Organisations need therefore to conduct periodic checks. There are a number of ways of doing this, including:

- **Self-assessment**, for example using the Audit Commission's tool the *Changing Organisational Culture Audit,* recommended by the Committee in its Tenth Report.[57]

- **Staff surveys**. The annual civil service staff survey, for example, includes questions testing staff awareness of the Civil Service Values. A report by the PwC Center for Board Governance recommends that, especially in geographically dispersed organisations, regular surveys be conducted asking employees about the example they see management setting.[58] Done well, such surveys can provide management with an accurate picture of their organisation and provide an outlet for staff to report any practices with which they are uncomfortable. Boards should follow up the results of such surveys.

54 The Rt Hon Lord Justice Leveson identified the importance of procedures for raising and escalating concerns, saying: *"I was struck by the evidence of journalists who felt that they might be put under pressure to do things that were unethical or against the code. I therefore suggest that the new independent self-regulatory body should establish a whistle-blowing hotline and encourage its members to ensure that journalists" contracts include a conscience clause protecting them if they refuse"* (The Leveson Inquiry, executive summary, paragraph 64).

55 Jim Baxter, James Dempsey et al., *Real integrity: Practical solutions for organisations seeking to promote and encourage integrity – briefing,* 2012.

56 PCAW, *Where's whistleblowing now?: Ten years of legal protection for whistleblowers*, 2010, p.12.

57 Tenth Report, recommendation 31.

58 PwC Center for Board Governance, *Board effectiveness: What works best?*, December 2011, p.28.

- **External audits**, such as the Public Appointments Commissioner's audits of departmental policies and practices in appointments to establish whether his code of practice is being observed.

Figure 9: External audit identifying standards issues: Ynys Môn (Isle of Anglesey) County Council

In early 2009, following allegations of bullying and concerns about the decision-making of Anglesey's Planning Committee (which frequently went against the advice of statutory officers), the Welsh Audit Office reported an "erosion of trust" and a breakdown in communications between senior officers and the ruling coalition on the Isle of Anglesey. There was concern that these standards issues were impacting on the service delivery of the local authority.

A full inspection of corporate governance at the County Council by the Welsh Auditor General during 2009 resulted in a highly critical audit report. In response the Welsh Assembly Government appointed an interim managing director and recovery board to oversee the Council. A subsequent audit report found that this had been unsuccessful "in producing a sustainable recovery from [the] long history of weak governance". The Welsh Assembly Government then appointed five commissioners to take over the running of the council from local councillors.

In September 2012 the Welsh Local Government minister reported that this second intervention had succeeded in establishing a sustainable improvement at the Council, and that the Commissioners would be either decommissioned or moved to part-time roles. He warned however, that the actions of the Council would remain under close scrutiny.

[Sources: Welsh Audit Office, *Annual Letter – Isle of Anglesey County Council*, January 2009, Welsh Audit Office, *Corporate Governance Inspection – Isle of Anglesey County Council*, July 2009, Welsh Audit Office, *Special Inspection: Corporate Governance Re-inspection – Isle of Anglesey County Council*, March 2011 and Ruth Keeling, "Anglesey intervention steps down a notch", *Local Government Chronicle*, 26 September 2012.]

Governance

4.33 Standards of behaviour are, or ought to be, a key concern for the boards of all organisations, in whatever sector. As one participant in our private sector seminar put it, where ethical standards are concerned, a crack at the top of an organisation can rapidly widen into a chasm at the bottom. Ethical standards issues should be included as regular items on board agendas or formally delegated to audit and risk committees for referral to the board as appropriate. Risks associated with poor standards should be included in risk assessments, and, where appropriate, risk registers. Mitigating strategies should be developed and monitored. There may also be a case for periodic intrusive challenge of ethical standards in different parts of the organisation.

Figure 10: Governance failings impacting on standards: the Nursing and Midwifery Council

In early 2012 the Department of Health asked the Council for Healthcare Regulatory Excellence (CHRE) to look at the conduct of the Nursing and Midwifery Council (NMC) after concerns were raised about how it ensured NHS nurses and midwives were fit to practise.

The CHRE's final report, published in July 2012 found that confusion over the NMC's regulatory purpose, lack of clear, consistent strategic direction, unbalanced working relationships and inadequate business systems had led to failures at the regulator. The report highlighted weaknesses in governance, leadership, decision making and operational management together with a passive, hierarchical culture of "resigned resilience".

It concluded:

> *"A regulator is charged with two key responsibilities: to protect the public and to uphold public confidence. In the NMC's case, this means to uphold confidence in the practice of nurses and midwives. The NMC has continued to carry out its public protection duties, although not as well as it should but, as its stakeholders make clear, it is not inspiring confidence in the professions or in professional regulation*."

[Source: CHRE, *Strategic Review of the Nursing and Midwifery Council: Final Report*, July 2012, p.4.]

4.34 Some of the participants in our private sector seminar suggested that the importance of boards taking an active interest in standards of behaviour in their organisations was better recognised in some parts of the private sector than it was in the public sector, largely because of potential impact of reputational issues on the bottom line. There are examples of ethical values and concerns rising up board agendas – and there are bound to be lessons which could be learned across the sectors. But we are not aware of any systematic attempt to compare approaches between commercial and public life.

Ethical issues should feature regularly on the agendas of the boards of public bodies and, where appropriate, on risk registers. All such boards should consider whether ethical risks have been adequately addressed and actively monitor standards of behaviour throughout their organisations, either themselves, or through their audit and risk committees.

Many organisations delivering public services, including those voluntary, private sector, mutual or social enterprise organisations taking on contracts from the public sector, already regularly assess how well they measure up to best practice in ethical governance. All organisations need to ensure that they actively review their current practices as a matter of routine, making sure that they consider all those factors affecting individual behaviour, including recruitment processes, appraisal and reward structures, leadership and contemporaneous prompts to good behaviour alongside formal codes and sanctions for poor behaviour.

Leadership

4.35 The place of leadership among the seven principles has sometimes been misunderstood. It is not a call for all public servants to be leaders. It refers instead to the importance of public servants demonstrating the other six principles in their everyday work, thereby providing an example to each other and helping create a culture in which high standards are the norm. Lord Nolan thought, and we agree, that the principles of public life, including exemplifying standards, were the responsibility of "all who serve the public in any way".[59]

59 First Report, p.14.

4.36 Exemplifying high standards is particularly important for those in management positions. It is even more so for those at the very top, because it is they who set the tone for an organisation. As a focus group participant put it:

> *"Isn't it a question of leadership? I mean at the end of the day if the top aren't honest then the bottom aren't..."*.[60]

Lord Justice Leveson made the same point in his report:

> "*...in a hierarchical organisation such as the police, the tone is set from the top, and how leaders behave will have an obvious filtering effect right through the force."*[61]

4.37 Staff are usually well aware of how their seniors behave. At every level they need to know with absolute clarity what behaviours are acceptable and what are not, what will be supported and what will not, and what will help or hinder their own careers. The clearest and most powerful signals will always be the personal behaviour of senior managers, not what they say. In her review of the relationship between the Metropolitan Police and the media, Elizabeth Filkin identified an inconsistency between the behaviour of senior managers and their expectations of their staff:

> *"I am concerned by the extent to which police officers and staff feel that some of their senior leaders abide by a different set of rules... There has been no clear standard set by the senior team for police officers and staff to use as a guide for their own behaviour and in some instances the standards set have been poor and have led to consequent damage."*[62]

4.38 The psychological literature confirms the influence of peer behaviour on one's own actions and the superiority of behavioural over injunctive norms.[63] Strong leadership through personal behaviour is even more effective when staff see that in practice the behaviours being modelled are also those which are rewarded.

4.39 Independent members of boards have a particular responsibility to hold up a mirror to behaviour within organisations and to challenge behaviour they see as inappropriate, having the benefit of bringing an external perspective to bear. To fulfil this role they need to ensure that they have accurate information about actual ethical standards within their organisation, not only data filtered through executive board members.[64]

4.40 Some organisations have adopted the strategy of appointing a specific person with responsibility for advising on and championing ethical issues,[65] which may be useful provided it does not lead others to abrogate their own personal responsibilities or "park" the issues too far down the organisational hierarchy. Lord Justice Leveson identified the absence of any such person as contributing to the "failure of systems of management and compliance" at News International, commenting that:

> *"None of the witnesses were able to identify who was responsible for ensuring compliance with an ethical approach to journalism*."[66]

4.41 Senior managers should be held personally accountable for standards of behaviour in their organisations, just as they are for performance and value for money. There is a strong case in our view, for symbolic as well as substantive reasons, for requiring accounting officers personally to sign assurances about ethical standards in the same way as they do financial accounts or the new accountability system statements

60 *Qualitative research on public perceptions of ethical standards in public life*.
61 The Leveson Inquiry, executive summary, paragraph 89.
62 *The ethical issues arising from the relationship between the police and media*, p.39.
63 Francesca Gino, Shahar Ayal and Dan Ariely, "Contagion and differentiation in unethical behavior: The effect of one bad apple on the barrel", *Psychological Science*, 20(3), 2009, pp.393–8; and Cristina Bicchieri and Erte Xiao, "Do the right thing: But only if others do so", *Journal of Behavioral Decision Making*, 22(2), 2009, 191–208.
64 The PwC Center for Board Governance provides some examples of how Board members can find out what is really happening in their company in *Board Effectiveness – What Works Best?*
65 This was a recommendation made by Elizabeth Filkin in *The ethical issues arising from the relationship between the police and media.*
66 The Leveson Inquiry, executive summary, paragraph 10.

developed as a consequence of the planned abolition of the Audit Commission.[67] In such statements they should attest that they have, as far as possible, satisfied themselves about the adequacy of their organisation's arrangements for safeguarding high standards. These arrangements should be proportionate to the size and nature of their organisation. They are likely to include the elements discussed earlier in this chapter: clear statements of principles effectively translated into codes of conduct of which all staff are aware, effective recruitment, induction, training and performance management procedures reflecting the organisation's ethical values, effective leadership and strong governance processes designed to ensure that the board is aware of and actively manages any ethical risks arising. The assurances given should be subject to some form of occasional external scrutiny.

Permanent secretaries and chief executives of all organisations delivering public services should take personal responsibility for ethical standards in their organisations and certify annually in their annual report or equivalent document that they have satisfied themselves about the adequacy of their organisation's arrangements for safeguarding high standards.

Leadership in legislatures

4.42 In the Committee's Eighth Report our predecessors noted:

> "*...the importance of leadership in setting high ethical standards. Parliament's supreme stature as the sovereign legislature gives it particular responsibilities in this area. People in all walks of life look to Parliament to set the example through its own regulatory system*."[68]

4.43 Surveys and studies of ethics and standards have repeatedly shown that the public expect their Parliaments to act as exemplars, and for legislators to live up to the standards they require of others. One of our focus group participants told us of the disillusioning effect on the public when MPs failed to meet expected standards:

> *"It's because* [MPs] *set an example isn't it? They're supposed to be there to set an example and when they are naughty then the whole idea just goes out the window."*[69]

4.44 A lesson about leadership which emerged particularly strongly from our review in relation to ethical standards in legislatures was the importance of ethical champions within institutions willing to challenge inappropriate behaviour and promote the standards to which their organisation aspires. Such ethical champions can ensure that ethical issues remain high on agendas. They could not be only those with an official responsibility for promoting standards. However, the position of a champion is a delicate one, particularly where they are self-appointed. They will not always be readily welcomed. There could also be a risk that ethical matters come to be seen as the preserve of the champions rather than, as they should be, an essential responsibility of all, especially those in leadership positions.

4.45 In Scotland we were told by a number of interlocutors that the late Donald Dewar had played a key role in ensuring that the new Scottish Parliament did not repeat the mistakes of Westminster in relation to standards. In Wales we were told that the previous reputation and eminence of the Commissioner for Standards had been key factors in establishing him as a figure of authority on standards issues. Both individuals could be seen as examples of standards champions. By contrast Northern Ireland continues to struggle to emerge from its complex and troubled recent history reflected in 30 years of conflict. This has inevitably inhibited the prioritisation of ethical standards in political life. The former Interim Commissioner for the Northern Ireland Assembly told us there is a need to support standards champions in the Assembly and in all areas of public life. He suggested political parties can play a critical role in this arena by giving clear

67 Accountability system statements are intended to be used to hold each department to account for its distribution of resources through grants and contracts to a range of public and private bodies (including NDPBs, voluntary sector organisations and private companies). The purpose of the statements is to make departmental Accounting Officers personally responsible for providing these assurances in a way which is consistent with the Government's localism and decentralisation agenda.

68 Eighth Report, p.15.

69 *Qualitative research on public perceptions of ethical standards in public life*.

priority to the importance of public duty through demonstrating their continuing commitment to the relevance and importance of the seven principles.

4.46 Numerous potential sources of ethical leadership can be identified in the House of Commons, including the Speaker, the Standards and Privileges Committee, the Parliamentary Commissioner for Standards, the whips and party leaders, the Leader of the House, the House of Commons Commission and the Clerk of the House. This might lead one to suppose that further ethical champions would be superfluous. But the numerous potential sources of ethical leadership did not prevent a collective ethical blind spot where MPs' expenses were concerned. Nor, despite numerous inquiries and investigations into All-Party Parliamentary Groups in recent years, have questions about their role and the potential for paid advocacy arising from their commercial sponsorship yet been resolved.[70]

Summary

- Organisations need codes of conduct, tailored to their particular circumstances, to supplement their ethical principles.
- Codes do not take precedence over principles. If an action offends against a principle it is wrong even if it can be made to appear to be consistent with the relevant code.
- To be effective codes need to be relevant, proportionate and straightforward.
- Codes should be framed positively, and in the first person.
- Codes do not have an impact simply by existing. Principles and rules are necessary but not sufficient to create high standards. Organisations also need the right culture, effective monitoring and strong leadership.
- The process of embedding principles starts with recruitment and induction and should continue with training, contemporaneous prompts and self-assessment.
- It is important there are processes in place to allow staff and board members to raise and escalate concerns and to be supported when doing so.
- There need to be visible incentives for good behaviour and sanctions for bad behaviour.
- Robust ethical cultures need to be led from the top by leaders who model the right behaviours.
- Individuals at all levels of an organisation need to be prepared to speak up and challenge inappropriate behaviour when an institution's integrity is at risk. Independent board members and governors have a particular responsibility in this regard.
- What people see others doing is much more important than what they hear them say.
- Permanent secretaries and other accounting officers should be as accountable for standards of behaviour in their organisation as they are for performance and value for money.

70 Including reports by the House of Commons (Services) Committee in 1985, the Select Committee on Members' Interests in 1985, the Administration Committee in 1996, the Committee on Standards and Privileges in 2006 and 2009, comment from the Parliamentary Commissioner in his 2012 mid-term review of the Guide to the Rules, and a joint Commons and Lords working party under the chairmanship of the Rt Hon Jack Straw MP in June 2012.

Chapter 5: Ethical regulation

Introduction

5.1 In this chapter we address the issue of ethical regulation, drawing on developments and lessons from the field of regulation more broadly.

5.2 Prime responsibility for the maintenance of high standards in public organisations must always lie with individuals and organisations themselves. The public tend, however, to be cynical about self-regulation. As one focus group participant put it:

> *"I think when people investigate themselves, like the MPs, when they investigate their own expenses... I don't think it gives you a lot of confidence that, actually, things aren't being sort of brushed under the carpet."*[71]

5.3 This scepticism is not irrational. History provides too many examples of failure where self-regulation is the only form of regulation. The Nolan Committee argued that robust, independent scrutiny was an essential requirement for high standards. We agree. As long as it is not seen as removing responsibility from the organisation itself, such scrutiny can both help organisations avoid becoming complacent or self-serving and provide greater assurance to the public.

External scrutiny

5.4 The requirement for independent scrutiny can sometimes be met, in part, by the injection of an outside element into an organisation's own processes, as is now the case for most of the professions.[72] The General Medical Council for example, has, over the years, introduced an increasing lay element into its deliberations about the fitness to practise of doctors. Since 2009 it has been composed of an equal number of medical and lay members. We ourselves recommended in our Twelfth Report that lay members be added to the House of Commons Standards and Privileges Committee.[73] We are pleased that that recommendation has now been implemented.

5.5 Even with a strong independent element, however, self-regulation has often proved insufficient.

5.6 Since 1995 a number of regulators have been created to deal with gaps identified in existing arrangements. These regulators include the Standards Board for England, the Public Appointments Commission, The Electoral Commission, the Parliamentary Commissioner for Standards, the Lords Commissioner for Standards and the House of Lords Appointments Commission. Equivalent bodies to some of these have been set up in Scotland, Wales and Northern Ireland. A number of other regulators, including the Civil Service Commission, have had their remits changed or powers refined over the same period.

71 *Qualitative research on public perceptions of ethical standards in public life*.

72 A large number of research, academic, medical, legal and other professional bodies now also have ethics committees which are specifically tasked to address the ethical issues arising in their areas of expertise.

73 Committee on Standards in Public Life, *MPs' expenses and allowances: Supporting Parliament, safeguarding the taxpayer* (Twelfth Report), Cm 7724, November 2009, recommendation 51.

5.7 Few of these bodies have been immune from criticism. The Committee has thought it necessary to revisit two of the larger ones ourselves in later reports.[74]

Characteristics of effective regulators

5.8 Regulators tend to be most effective when there is widespread public agreement that regulation is required (as in the field of food standards), and less effective where that is not the case. The principles of good regulation have been developed in a number of different contexts over the last few years.[75] They have been shaped by simultaneous pressures for lighter touch regulation (amid concern about the burden of compliance costs), and for more effective regulation (in the light of concerns about inadequacies in areas as diverse as children's services, health, social care and financial services). The principles apply as much in relation to the regulation of standards of behaviour in public life as they do to other areas.

5.9 To be effective ethical regulators, like other regulators, need to:

- **be proportionate and targeted:** Regulation should only be introduced where its aims are clear, and should focus on the problem or risk identified (figure 11). Regulators operating in the same sector should work together to ensure their regimes are consistent, share information and avoid excessive bureaucracy. Disproportionate or excessive regulation is damaging not only because of the unnecessary costs it imposes on those being regulated but also because the irritation it causes can damage the legitimacy of the regulator. We have already referred to the original over-engineering of the Standards Board for England, which contributed to the demise of its successor body in 2012. Other regulators have been criticised in the past for "mission creep" (for example the Audit Commission) or for losing focus on their core remit. In our Eleventh Report, for example, we argued that:

  "The very wide breadth of the [Electoral] *Commission's mandate has led to a concentration on "softer" issues such as policy development and voter participation work at the expense of a "harder edged", more contentious regulatory and advisory role*."[76]

  It is worth noting that some criticism of regulation as excessive can be based on an overly rosy view of prevailing standards of behaviour.

- **be risk-based:** Regulators should allocate their resources according to an assessment of the risks which they identify and monitor, being prepared to take robust decisions about where to focus their efforts. Unrealistic public and political expectations of zero-failure regimes can sometimes make this difficult. Risk-based prioritisation becomes even more important when resources are being reduced. It can also help to avoid a box-ticking mentality, which can easily be fostered by a rules-based approach to regulation. A box-ticking approach creates a danger of regulators and those they regulate abrogating their responsibility to use their own judgement in relation to the ethical issues they face.

- **be transparent:** Regulators should be open within the limits of what is permitted by data protection and other legislation. We have previously suggested, for example, that the Advisory Committee on Business Appointments (ACoBA) would command greater public confidence if it did more to advertise the extent to which appointments are not taken up because of the advice it has given (including informally).[77]

- **be accountable:** Regulators should be prepared to justify their decisions and be open to public scrutiny. Accountability is a necessary counterpart to independence.

74 The Standards Board in our Tenth Report and the Electoral Commission in our Eleventh Report (Committee on Standards in Public Life, *Review of the Electoral Commission* (Eleventh Report), Cm 7006, January 2007).
75 See for example: Better Regulation Task Force, *Regulation – Less is more: Reducing burdens, improving outcomes – a BRTF report to the Prime Minister,* 2005; and Philip Hampton, *Reducing administrative burdens: Effective inspection and enforcement*, 2005.
76 Eleventh Report, p.3.
77 Committee on Standards in Public Life, response to Government consultation on a Statutory Register of Lobbyists, April 2012.

Figure 11: Public Accounts Committee analysis of the Care Quality Commission

A recent report from the House of Commons Public Accounts Committee on the Care Quality Commission demonstrates the potential problems which can arise when Parliament establishes a regulator with too many responsibilities and insufficient clarity about where its regulatory focus should lie:

> *"The Commission has more responsibilities but less money than its predecessors... It is overseen by the Department of Health (the Department), which underestimated the scale of the task it had set in requiring the Commission to merge three bodies at the same time as taking on an expanded role... Neither the Commission nor the Department have defined what success would look like in regulating health and adult social care. This makes it hard for us to know whether the Commission has the resources it needs to operate effectively. In addition, while the Commission reports what it does, it does not measure the quality or impact of its work. Where information is available, it is not presented in a way that allows the public to make meaningful comparisons between care providers. As a result, the public are unclear what the Commission's role is and lack confidence that it is an effective regulator."*

[Source: House of Commons Committee of Public Accounts, *The Care Quality Commission: Regulating the quality and safety of health and adult social care* (seventy-eighth report of session 2010-12), HC 1779, March 2012.]

- **be consistent:** Much of the controversy surrounding the work of the Prime Minister's Independent Adviser on Ministers' Interests, for example, has focused on perceived inconsistencies in the Prime Minister's use of his Adviser to investigate allegations that ministers have broken the Ministerial Code.
- **pay attention to public opinion** in judging what standards of behaviour are appropriate. They also need to be prepared to go against public opinion where that appears to be justified, carefully explaining, of course, why they are doing so.
- **communicate** with those they are regulating, but also the public more generally, about the standards they are promoting and why they are important, ensuring that they have adequate media-handling skills.
- **be willing to use their discretion** to refuse to investigate trivial issues. One of the reasons why the local authority standards regime in England became so unpopular was the unwillingness of some local authority monitoring officers to dismiss trivial complaints. By contrast, there are no plans to abolish the equivalent standards regime in Wales, where all complaints fall to be investigated by the Local Government Ombudsman.
- **achieve clarity about what falls within their responsibility** and what does not. The Electoral Commission, for example, has sometimes been unfairly criticised for not pursuing possible cases of electoral fraud when that responsibility actually falls to the police.
- **have a range of appropriate and timely sanctions at their disposal**. The Political Parties and Elections Act 2009, for example, gave the Electoral Commission civil sanctions which it could apply in cases where it had previously only had the option of referring cases to the police for criminal prosecution. Some other regulators do not, in our view, have an appropriate range of proportionate and timely sanctions available to them. Many members of the House of Lords have acknowledged a weakness in the arrangements for preserving standards in the House of Lords in that no powers exist permanently to prevent peers who have behaved inappropriately from sitting and voting in the House. They have called for this to be remedied. ACoBA feels unable to recommend delays of more than two years in public office-holders taking up appointments in areas related to their previous activities because of a concern that this might amount to restraint of trade. In our view there may be appointments for which the delay should be greater than that.

- **be robustly independent** of those they regulate, which has implications for the way in which they are appointed. Perceptions of independence can be buttressed by putting regulators on a statutory basis. Some existing regulators are statute-based (for example the Electoral Commission and the Independent Parliamentary Standards Authority), but a majority currently are not. We do not necessarily believe that all regulators need a legally binding foundation, although it may be helpful in buttressing their independence and giving force to sanctions. The appropriate footing for each regulator needs to be considered on a case by case basis.

5.10 Lord Justice Leveson identified many of the same key characteristics in specifying the nature of the new press regulatory regime he proposed to replace the current system of self regulation:

> *"...effectiveness, in terms of credibility and durability with both press and the public; fairness and objectivity of standards; independence, transparency of enforcement and compliance; effective and credible powers together with remedies; and the need for sufficient funding taking into account the market constraints... with the additional point that any regulatory regime must itself be accountable."*[78]

5.11 In establishing any new regulator it is the responsibility of the Government and Parliament to consider with care the right balance between independence and accountability. Accountability is the counterpart of independence. Independence does not mean that a body should not be held to account, but the nature of its accountability should be proportionate and clear from the start. That implies a settled, cross-party understanding of the mission, purposes, resources and life-span of the regulator from the outset. In the past such a consensus has on occasion proved more difficult to achieve than might be expected. Regulators have sometimes been established hastily, in response to serious ethical controversies or as a result of expediency and budgetary constraints. Important details have been left to be determined later.

5.12 An underpinning of prior cross-party agreement is necessary to ensure that the proper accountability to which all regulators must be subject is not overlain by continuing political controversy. Accountability which is overlain by partisan arguments, not about performance but about the mission and resources of the regulator, is likely to damage the public's confidence in the regulator's effectiveness and credibility. Top quality public servants will be less likely to commit to an organisation that may have a limited life and constantly faces unjustified criticism. Recruitment and retention of staff, poor morale, and endemic arguments over priorities and procedures can seriously damage a regulator's performance.

5.13 It is apparent that problems of this kind have affected a number of regulators established in the last two decades. Important lessons should be learned from the experience.

5.14 All regulators should be subject to regular external scrutiny to ensure they continue to meet the criteria for good regulation set out above. Many regulators are currently subject to triennial review which, in our view may be too frequent, creating the risk of unnecessary expense and distraction for the agency concerned.

78 The Leveson Inquiry, executive summary, paragraph 50.

Summary

- Prime responsibility for the maintenance of high standards should always lie with individuals and organisations themselves, in particular with their leadership.
- There can, however, be a great capacity for self-deception and the public are often rightly suspicious of self-regulation. There is also a need for independent external scrutiny.
- Ethical regulation should always follow the principles of good regulation. It should be proportionate, targeted, risk-based, accountable and consistent.
- Regulators need to be prepared to use their discretion in refusing to investigate trivial issues, avoid box-ticking and have an appropriate range of sanctions at their disposal.
- Regulators should be independent and seen to be so. The way they are appointed is therefore important.
- When establishing new regulators Parliament should ensure that there is clarity and cross-party agreement about their mission, purposes, resources, life-span and accountability.
- All regulators should be regularly scrutinised to ensure that they continue to meet the criteria for good regulation, avoid mission creep and remain fit for purpose. Reviewing them too regularly, however, risks unnecessary expense and distraction.

Chapter 6:
Public confidence, trustworthiness and ethical standards

Introduction

6.1 Trust and confidence in public office-holders and institutions are important for the functioning of modern democracies. This is particularly true in the case of elected office-holders. People need to be able to rely on the processes by which they are administered and governed. In the absence of trust in their basic integrity, public institutions lack legitimacy. That weakens their capacity to command compliance in areas such as public order, taxation and health and safety. Transactions between individual citizens and the state become much more difficult, and social cohesion may come under threat.

6.2 No one can seriously argue that we have reached anything like such a position in the United Kingdom. Relative to many other countries our public institutions possess a high degree of integrity. Moreover, a degree of scepticism on the part of the public towards its representatives may be healthy for democracy. But the decline in public confidence in some of our public office-holders and institutions in recent years has been both marked and worrying.

6.3 The original Nolan Committee stated that one of the aims of its first report was to rebuild public confidence in the holders of public office, which it believed had been eroded.[79] The Committee did not, however, make any recommendations specifically about confidence. It seems to have assumed that improvements would follow from its other recommendations, namely:

- the establishment of new mechanisms to ensure high standards;
- greater assurance for the public from the fact the mechanisms were in place; and
- fewer breaches of those standards as a result of the mechanisms.

6.4 The evidence of the past 18 years shows the Nolan Committee was wrong to assume that raising standards of behaviour alone would increase public trust and confidence. As we record in **Chapter 2**, we believe that in many areas ethical standards have improved over this period. But reported levels of trust in public institutions as measured by surveys of public opinion have declined.[80] If, as seems to be the case, people's observations of how others behave will affect their own behaviour, then it matters greatly how people believe those in public office behave. Hence the emphasis in survey work commissioned by the Committee on what people believe about those in public office, rather than a simple focus on trust.

6.5 In analysing our surveys we have commented on the complexities of measuring concepts such as trust and have sought to develop more robust ways of understanding how people judge those who govern them. Surveys measure only what people say in response to questions about issues which are complex and multi-dimensional. This means that other evidence must also be considered, such as the way in which

79 First Report, p.16.
80 See for example: Committee on Standards by Public Life, *Survey of public attitudes towards conduct in public life 2010*, September 2011; and Hansard Society, *Audit of political engagement 9: Part 1*, April 2012.

people actually behave in relation to public institutions (although there are difficulties in assessing this in relation to services from which they cannot opt out, like law and order or taxation).

6.6 It has been suggested to us that because public trust and confidence as measured by polling evidence provide an unreliable indicator of actual standards of behaviour, we should not pay them too much attention. Some MPs have told us of their belief that the public will always hold MPs as a group in low esteem, for a number of reasons, and that there is not a great deal that can be done about it.

6.7 We do not accept it is inevitable that reported public confidence in national politicians should be as low as it is in the UK today. Survey results from other countries prove that trust in politicians does vary and that politicians can achieve higher levels of trust. GfK Custom Research published findings from an international survey in June 2011 which showed the percentage of respondents expressing trust in politicians as a professional group ranged from 8 per cent in Romania and the Czech Republic to 39 per cent in Sweden compared with 14 per cent in the UK.[81]

Increasing public confidence

6.8 Increasing public confidence is not easy. It is a more complex and multifaceted task than the first Nolan report implied. Trust may be inconsistent even within a single relationship. A patient might trust their doctor to make the right diagnosis but not to provide the best value for money service, or to maintain confidentiality. Moreover, while it may be possible to identify characteristics which make an individual or organisation more or less trustworthy, public confidence may be affected by a range of external factors over which the individual or organisation may have little control.

6.9 In addition, people can often feel a particular sense of trust in someone with whom they identify, even beyond the point where that trust is justified. We tend to trust the leader of "my community" but not the leader of "the other" community. Individuals with whom we feel a sense of identification inspire more trust than a more amorphous group, especially one which includes people that we positively do not like. So, for example constituents will express trust in their own MP, but make it clear that he is different from "politicians as a whole", whom they do not trust.

What makes someone trustworthy?

6.10 To judge whether someone is worthy of their confidence people need information about their behaviour. In some circumstances the information can be gained through first-hand experience. Where this is unavailable, people are likely to rely on the reported experience of people they know, including colleagues, family and friends. If this is absent it is more likely that views will be formed on the basis of other third party sources of information including the media. It appears that the greater the distance between an individual and the relevant person or institution, the harder it is for them to form a strong perception of trust. Participants in our focus group research identified their own lack of knowledge about MPs as contributing to their difficulty in trusting them:

> *"I mean MPs we did pick on a bit because we're not quite sure, that's a very grey area of what they do and what they don't do."*[82]

6.11 Logically a key factor affecting whether someone is perceived to be trustworthy must be others' perceptions of their behaviour, and crucially, whether this meets expected standards. Where institutions are concerned, trustworthiness relates not only to the behaviour of their members but also to the assurance they provide about their mechanisms for ensuring the fairness of their decision making processes, their treatment of individuals as equal members of the community, and their ability to show that behaviour is of a high standard, and will be dealt with if it falls short.

81 GfK Group press release, "Trust in charities and judges rising internationally", 17 June 2011.
82 *Qualitative research on public perceptions of ethical standards in public life*.

6.12 Behaviour is more important than statements about behaviour or beliefs. So, for example, it may be helpful in some ways for a hospital to list its core values on the wall of reception so that patients see them as they enter; but in judging ethical standards patients are likely to give more weight to their experience of the behaviour of individual clinicians and other staff. Correspondingly, published information about a hospital's assurance procedures is likely to carry less weight than the speed and efficiency with which the hospital detects and deals with poorly performing members of staff. As one focus group participant said:

> *"You know the ethics of the organisation as portrayed in their code of practice or whatever else are always very, very good, you know they always gave mission statements and all the rest of it to the highest standard but the actual delivery can quite often not have been the same."*[83]

6.13 A second factor is the consistency or reliability of behaviour which an individual or institution displays. Single transgressions can damage the public's trust in an individual, and an individual's bad behaviour can damage the trust placed in the institution to which they belong. The effect can be magnified if the media exaggerate the extent of a transgression. Focus group participants also commented on the importance of those responsible for setting standards maintaining those standards personally:

> *"...we said that it would be a bigger deal if you've a judge break the law than if you had a fireman that had, so sort of the practice what you preach thing really."*[84]

It seems that hypocrisy is particularly damaging to trust.

6.14 A third factor affecting perceptions of trustworthiness is accountability. An individual who is willing to account for their actions is generally seen as more trustworthy than one who is reluctant to do so. However accountability needs to be used intelligently as it can also have a detrimental effect:

> *"The pursuit of ever more perfect accountability provides citizens and consumers, patients and parents with more information, more comparisons, more complaints systems; but it also builds a culture of suspicion, low morale and may ultimately lead to professional cynicism, and then we would have grounds for public mistrust."*[85]

6.15 Intelligent accountability may be easier to talk about than to achieve, but implies:

- putting out good information in intelligible and adaptable formats, not just data;
- creating a genuine dialogue with stakeholders (including the media);
- building up a degree of trust over time that creates a virtuous feedback loop in which stakeholders can see policies being influenced and changed as a result of their input; and
- being open, particularly in relation to reporting problems to avoid a culture of blame.

6.16 An individual or organisation which is perceived to be open with information about its beliefs and actions is more likely to be seen as trustworthy than one which resists disclosing information. Focus group participants saw clear, good quality communication processes that "de-mystified" the work of institutions together with easily accessible, transparent sources of information as one of the two most important factors in increasing their confidence in public office-holders, the other being good leadership.[86] Although people admitted that they would not necessarily access this information, they felt it was important to know it was available should they decide to do so.

6.17 Transparency can, however, have some perverse effects. The Justice Select Committee's post-legislative review of the Freedom of Information (FOI) Act concluded that while the greater access to public information

83 Ibid.
84 Ibid.
85 Onora O'Neill, "Called to account", lecture 3 from *A question of trust* (Reith lectures 2002).
86 *Qualitative research on public perceptions of ethical standards in public life.*

which the Act provided had led to an increase in accountability, there had been no corresponding increase in public trust in public authorities. The Committee noted that:

> *"Evidence of irregularities, deficiencies and errors is always likely to prove more newsworthy than evidence that everything is being done by the book and the public authority is operating well. In these circumstances, the expectation of a substantial increase in public trust following the introduction of the Act was always going to prove unrealistic."*[87]

External factors affecting confidence

6.18 Judgements about where to place confidence are not based only on direct experience. They are mediated by perceptions shaped by a number of factors. Some of the key ones are as follows.

- **The media:** In the course of our review we heard that the prospect of seeing their actions reported – or mis-reported – in the media can discourage public office-holders from sensible risk-taking, innovation or brave decision making. We have also heard complaints that the media distort perceptions of actual standards by focusing on negative stories or conducting "witch hunts" and that the agendas of regulators are often shaped by the "court of public opinion" rather than a proper analysis of where the risks to standards lie. Even press representatives we spoke to accepted that the media's coverage of standards issues can be "haphazard" and disproportionate. The rise of social media has created an additional class of commentators who may not adhere to the same standards of proof to which we would hope professional journalists would.

  Despite the risk that actual or potential media coverage can have a negative impact, the Committee is very mindful of the important positive role that the media can play in promoting high ethical standards in public organisations. The media act as the main vehicle through which openness and transparency are made meaningful to the general public and, in some cases, escalate issues onto political agendas at local and national levels. Not only does this directly affect perceptions of trustworthiness, the prospect of media attention can have a powerful effect in deterring impropriety and conduct which is of questionable integrity (although it also provides a powerful incentive to cover up mistakes). Where misconduct appears to have taken place, media exposure frequently prompts further investigation, the imposition of sanctions and tightening of procedures to prevent repetition.

- **Regulators**: A concern expressed to us during the course of our review was that the growth of ethical regulation had itself contributed to a decline in public trust, because regulators had drawn attention to failings and problems and rarely praised those who were doing a good job. It is difficult to test the validity of this argument. The majority of regulators which have identified problems have been fulfilling their remit in doing so. Indeed many were established in response to the emergence of ethical problems following a scandal or inquiry. Few would argue that it would have been better for the problems to have remained hidden than for them to have been brought into the open so that they could be resolved.

- **Political culture:** The nature of politics in the UK is likely to affect people's perceptions of the trustworthiness of those involved in the political arena. Constant attacks on the integrity and effectiveness of one side of the political spectrum by the other make it difficult for the public to have confidence in any politician. It is clear from our research that people regard politicians keeping promises as an important part of honesty. However, the adversarial nature of politics in the UK (together with the media's tendency to present any shift in policy as a "u-turn") may make it difficult for the public to distinguish between occasions when a promise has been broken and circumstances where a politician has undertaken a sensible reassessment of options in the light of changing circumstances or the emergence of new information. There is a powerful case for more systematic consideration of how to improve people's understanding of the political process, and their awareness of the ethical issues associated with government and the provision of public services.

87 House of Commons Justice Select Committee, *Post-legislative scrutiny of the Freedom of Information Act 2000* (first report of session 2012-13), HC 96-I, July 2011, paragraph 37. See also Ben Worthy, Jim Amos et al., *Town hall transparency? The impact of the Freedom of Information Act 2000 on Local Government in England*, December 2011.

- **Other narratives:** Sometimes the trustworthiness of individuals or institutions can be affected by other narratives. We heard the view of some politicians that trust in the integrity of Parliament had been undermined by a dislike of the policies of the governing parties. Some otherwise trustworthy institutions may find it difficult to break free of strong public narratives about what they do. Health and safety issues, for example, are frequently derided in the UK, to some extent because of decisions taken by practitioners on the ground which were never intended by legislation or guidelines. This narrative may affect the Health and Safety Executive's ability to deal with real issues. In other cases the trustworthiness of some institutions can be damaged if they are criticised for not doing something which it is not in their remit to do. This often reflects a lack of clarity over their function or a weakness in their powers. We referred in the previous chapter, for example, to the fact that the Electoral Commission has been criticised for not doing more to pursue those committing potential voting irregularities, which is in fact the responsibility of the police (who themselves require evidence to Crown Prosecution Service standards). The contrary is also true: some individuals or institutions can be trusted for the wrong reasons or more than their trustworthiness would really justify. The BBC has long been seen as a highly trustworthy institution, but public confidence in the corporation has recently been shaken by allegations about its institutional failure to respond to concerns about the potentially criminal behaviour of the late Jimmy Savile.

- **Legal framework**: Laws and regulations can also affect public perceptions of the trustworthiness of institutions. In particular, regulators may be inhibited by data protection or other considerations from revealing the full extent of their activities, which might make it appear that they are less proactive than they are in reality. The Freedom of Information Act has been used by journalists and private citizens to force organisations to reveal information which was not previously in the public domain. Both the information revealed and the fact that it had not previously been released proactively may reduce the perceived trustworthiness of the organisation in question.

How can we increase public confidence in standards?

6.19 There are three obvious ways in which public institutions and office-holders can and should influence levels of public confidence.

- They should seek to improve their own trustworthiness. They should consistently and reliably demonstrate high standards of ethical behaviour, openness and accountability, and recognise that even small lapses can have a disproportionately damaging effect.

- They should establish and promulgate (or as individuals, sign up to) robust mechanisms for detecting and dealing with wrongdoing. When problems are identified they should be acknowledged and appropriate mechanisms should be employed to deal with them rapidly, openly, fairly and effectively.

- They should work constantly to increase public understanding of their role and work. The remits and activities of standards regulators are poorly understood. We are optimistic that the public would derive greater assurance if they knew more about what was being done. In the same way, the public might find it easier to trust public office-holders if they understood more about their roles.

Public office-holders and organisations should seek to improve their own trustworthiness by consistently and reliably exemplifying high standards of ethical behaviour, openness and accountability and establishing and promulgating robust mechanisms for detecting and dealing with wrongdoing. They should endeavour to increase public understanding of their role and work and should aim to create a culture which harnesses the power of the media to promote high standards and deter or expose misconduct.

Summary

- Confidence in the integrity of public institutions is an important component of a well-functioning democracy.
- Polling evidence about people's confidence in the integrity of public office-holders or public institutions may not be an entirely reliable indicator of actual levels of trust, but nor should it be ignored. Perceptions are important.
- Trust and confidence can be affected by a whole range of issues which have little or nothing to do with integrity. We need to understand these factors if we are serious about improving public trust.
- Nonetheless there is scope for improving or maintaining levels of trust and confidence by doing as much as can reasonably be done to maintain standards focusing on:
  - improving the trustworthiness of public institutions and public office-holders;
  - establishing and using effective mechanisms for dealing with problems; and
  - improving the credibility of standards watchdogs as robust independent regulators.

Chapter 7:
Current risks to ethical standards

Introduction

7.1 This chapter identifies what the Committee believes to be the most important of the current risks to ethical standards in public life. While some have been partially addressed, in a number of cases we remain unconvinced that the measures taken so far are sufficiently robust to mitigate the risks adequately. We begin with two generic risks of potentially wide application before moving on to more specific risks.

7.2 Our list is unlikely to be complete. In particular, we are conscious of a number of major inquiries which have either recently reported or are currently underway with potential implications for standards issues. These include the Mid Staffordshire NHS Foundation Trust Public Inquiry, the various inquiries announced by public bodies following allegations about the behaviour of the late Jimmy Savile and the Independent Police Complaints Commission's (IPCC) independent investigation into allegations surrounding the aftermath of the 1989 Hillsborough disaster. The Committee will follow responses to these inquiries closely and may examine in more detail any specific standards issues they raise.

7.3 We are also aware of a number of important standards issues in areas outside our remit, which are currently the subject of considerable public concern. These include the alleged behaviour of a number of banks in relation to the manipulation of LIBOR and the findings of the Leveson Inquiry into the culture, practice and ethics of the press. We intend to ensure that we identify any lessons learned by inquiries into these and other issues which have wider applicability to the public sector.

New ways of delivering public services

7.4 The first generic risk we have identified stems from the introduction of a wide range of new ways of delivering public services – clinical commissioning groups, academies, elected police and crime commissioners (PCCs) and so on. Some of these new ways of working will entail services being delivered by people not previously involved in public service, or in different roles from those they previously occupied. It was in just such a climate that Lord Nolan's committee produced their first report. It is essential to take care in all these cases to design governance structures which actively promote the right ethical behaviour.

7.5 Our review suggests that some areas of public life are giving this issue more attention than others. The recently published *Standards for members of NHS boards and Clinical Commissioning Group governing bodies in England* (figure 2) reflect the Department of Health's recognition of the need to provide ethical guidance to those involved in governance of the NHS. It remains to be seen how the standards will be promulgated and monitored. A less coherent picture of how accountability and ethical standards will be maintained has emerged in relation to the possible outsourcing of certain policing functions.

In all cases where new methods of delivering public services are being created, commissioners and providers should give careful thought to the mechanisms necessary to maintain expected high standards of behaviour and promote the seven principles of public life.

7.6 We explored our concerns about the potential risks in this area at a seminar with representatives of a number of major companies, including Serco, G4S, Balfour Beatty and Network Rail. These companies are

among those already delivering or bidding for contracts for a range of public services including prisons, policing, social housing, social care and hospitals. We were not surprised to be told by those present that they and many other private sector companies were keen to maintain high ethical standards, not least because of the possible threat to their reputation (and bottom line) of being judged inadequate in this respect. It is evident that many private sector organisations have established an infrastructure intended to support high ethical standards. As in the public sector, however, there remain questions about the extent to which they have genuinely developed the appropriate culture.

7.7 The natural place to look for requirements to promote high standards of ethical behaviour is in the specification of contracts let by the public sector for the provision of services. We found it difficult to find much evidence of this, except where the contract was to procure ethical goods (such as Fair Trade or Forest Stewardship Council certified products). As discussed in **Chapter 3**, unless the public sector does specify ethical requirements in its contracts it is unlikely that the market will operate to drive up ethical as well as quality standards and value for money.[88]

7.8 We did not have the opportunity to look into these issues in as much detail as we would have liked. It is likely that we will return to them.

Public servants designing and commissioning services should, in a consistent and proportionate way, address ethical issues throughout the procurement process. Contractors and others should acknowledge the particular responsibilities they bear when delivering public services, paid for by public money, to individuals who may not have the choice of going elsewhere.

The impact of austerity on support for standards

7.9 Our second generic concern is the potential effect on efforts to promote high ethical standards of cuts in organisational budgets resulting from the current climate of austerity. The main risk is that financial constraints may reduce management support for investment in the promotion of high ethical standards or create a temptation for organisations or individuals to cut corners. While there should be a presumption that efficiency gains in standards, as elsewhere, should be secured where possible, we must take care that the infrastructure supporting standards is not fatally undermined, nor corners cut that could undo the improvements which have been made or further damage confidence and trust. A secondary risk is that budget cuts may undermine the commitment of some individuals to public service values. We intend to continue monitoring these risks.

Specific issues

7.10 We also have a number of concerns about specific issues.

Lobbying

7.11 Concerns about lobbying are longstanding. Conducted properly, lobbying is an essential part of the process by which individuals and organisations make sure their views and perspectives are taken into account in public policy. But two main concerns are frequently expressed. In relation to the press and politicians Lord Justice Leveson concluded that these concerns amounted to "a genuine and legitimate problem of public perception, and hence of trust and confidence".[89]

- Some people might have more access than others to policymakers or legislators. Preferential access could be because of past relationships or positions, because of donations to political parties or for other reasons.

88 See also our comments in Chapter 3 on the importance of proportionality in the application of the seven principles to non-public sector providers.
89 The Leveson Inquiry, executive summary, paragraph 134.

- Too much lobbying takes place behind closed doors, so that it is not known who is influencing decisions or what they may have done to achieve that influence. Lobbying which is not transparent also means that those who take a different view have no opportunity to present alternative perspectives.

7.12 The manner of lobbying can also be a cause of concern, particularly where it is accompanied by entertainment or other inducements.

7.13 In February 2010, when still in opposition, the current Prime Minister referred to lobbying as:

> *"...the next big scandal waiting to happen. We don't know who is meeting whom. We don't know whether any favours are being exchanged. We don't know which outside interests are wielding unhealthy influence... I believe that secret corporate lobbying, like the expenses scandal, goes to the heart of why people are so fed up with politics. It arouses people's worst fears and suspicions about how our political system works, with money buying power, power fishing for money and a cosy club at the top making decisions in their own interest."*[90]

7.14 At the beginning of the new Parliament the Coalition Government began, once a quarter, to publish details of official meetings between outside interest groups and ministers and senior officials, together with information about any hospitality received in official capacities. We welcome this development. A consultation paper was subsequently published in January 2012 proposing a statutory register of lobbyists.[91] The consultation has not yet been followed up with any revised proposals. The issues are undoubtedly complex. But we share the concern expressed by the Prime Minister in 2010. We do not think enough has yet been done to address the issues he identified.

7.15 We doubt that a register of third party lobbyists is the key to further reform. We believe it would be better to build on the steps already taken to increase transparency. Greater transparency might include, for example, enhancing the level of disclosure around meetings between ministers and those lobbying on behalf of a particular interest, as proposed by the Political and Constitutional Reform Committee.[92] We note that the Government renewed its commitment to introducing a statutory register of lobbyists and increasing transparency around lobbying in its mid-term review of the Coalition published in January 2013.[93]

7.16 The UK lobbying industry has made attempts at self regulation in the past through the UK Public Affairs Council. These have not been universally viewed as a success. We do not find this failure surprising in the light of the fact there are three different professional bodies for lobbyists.[94] Lobbyists can choose which to join, or decide not to join at all.[95] In our view the industry should be required to make a further attempt to improve their self-regulation, including through a single code of practice, as part of future attempts at reform.

7.17 Concerns about lobbying have also been expressed in relation to the devolved administrations, which do not, of course, have the same range of responsibilities as the UK Parliament. They have, however, tended to be more muted there. As things stand at present the Scottish Ministerial Code requires ministers to publish details of all the events and engagements they attend, including meetings with media representatives. The Welsh and Northern Irish Ministerial Codes do not include any such requirement. There is no obvious reason why Welsh and Northern Irish ministers should not adhere to the same level of transparency as their UK and Scottish counterparts.

7.18 A draft proposal for legislation to introduce a statutory register for people involved in lobbying Scottish Ministers, Members of the Scottish Parliament (MSPs) and certain public officials, is currently undergoing

90 *Rebuilding trust in politics.*
91 HM Government, *Introducing a statutory register of lobbyists: Consultation paper*, Cm 8233, January 2012.
92 House of Commons Political and Constitutional Reform Select Committee, *Introducing a statutory register of lobbyists* (second report of session 2012–13), HC 153, July 2012.
93 HM Government, *The Coalition: Together in the national interest – Mid-Term Review*, January 2013, p.39.
94 The Association of Professional Political Consultants, the Public Relations Consultants' Association, and the Chartered Institute of Public Relations.
95 The Public Administration Select Committee commented in 2009 on the inadequacy of this arrangement (House of Commons Public Administration Select Committee, *Lobbying: Access and influence in Whitehall* (first report of session 2008-09), HC 36, January 2009).

consultation at Holyrood. The Welsh Standards Commissioner has recently undertaken a review of the issue of lobbying, the outcome of which has been reported to the Standards Committee of the National Assembly for Wales. We are not aware of any current proposals regarding the regulation of lobbying in Northern Ireland.

7.19 Concern has been expressed about the transparency of any lobbying of the new PCCs, who will be taking decisions about issues of considerable public interest, including possible outsourcing of some police functions. An analogous point can be made in relation to elected mayors. Immediately prior to the November 2012 elections the Labour Party made a commitment that their successful PCC candidates would publish details of meetings with lobbyists and private contractors.[96] As far as we are aware other parties or individuals have yet to respond to this initiative.

Political party funding

7.20 The arrangements for the funding of political parties are one of the most important outstanding standards issues. Unlike most other democracies, the UK presently places no limit on the amount any UK national who is on the UK electoral register can give to any party in any year, provided donations above £7,500 are made public on an Electoral Commission register.[97] As party memberships have declined the three main political parties have become critically dependent on a small number of wealthy individuals or organisations, including, in the case of the Labour Party, the trade unions. This financial dependency has given rise to public suspicion about the motivations of donors and about the likelihood of favours being granted in return for donations.[98] All three of the largest parties in the UK committed themselves in their election manifestos to reform of the system, with varying degrees of specificity.

7.21 In our last report in November 2011 we made 24 recommendations to address these concerns.[99] Our proposals included a cap of £10,000 a year on individual donations, changes to the arrangements for trade union affiliation fees paid to the Labour Party, a reduction in the maximum permitted expenditure on election campaigns and an increase in support from public funds. We recommended that these significant changes should not be introduced until after the next Westminster election, due in 2015, to give the parties and regulators time to adjust. We also made some more minor accounting and procedural recommendations which we suggested could be implemented more rapidly. These latter recommendations included the standardisation of political party accounts. We were pleased that, in September 2012, the Electoral Commission announced regulations that will require all parties with income and/or expenditure over £250,000 to use a standardised format for their 2014 accounts, and thereafter.

7.22 We recognise that our main recommendations pose significant problems for all three major parties. For the Labour Party they mean changing their financial relationships with the unions in a way which, though logical, has deep symbolic importance. For the Conservative Party it would mean accepting a cap set at a level which would remove much of the advantage they currently enjoy through their wealthy supporters. With a cap set as high as £50,000 the Conservative Party could probably survive without any further support from public funds. In current circumstances the other main UK parties could not easily do so. All parties fear that taking more public funds would be unpopular with the electorate.

7.23 We would not have proposed more public funding if we had thought that there was any alternative, at least in the short term, which allowed an appropriate cap on donations while still leaving the parties with sufficient funds to play their established part in our democratic system. The additional amounts involved are relatively small, possibly equivalent to no more than about 50 pence per elector per year, part of which could potentially be found by redirecting existing forms of state support.

7.24 As yet there has been no formal response to our report from the Government. We understand that discussions between the three main parties about party funding are continuing. In the meantime further

96 Rt Hon Yvette Cooper MP, "Police Commissioner elections could be the first step on a road to corruption", *The Guardian*, 9 November 2012.
97 With a limited exception in Northern Ireland.
98 For evidence see Committee on Standards in Public Life, Thirteenth Report.
99 Ibid.

damage is likely to be done to public confidence in the integrity of the political system if further revelations continue – as they are bound to do. While we note the renewed commitment to pursuing a detailed agreement on party funding made by the Coalition in its mid-term review, we are conscious that there is not a great deal of time to resolve the issue if the parties are to honour their election manifesto commitments before the next general election. They need to show courage, in the public interest.

Local government standards

7.25 Details of the recent history of local government standards are set out in figure 3. As we have argued earlier, prime responsibility for maintaining high standards of behaviour must always lie with individuals and organisations, not with external regulation. We welcome therefore the intention behind the Localism Act 2011 to encourage a greater sense of local responsibility for standards and to address some of the more vexatious and disproportionate aspects of the local government standards regime.[100]

7.26 To function effectively, local leadership and responsibility for standards requires certain conditions to be met – including strong leadership and robust, visible action against those who fall short. The Local Government Association has a particularly important responsibility in this respect. We would expect the new regime, like the previous one, to function well in those areas where party leaders are prepared to provide leadership. It is likely to do less well where such leadership is absent.[101] Past history suggests that problems are most likely in areas with monolithic political cultures and correspondingly little political challenge, where partisan rivalry is most bitter and tit for tat accusations most common, or in those predominantly rural areas with significant numbers of independent members without the benefit of party discipline.

7.27 We have other concerns about the new arrangements which apply even in those authorities where strong leadership on standards does exist. The first is that under the previous arrangements local authorities had the power to suspend members for varying periods of time as a sanction against poor behaviour. The only sanctions now available, apart from through the use of party discipline, are censure or criminal prosecution for deliberately withholding or misrepresenting a financial interest. We do not think these are sufficient. The last few years have seen a number of examples of inappropriate behaviour which would not pass the strict tests required to warrant a criminal prosecution, but which deserves a sanction stronger than simple censure. Bullying of other members or officers is one category of offence which will be difficult to deal with adequately under the new arrangements.

7.28 Our second concern is about the new and so far relatively untested arrangements for independent involvement in the disciplinary process. Under the previous arrangements allegations about poor behaviour were determined by standards committees independently chaired by individuals who were not themselves members of the local authority. Under the new arrangements every local authority must appoint at least one independent person whose views it will seek, and take into account, before making its decision on an allegation that it has decided to investigate. We doubt that this will be sufficient to provide assurance that justice is being done and, equally important, that it is seen to be done.

Where powers to regulate standards are devolved to promote local responsibility and leadership, care should always be taken to ensure that there is independent scrutiny, that the results of such scrutiny are made publicly available and that those who have responsibility for imposing sanctions have adequate legal or other powers to do so.

7.29 The new arrangements in England have not been followed in Scotland, Wales and Northern Ireland which all have smaller numbers of local authorities and differing arrangements.

100 Although many of these concerns had already been addressed by reforms introduced in 2007 by the Local Government and Public Involvement in Health Act, following our Tenth Report.

101 Not forgetting that in several prominent recent cases it is the behaviour of leaders themselves that have been under question.

- In Scotland all complaints against local authorities are investigated and determined by the Commissioner for Ethical Standards in Public Life, whose remit also covers MSPs and members of devolved public bodies.[102] The results of investigations of councillors and members of public bodies in which the Commissioner finds a breach of the code of conduct are reported to the Standards Commission. Those about MSPs are reported to the Standards, Procedures and Public Appointments Committee of the Scottish Parliament.

- In Wales complaints about the behaviour of members of local authorities are investigated by the Public Services Ombudsman before being passed either to a local standards committee or, in serious cases, to a national adjudication panel. The Public Services Ombudsman for Wales appears to be robust about deciding not to investigate cases which are trivial and told us he is encouraging local authorities to deal with appropriate cases through informal mediation instead of referring them to him. Consideration is being given to the establishment of regional standards committees to replace local ones.

- In Northern Ireland there is a voluntary code of conduct for local councillors, with no sanctions attached and no oversight. It is envisaged that long-standing proposals to reform the standards regime and introduce a mandatory, statutory code of conduct for local councillors may be introduced as part of a bill in the current session of the Northern Ireland Assembly. The new mandatory code would be administered by the Northern Ireland Ombudsman, who would also have the power to sanction members found guilty of breaking the code.

Behaviour and conduct of the police

7.30 We are conscious of a degree of public concern about the behaviour and conduct of the police arising from a number of recent cases. Recent concerns have included:

- examples of police officers soliciting payment for information and being in receipt of inappropriate levels of hospitality from media organisations which emerged in the course of the Leveson Inquiry;[103]

- the September 2012 Independent Hillsborough Panel Report, which found that police and emergency services had made "strenuous attempts" to deflect the blame for the 1989 football disaster on to fans, including the alteration of a large number of police statements,[104] and led the Government to introduce emergency legislation giving new powers to the IPCC to enable it to re-examine the actions of up to 2,400 existing or retired police officers;

- Sir Desmond de Silva's report into the nature and extent of state collusion in the murder of the Belfast lawyer Patrick Finucane in 1989, which found that employees of the state including the police, armed forces and Security Service played "key roles" in the death of Mr Finucane, that after the murder there was a "relentless attempt to defeat the ends of justice", that "senior Army officers deliberately lied to criminal investigators" and that Royal Ulster Constabulary Special Branch "were responsible for seriously obstructing the investigation";[105] and

- the dismissal of the Chief Constable of Cleveland Police for gross misconduct, and the suspension of the temporary Chief Constable of Cumbria while an investigation into allegations of misconduct took place.

7.31 Of all the areas of public life discussed, the police and politicians were the two groups subject to the greatest degree of negative comment during our focus groups, although some examples of exceptional service by individual police officers were cited.

102 Since June 2012 the Commissioner for Ethical Standards has also taken on the role of Public Appointments Commissioner.

103 It should be noted that Lord Justice Leveson concluded that these were problems more of perception than of substance: "*I am satisfied that I have seen no basis for challenging at any stage the integrity of the police, or that of the senior police officers concerned. What is, however, equally clear is that a series of poor decisions, poorly executed, all came together to contribute to the perception* [of inappropriate closeness] *that I have recognised*" (The Leveson Inquiry, executive summary, paragraph 78).

104 *The report of the Hillsborough Independent Pane*l, 12 September 2012.

105 Rt Hon Sir Desmond de Silva QC, *Pat Finucane review: Executive summary and principal conclusions*, 12 December 2012.

7.32 The Government has argued that the introduction of elected PCCs will increase the accountability of the police and increase public trust in them. Each PCC has sworn an Oath of Impartiality which covers delivery of service as well as ethical matters. Unfortunately concerns have already been raised about the fairness and transparency of appointments made by some newly elected PCCs.[106] We note that the IPCC has the power to decide how any allegations against PCCs of criminal conduct should be investigated. The newly created College of Policing will also have a potentially significant role to play in developing and implementing professional standards, including ethical standards, for the police. We intend to monitor the extent to which PCCs are genuinely open and accountable and how successfully any ethical risks (such as conflicts of interest) arising from their role are addressed.

Interchange between the public and private sectors

7.33 We welcome increased interchange of people between the public and private sectors. Such interchange creates many potential benefits. It also involves some risks. The system which regulates the take up of business appointments by former ministers and senior civil servants needs to ensure that people are able to move from the civil service to business or other sectors without suspicion of impropriety.[107] This is no easy task, particularly in the light of the decrease in civil service numbers and the increasing involvement of business in the public sector. A recent report by the Public Administration Select Committee (PASC) summarised many of the concerns which have been expressed about the current arrangements:

> *"The current Advisory Committee on Business Appointments (ACoBA) lacks adequate powers and resources, and its membership is not in keeping with its role. The way ACoBA operates makes the process opaque to applicants and does nothing to deter misleading and damaging mis-reporting of individual cases. When misleading reports appear, the Government is neither quick nor robust enough in responding to them, often leading to reputations being damaged unfairly."*[108]

7.34 As recommended by Lord Nolan, the current approach relies on transparency and the prospect of reputational damage to discourage people from ignoring the advice of ACoBA. More needs to be done to ensure that the Committee commands public confidence. Possible changes include alterations in its membership, increases in its powers, greater publicity for the extent to which it advises against particular appointments and improved clarity at the time of appointment to particularly sensitive jobs about the restrictions which might then apply to subsequent employment elsewhere.

Prime Minister's Independent Adviser on Ministers' Interests

7.35 The post of Prime Minister's Independent Adviser on Ministers' Interests was set up in 2007 following a recommendation in the Committee's Ninth Report.[109] It is not backed by statute. The Independent Adviser's functions are to advise individual ministers on the application of the Ministerial Code and to undertake an independent investigation if an allegation is made about a potential breach. Such an investigation can only take place following a request from the Prime Minister. The purpose of an investigation is to establish the facts. It is for the Prime Minister to determine whether a minister still retains his or her confidence once the facts are clarified.

7.36 Our concern about the Independent Adviser's investigatory role regards his or her inability to initiate investigations in the absence of a request from the Prime Minister.[110] There have only been two formal

106 A recent report from Her Majesty's Inspectorate of Constabulary (HMIC) also highlighted the risks relating to the position of PCCs (HMIC, *Revisiting police relationships: A progress report,* December 2012).

107 The Advisory Committee on Business Appointments (ACoBA) provides advice to ministers and senior civil servants in England, Scotland and Wales. The Northern Ireland Civil Service HR Policy states that ACoBA is currently responsible for providing advice to NICS as well but that this responsibility will "be taken on by a Northern Ireland body in time".

108 House of Commons Public Administration Committee, *Business appointment rules* (third report of session 2012–13), HC 404, July 2012.

109 Committee on Standards in Public Life, *Defining the boundaries within the executive: Special advisers and the permanent civil service* (Ninth Report), Cm 5775, April 2003.

110 PASC has also recommended on a number of occasions that the Independent Adviser should be able to undertake inquiries on his or her own initiative, most recently in: House of Commons Public Administration Select Committee, *Special Advisers in the thick of it* (sixth report of session 2012-13), HC 134, September 2012.

investigations by the Independent Adviser since the role was established.[111] There has been controversy over the Prime Minister's decisions not to refer other cases to the Independent Adviser, including two recent examples. The first involved allegations made in 2011 about a breach of the Ministerial Code by the then Secretary of State for Defence which were investigated first by his departmental permanent secretary and then by the Cabinet Secretary.[112] It is not clear to us whether the decision not to use the Independent Adviser was deliberate or inadvertent. The second example involved allegations made in 2012 about a possible breach of the code by the then Secretary of State for Culture, Media and Sport in relation to the bid by News Corporation for BSkyB. The Prime Minister decided not to refer the allegation to the Independent Adviser, on the basis that the issue would be looked at during evidence sessions for the Leveson Inquiry. It would in our view have taken much of the politics out of the issue, to everyone's advantage, if the decision on whether to investigate separately had been taken by the Independent Adviser – even if, as he might well have done, he had taken the same view. It is too easy for a Prime Ministerial decision not to refer to be interpreted, however unfairly, as being motivated by a desire to avoid uncomfortable revelations.

7.37 It has been suggested that if the Independent Adviser did possess the power of initiative he or she would be likely to be subject to media and political pressure which might lead him or her to feel forced to begin an investigation when none was justified. We have no doubt that such pressures might arise. An individual of the standing and independence essential for the role ought, however, to be able to withstand them. The Parliamentary Commissioner for Standards possesses an analogous power in relation to allegations about breaches of the House of Commons code by Members of Parliament. We have no reason to believe that has caused comparable problems of the kind feared.

7.38 There is no formal obligation on the Prime Minister to publish the Independent Adviser's reports. Both those produced to date have been published. We think it important that this practice should continue. An announcement that an investigation has taken place and that an allegation has been shown to be unfounded is less convincing if it is simply an assertion not supported by publicly available evidence. Publication is fairer to an innocent subject of an allegation. If, on the other hand, an allegation is proven in whole or in part it is important for confidence in the robustness of the approach for the public to be able to see the evidence on which the Prime Minister decides whether or not to keep a colleague in post.

7.39 We would also welcome more regular publication of information about ministers' interests and of the Adviser's annual reports. The Ministerial Code promulgated by the present Prime Minister in May 2010 contained a commitment that "a statement covering relevant ministers' interests will be published twice yearly". The current list of ministers' interests on the Cabinet Office website dates from December 2011, well before the September 2012 reshuffle.

7.40 The Scottish First Minister has, since 2008, appointed Independent Advisers on the Application of the Scottish Ministerial Code to provide similar advice to that provided by the Prime Minister's Independent Adviser.[113] There are no analogous positions in relation to ministers of the devolved governments in Wales or Northern Ireland.[114] We have previously argued that both devolved administrations should establish formal mechanisms for the independent investigation of alleged breaches of their ministerial codes and that the reports of any such investigations should be made publicly available. Our expectation would be that the role in either jurisdiction would be very part time. It could therefore possibly be combined with the remit of the relevant Parliamentary Commissioner, particularly since allegations about breaches of Ministerial and Parliamentary Codes frequently overlap.

111 The first investigation, carried out by Sir Philip Mawer in May 2009, found no breach of the Ministerial Code by the then Parliamentary Under-Secretary of State for Justice. The second investigation, carried out by Sir Alex Allan in 2012, found that the then Conservative Co-chairman had committed a minor breach of the code by not declaring a business relationship.

112 The then Secretary of State for Defence resigned on 14 October 2011 over allegations that he had given a close friend inappropriate access to the Ministry of Defence and allowed him to join official trips overseas.

113 The current advisers are the former Lords Advocate, the Rt Hon Lord Fraser of Carmyllie QC and the Rt Hon Dame Elish Angiolini QC DBE, who replaced the former Presiding Officers, the Rt Hon George Reid and Rt Hon Lord Steel of Aikwood in August 2011. The Scottish Advisers have been busier than their UK counterparts in relation to their investigatory remit, publishing a total of five reports to October 2012.

114 This is also an issue which has been raised with the Welsh First Minister by the leader of the Welsh Liberal Democrats in the Welsh Assembly (19 June 2012).

House of Lords

7.41 The Committee has welcomed the steps taken by the House of Lords, in response to previous recommendations from this Committee to introduce a code of conduct and an independent Commissioner for Standards.[115]

7.42 The role of the Lords Commissioner is more constrained than his counterpart in the House of Commons. The House of Lords Commissioner requires the agreement of the Sub-Committee on Lords' Conduct before conducting an inquiry at his own initiative. The Parliamentary Commissioner for Standards can do so without consulting the Committee on Standards and Privileges. The Lords Code of Conduct requires complaints to be made within four years of the relevant conduct. The Commons has no such time constraint, though the Commissioner is expected to consult the Committee on Standards and Privileges before investigating a matter going back more than seven years or initiating an inquiry into a former Member. The Lords Commissioner has no discretion equivalent to that of the Commons Commissioner to decide not to begin an inquiry if it "would be disproportionate given the nature and seriousness of the allegation made". It is not obvious why there should be such differences between the two Houses.

7.43 The abuses of expenses revealed in the Lords in 2009 highlighted the disparity between the sanctions available to the two Houses of Parliament when their members behave badly. A 2009 House of Lords Committee for Privileges report concluded that while the Lords had the power to suspend its members, it could not resolve to expel them permanently.[116] A number of peers have since called for this position to be remedied. The House of Commons does have the power to expel an MP, although it is rarely used. MPs given custodial sentences of over twelve months automatically lose their seats, triggering a by-election. We have argued earlier in this report that appropriate sanctions form a key part of any system designed to regulate ethical behaviour. We support calls for legislation providing that peers who receive custodial sentences of over twelve months should automatically lose their right to sit and vote in the House of Lords, and furnishing the House of Lords with the power to expel its members in exceptional circumstances. There appears to be considerable support in the House of Lords for such measures.

Special advisers

7.44 Effective special advisers can be of benefit to both ministers and officials. Operating at the boundary between politics and the civil service can, however, create a number of difficulties. It is important therefore that there be clarity about what they can and cannot do. The Code of Conduct for Special Advisers, which sets this out, was most recently revised in June 2010 to reflect the provisions of the Constitutional Reform and Governance Act 2010 and the circumstances of coalition government. Recent issues relating to special advisers suggest that a number of problems or potential areas of ambiguity remain.[117]

7.45 In a report published in October 2012 PASC recommended that special advisers should be provided with better induction including "where to seek advice and support on propriety issues" and that there should be greater transparency about the qualifications and responsibilities of newly appointed special advisers. The report emphasised that ministers were responsible as well as accountable for the actions of their advisers, but also stressed the responsibility of permanent secretaries "to offer advice in a timely manner, to avert any suggestion of impropriety or breach of the Codes of Conduct".[118]

7.46 We await the Government's response to the select committee's report with interest. We will continue to monitor the ethical issues surrounding the role of special advisers.

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115 The House of Lords Code of Conduct was introduced in November 2009 (amended in March 2010) to provide guidance for Members of the House of Lords on the standards of conduct expected of them in the discharge of their parliamentary duties, and to reinforce public confidence. The position of the independent Lords Commissioner for Standards was adopted by the House at the start of the new Parliament in May 2010. The Commissioner investigates alleged breaches of the Code, including breaches of the rules governing financial support available to Members and the use of parliamentary facilities.

116 House of Lords Privileges Committee, *The powers of the House of Lords in respect of its members* (first report of session 2008-09), HL 87, May 2009.

117 In the case of the Secretary of State for Culture, Media and Sport mentioned above, Lord Justice Leveson found that: *"Best practice of the kind subsequently encapsulated in the Cabinet Office guidance on quasi-judicial decision-making was not followed... The consequential risks were then compounded by the cumulative effects of the lack of explicit clarity in Mr Smith's role, the lack of express instruction that it was clear that he fully understood, and a lack of supervision by Mr Hunt..."* (The Leveson Inquiry, executive summary, paragraphs 126–7).

118 *Special Advisers in the thick of it,* pp.3-4.

Electoral arrangements

7.47 In our Eleventh Report we made a number of recommendations about electoral registration.[119] Our key recommendation was the introduction of arrangements for individual electoral registration to modernise the system and help tackle electoral fraud. We welcomed the Bill which was introduced to Parliament with the intent of introducing individual electoral registration by the 2015 election, note the Coalition's commitment to achieving this set out in their mid-term review and hope that the Bill's passage will not be prevented by wider political disagreements about boundary reform.

7.48 There are certain aspects of the Government's proposals which we question. In particular, we are concerned about the implications for fraud of not requiring a signature as one of an individual's three personal identifiers. We understand the desire to avoid electoral registration becoming an overly bureaucratic exercise, which might inhibit the numbers of those coming forward. Voting is too important, however, to be treated as a run of the mill transaction. The process for registration should be treated with at least equivalent seriousness as that for applying for a passport or driving licence.

7.49 Since postal voting on demand was introduced in Great Britain in 2001, perceptions of the extent of electoral fraud seem to have increased.[120] There has also been an increase in the number of prosecutions, many relating to postal voting.[121] The Electoral Commission believes nevertheless that electoral fraud is not a significant problem.[122] It is currently undertaking a review.

7.50 In Northern Ireland the Electoral Fraud Act 2002 introduced a range of measures aimed at reducing electoral fraud. These included individual voter registration and a requirement for photographic identification at polling stations. Postal voting on demand has never been allowed. The 2002 measures appear to have made the Northern Ireland electoral register more robust and to have increased public confidence in the electoral system.

The outstanding ethical issues identified in this report should be addressed actively before they become even more problematic and further undermine confidence in our public institutions.

119 Eleventh Report, recommendation 42.

120 In 2008 a Parliamentary Assembly Council of Europe (PACE) report concluded that: *"2006 changes to the postal voting system had enhanced security, but shortcomings remained. In particular, registering voters without personal identifiers – such as date of birth or national insurance number – made it "childishly simple" to register bogus voters... Postal voting then provided the anonymity to carry out fraud without detection"* (Council of Europe press release, "PACE committee says UK electoral system "open to fraud", urges further changes to postal voting and voter registration", 22 January 2008).

121 A Standard Note from the House of Commons Library includes a chronology since 2003 of incidents of electoral malpractice involving postal vote fraud (Isobel White and Charley Coleman, *Postal voting and electoral fraud*, SN/PC/3667, 22 June 2011, pp.17–42).

122 On 15 February 2011 the Electoral Commission and the Association of Chief Police Officers published a report into allegations of electoral malpractice during the 2010 elections which concluded that, despite public concerns: *"there appears to be no evidence of widespread, systematic attempts to undermine or interfere with the May 2010 elections through electoral fraud"* (Electoral Commission and Association of Chief Police Officers, *Analysis of cases of alleged electoral malpractice in 2010*, February 2011, p.2).

Summary

Issues which the **Committee** is likely to investigate in the near future include:

- *how best to maintain high standards as new models of delivering public services are developed*;
- *lobbying* (concerns about unequal access to decision-makers and inadequate transparency); and
- *interchange between the public and private sectors* (suspicions of impropriety in relation to people moving between the public and private sectors).

Issues over which the **Committee** intends to keep a watching brief, and investigate if necessary include:

- *local government standards* (concerns about the impact of the regime introduced by the Localism Act 2011);
- *behaviour and conduct of the police* (concerns arising from recent incidents and reports, some of which are currently the subject of further investigation elsewhere);
- *electoral arrangements* (concerns about electoral fraud, particularly in relation to the electoral register and postal voting);
- *the role of the media in the public sector's promotion and maintenance of standards* (including its effects on public confidence, in the light of the Leveson Inquiry); and
- *the impact of austerity on support for maintaining high standards.*

Issues which need to be addressed by the **Government** include:

- *the Prime Minister's Independent Adviser on Ministers' Interests* (the lack of a power for the Adviser to initiate his own investigations);
- clarification of the some of the aspects relating to the arrangements for *Special Advisers*; and
- *the House of Lords* (by facilitating the efforts of the House itself to address its own powers to sanction the most severe breaches of the Lords' Code of Conduct).

An issue which needs urgently to be resolved by the **political parties** is:

- *political party funding* (suspicion about the motivation behind large donations and what is received in return).

Chapter 8: Conclusions

8.1 Standards of behaviour are important both as a characteristic of good government and because they can help to deliver better outcomes for society. In the short term it might be possible to produce good outcomes without adhering to high standards. But that is unlikely to be sustainable over time. Meanwhile considerable damage can be done to reputation and confidence which are difficult to rebuild.

8.2 The main purpose of this review has been to take stock of what has been learnt over the almost two decades since this Committee was established about how to promote high standards in UK public life. We asked ourselves three questions.

- Have standards of conduct in public life improved since this committee first reported in 1995?
- What do we now know about what work bests in promoting high ethical standards in organisations providing public services?
- What needs to be done by whom to continue to embed high standards in public life?

8.3 Our answer to the first question is equivocal. On the one hand, standards of behaviour have improved significantly in many areas of public life. We believe that the considerable effort and expense devoted to that objective since 1995 has not been wasted.

8.4 On the other hand, in almost all the areas we have looked at, doubts remain. The introduction of transparency for political donations in 2001 might have ended some bad practices. But the public still believes, not without cause, that very large donations are solicited and given in the expectation of favours in return. Expenses systems in the UK's legislatures have been reformed. But it will be some time yet before public trust is restored. Many of the worst excesses of local authority members may have been ended. But instances of unacceptable behaviour continue to occur. The arrangements for making public appointments have been vastly improved. But accusations are still made about crony appointments.

8.5 Moreover, public scandals of a significant kind continue to occur on a regular basis. The last few months have seen major issues relating to the police, the BBC, care homes and a number of other key public institutions. Several revelations about historical events have revealed deliberate attempts to get round the rules and cover up the truth, which implies that the principles of public life are some way from being fully internalised. New risks arise with new structures and policies; and public trust and confidence in the integrity of many of our public institutions remain low and declining.

8.6 So while standards of behaviour in the UK may generally be high compared with those in many other countries, including some of our European neighbours, there remains much to do.

8.7 In answer to our second question, we know a lot about what works best in promoting high standards. The key elements remain much as Lord Nolan suggested: robust principles, effective codes tailored to the particular circumstances of the body concerned, training and guidance, good, relevant prompts, strong leadership and organisational processes demonstrating the principles in practice, sure and effective

responses to unethical behaviour and independent scrutiny. Together these elements help an organisation to achieve the right culture.

8.8 Many of the requirements for high standards require action at an organisational level. But high standards also require individuals to take personal responsibility – by observing high standards themselves, by demonstrating high standards to others through their own behaviour and by challenging inadequate standards when they see them. Mindlessly following rules and processes is not enough if people do not also engage their judgement about what is important. An individual who has internalised sound ethical principles and the reasons they are important is better able to make appropriate decisions than someone simply following a set of rules.

8.9 Our answer to the third question is that the main requirement now is not for additional principles, more codes or new regulators in any specific areas. It is for active management and constant vigilance. So all organisations delivering public services should ensure that they have robust governance processes in place to deliver and monitor high standards. Legislators and policymakers should be attentive to and active in addressing the current and emerging risks we have identified rather than waiting for some public revelation to force their hand; and those designing and procuring new forms of delivery of public services should ensure that they give priority to the maintenance of high standards in the new circumstances they are creating. In this report we have identified best practices designed to support these activities.

8.10 The behaviour of holders of public office is not independent of that of the society they serve. They come from the same populations on whose behalf they work. So they can be expected to share much the same general standards of morality as the rest of us exhibit in our own lives – though some of them may have different attitudes to risk. Some transgressions only occur in response to inducements offered by others. There would have been no paid advocacy in the House of Commons, for example, without someone offering cash for questions. Nor would there be an issue with police accepting payments for the provision of information without media organisations being willing to offer money for that information.

8.11 This is not to excuse poor behaviour. But it may help to keep it in perspective. We have a tendency to judge public office-holders by higher standards than we are always prepared to apply to ourselves. There is a need to acknowledge that those who interact with the public sector also have responsibilities.

8.12 We have been told that the low level of trust in holders of public office is inevitable. We do not agree and would argue that such a belief is damaging if it is used as an excuse for failing to address acknowledged problems. Of course, trust is a complex phenomenon and affected by many different factors. But the behaviour of those in authority must be one of the more significant. There can be no doubt that current levels of trust would be higher without the revelations of recent years. But many of these problems were well recognised before they became the subject of media stories. A more active approach to addressing them would have prevented much of the subsequent media storm and much of the damage to the reputation of individuals and institutions which resulted. Only if we adopt such an active approach can we realistically hope to increase public confidence in our public institutions.

Appendix 1: About the Committee on Standards in Public Life

1. The Committee on Standards in Public Life is an advisory Non-Departmental Public Body (NDPB) sponsored by the Cabinet Office. The Chair and members are appointed by the Prime Minister. The Committee was established in October 1994, by the then Prime Minister, with the following terms of reference:

> *"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*."

2. The remit of the Committee excludes investigation of individual allegations of misconduct.

3. On 12 November 1997 the terms of reference were extended by the then Prime Minister:

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

Membership of the Committee

Sir Christopher Kelly KCB (Chair)
The Lord Alderdice
The Rt Hon Dame Margaret Beckett DBE MP
Sheila Drew Smith OBE
Oliver Heald QC MP (*until 14 September 2012*)
Patricia Moberly
Sir Derek James Morris MA DPhil
Dame Denise Platt DBE
David Prince CBE
Richard Thomas CBE
Dame Angela Watkinson DBE MP (*appointed to the Committee 30 November 2012 but not involved in this review)*

Secretariat

4. The Committee is assisted by a Secretariat consisting of Dr Hannah White (Secretary), Peter Hawthorne (Assistant Secretary), Hannah Panayiotou and Sarah Taylor (Policy Adviser – job share) and Conrad Steel (Secretariat Coordinator – *from 27 August 2012*). Press support is provided by Maggie O'Boyle.

Cost of the inquiry

5. The estimated cost of this inquiry was £237,610. This figure includes staff and Committee costs, the cost of seminars, visits, research, and the cost of printing and launching the report.

The Committee's previous reports

6. The Committee has previously published the following reports.

- *Political party finance: Ending the big donor culture* (Thirteenth Report), Cm 8208, November 2011
- *MPs' expenses and allowances: Supporting Parliament, safeguarding the taxpayer* (Twelfth Report), Cm 7724, November 2009
- *Review of the Electoral Commission* (Eleventh Report), Cm 7006, January 2007
- *Getting the balance right: Implementing standards of conduct in public life* (Tenth Report), Cm 6407, January 2005
- *Defining the boundaries within the Executive: Ministers, special advisers and the permanent civil service* (Ninth Report), Cm 5775, April 2003
- *Standards of conduct in the House of Commons* (Eighth Report), Cm 5663, November 2002
- *Standards of conduct in the House of Lords* (Seventh Report), Cm 4903, November 2000
- *Reinforcing standards: Review of the First Report of the Committee on Standards in Public Life* (Sixth Report), Cm 4557, January 2000
- *The funding of political parties in the United Kingdom* (Fifth Report), Cm 4057, October 1998)
- *Review of standards of conduct in executive NDPBs, NHS trusts and local public spending bodies* (Fourth Report), November 1997
- *Local government in England, Scotland and Wales* (Third Report), Cm 3702, July 1997
- *Local public spending bodies* (Second Report), Cm 3207, June 1996
- *Members of Parliament, ministers, civil servants and quangos* (First Report), Cm 2850, May 1995

7. The Committee is a standing Committee. It can not only conduct inquiries into areas of concern about standards in public life, but can also revisit those areas and monitor whether and how well its recommendations have been put into effect.

Appendix 2: Case study reports

The Committee examined a number of case study reports in the course of this review. These were:

Committee on Standards in Public Life

- *Members of Parliament, ministers, civil servants and quangos* (First Report), Cm 2850, May 1995
- *Standards of conduct in the House of Lords* (Seventh Report), Cm 4903, November 2000
- *Standards of conduct in the House of Commons* (Eighth Report), Cm 5663, November 2002
- *Defining the boundaries within the Executive: Ministers, special advisers and the permanent civil service* (Ninth Report), Cm 5775, April 2003
- *Getting the balance right: Implementing standards of conduct in public life* (Tenth Report), Cm 6407, January 2005
- *Review of the Electoral Commission* (Eleventh Report), Cm 7006, January 2007

Other bodies

- National Centre for Social Research, *Guiding principles: Public attitudes towards conduct in public life*, October 2002
- Bob Phillis (chair), *An independent review of government communications*, January 2004
- The Independent Commission on Good Governance in Public Services, *The good governance standard for public services*, January 2005
- Public Administration Select Committee, *Politics and administration: Ministers and civil servants* (third report of session 2006–07), HC 122, March 2007
- Public Administration Select Committee, *Good government* (seventh special report of session 2009–09), HC 1045, June 2009
- Robert Francis QC (chair), *Independent inquiry into care provided by Mid Staffordshire NHS Foundation Trust January 2005 – March 2009*, HC 375, February 2010
- Communities and Local Government Committee, *Audit and inspection of local authorities* (fourth report of session 2010–12), HC 763, July 2011
- Elizabeth Filkin, *The ethical issues arising from the relationship between police and media: Advice to the Commissioner of Police of the Metropolis and his management board*, January 2012

Appendix 3: Qualitative research: methodology and key findings

Methodology

A total of fourteen deliberative workshops, with 101 members of the public, were conducted in seven areas across the UK. These seven areas were selected to cover all parts of the UK: four areas in England (Leamington Spa, London, Newcastle and Portsmouth) and one each in Wales (Bridgend), Northern Ireland (Belfast) and Scotland (Glasgow).

Participants in the workshops were mixed in terms of gender, age, socio-economic grade and ethnicity. Participants were also selected to reflect a mix of levels of interest in current affairs (a high, medium and low scale) and employment in the public and private sectors. People were recruited using "free-find" methods.

The workshops were re-convened after two weeks (two workshops were held in each area) and the participants committed to attending both workshops in their locality. The research sessions each lasted for 90 minutes and each involved between 12 and 15 people. Participants were asked to undertake a short "homework" exercise in the fortnight between the first and second workshop.

Key findings

- Ethical standards were not generally a subject that people often thought about consciously in their daily lives. Nevertheless, people did have a strong sense as to what ethical standards broadly meant, and this related broadly to the seven principles of public life.
- People drew on their first-hand experience when making judgements on standards of ethical behaviour. The experiences of their friends and family and media coverage also appeared influential in shaping judgements.
- There was a very close association between high ethical standards and the provision of good quality customer service.
- Some public office occupations were judged to be inherently more ethical than others, including fire fighters, the army, teachers and nurses. The ethical standards of politicians and police gathered the most negative responses.
- Public office-holders whose behaviour was judged to have more impact were expected to have higher standards. There were especially high expectations for senior public office-holders. Some expectations were so high they are probably unachievable.
- Rules and standards were recognised as key drivers of good ethical behaviour.
- It was of key importance to people that public office-holders lead by example. Strong leadership was recognised as key to building high ethical standards within institutions.

- Visibility and understanding of particular public office roles was important in building people's confidence in ethical standards. Good quality communication de-mystified institutions and contributed to trust.
- The implementation of timely, swift and thorough sanctions and punishments was reported as improving confidence in public office-holders and institutions.
- The majority of research participants did not believe that MPs, or Parliament, were regulated. There appeared to be a lack of awareness regarding existing systems of accountability and scrutiny, coupled with scepticism about whether there could be effective independent regulation of Parliament.

Appendix 4: Seminar participants

The Committee held seven seminars in the course of this review. The participants were as follows:

Parliament (18 June)

Rt Hon Sir George Young Bt MP, former Leader of the House of Commons
Rt Hon Kevin Barron MP, Chair, Standards and Privileges Committees, House of Commons
Bernard Jenkin MP, Chair, Public Administration Select Committee, House of Commons
Baroness Manningham-Buller, Chair, House of Lords Conduct sub-committee
David Beamish, Clerk of the Parliaments, House of Lords
John Lyon CB, former Parliamentary Commissioner for Standards, House of Commons
Stuart Allan, Public Standards Commissioner for Scotland
Dr Tom Frawley CBE, former interim Northern Ireland Assembly Standards Commissioner
Gerard Elias QC, National Assembly for Wales Commissioner for Standards
Andrew McDonald, Chief Executive, Independent Parliamentary Standards Authority
Jenny Watson, Chair, The Electoral Commission
Matthew Hamlyn, Head of the Office of the Chief Executive, House of Commons
Eve Samson, Clerk, Standards and Privileges Committees, House of Commons

Academics (21 June)

Professor Roger Crisp, Uehiro Fellow at the Oxford University Uehiro Centre for Practical Ethics
Dr Mark Philp, University lecturer and tutor in politics, Oriel College, University of Oxford, and chair, CSPL Research Advisory Board
Dr Regina Rini, postdoctoral research fellow in moral cognition at the Oxford University Uehiro Centre for Practical Ethics
Dr Simon Rippon, doctoral research fellow at the Oxford University Uehiro Centre for Practical Ethics

Civil service and central government (19 July)

Sir Alex Allan KCB, Independent Adviser to the Prime Minister on Ministers' Interests
Jonathan Baume, former General Secretary, FDA
Dr Karen Carlton, former Scottish Public Appointments Commissioner
Elizabeth Filkin, former Parliamentary Commissioner for Standards
Dame Janet Gaymer DBE, former Commissioner for Public Appointments
Sue Gray, Director, Propriety and Ethics Team, Cabinet Office
The Hon Mary Jo Jacobi, Member, Advisory Committee on Business Appointments (ACoBA)
Richard Jarvis, former CEO, Civil Service Commission
John Keanie, Northern Ireland Public Appointments Commissioner
Chandrashekhar Krishnan, former CEO, Transparency International
Sir Philip Mawer, former Parliamentary Commissioner for Standards and former Independent Adviser to the Prime Minister on Ministers' Interests
Dame Julie Mellor DBE, Parliamentary and Health Service Ombudsman
Amyas Morse, Comptroller & Auditor General
Lord Gus O'Donnell GCB, former Cabinet Secretary and former Head of the Civil Service

Rt Hon Dame Janet Paraskeva DBE, former First Civil Service Commissioner
Akash Paun, Senior Researcher, Institute for Government
Brian Rowntree, First Northern Ireland Civil Service Commissioner

Local government (20 September)

Clive Betts MP, Chair, Communities and Local Government Select Committee
Paul Hoey, former Director at Standards for England
Mark Hynes, Board Member, Society of Local Authority Chief Executives (SOLACE)
Professor Michael Macaulay, Teesside University
Dr Jane Martin, Local Government Ombudsman
Jim Martin, Scottish Public Services Ombudsman
David Prout, Director General Localism, DCLG
Paul Raynes, Head of Programmes, LGA
Anne Seex, Local Government Ombudsman
Sir Peter Soulsby, Mayor of Leicester
John Wynn, Deputy Director of Legal Services, Birmingham City Council
Peter Tyndall, Public Services Ombudsman for Wales
Dr Elizabeth David-Barrett, Research Fellow, Oxford University Centre for Corporate Reputation

Private Sector (11 October)

Fiona Alldridge, Head of Strategic Development, Whitehall and Industry Group
Caoimhe Buckley, Head of Public Affairs, Europe, BHP Billiton
Dr Vanessa Davies, Chief Executive, Bar Standards Board
Philippa Foster Back OBE, Director, Institute of Business Ethics
Steve Freer, Chief Executive, CIPFA
Andrew Hayward, Head of Ethics and Compliance, Balfour Beatty
Robert Smith, Director Business Compliance and Ethics, SERCO
Sean Williams, Managing Director, G4S Welfare to Work & G4S Resourcing
Suzanne Wise, General Counsel, Network Rail

Media (18 October)

David Hencke, former Westminster correspondent, The Guardian
Helen Warrell, UK news reporter, Financial Times
Robin Esser, Executive managing editor, Daily Mail
Martin Kettle, Associate editor, The Guardian
Jonathan Werran, Senior reporter, Municipal Journal

Wider public sector (25 October)

Chief Superintendent Derek Barnett, President, Police Superintendents' Association of England and Wales
Kevin Baskill, Executive Member, National Association of Head Teachers
Dr Ann Gallagher, member of Ethics Committee, Royal College of Nursing
Chief Constable Nick Gargan, Chief Executive, National Policing Improvement Agency
Dinah Godfree, Policy Adviser, Council for Healthcare Regulatory Excellence
Ian Gross, Head of Governance, Higher Education Funding Council for England
Philippa Harding, Board Secretary, Monitor
Ben Jones, Director of Strategy and Communication, General Medical Council
Sir Ron Kerr CBE, Chair, Association of UK University Hospitals
Sir Denis O'Connor CBE QPM, Chief Inspector, HM Inspectorate of Constabulary
Dame Anne Owers DBE, former Chair, Independent Police Complaints Commission
Dame Jo Williams DBE, Chair, Care Quality Commission

Appendix 5: Stakeholders met during visits to Northern Ireland, Scotland and Wales

Northern Ireland (24 September)

- Dr Tom Frawley CBE, Northern Ireland Ombudsman
- Anna Carragher and Seamus Magee, The Electoral Commission
- Douglas Bain CBE, Standards Commissioner for the Northern Ireland Assembly
- Rt Hon Peter Robinson MLA, First Minister and Martin McGuinness MLA, Deputy First Minister
- Pat McCartan CBE and Alan McQuillan OBE, Independent Financial Review Panel
- William Hay MLA, Speaker of the Northern Ireland Assembly
- Members of the Northern Ireland Assembly Commission and members of the Assembly's Standards and Privileges Committee

Scotland (26 September)

- Joe Fitzpatrick MSP, Minister for Parliamentary Business
- Members of the Standards, Procedures and Public Appointments Committee, Scottish Parliament
- Professor Charlie Jeffery, Professor of Politics, University of Edinburgh
- Jim Martin, Scottish Public Services Ombudsman
- Professor Frank Clark CBE, Chair, Scottish Care Inspectorate
- Stuart Allan, Public Standards Commissioner for Scotland

Wales (10 October)

- Steve Thomas CBE, Chief Executive, Welsh Local Government Association
- Daniel Hurford, Head of Improving Governance, Welsh Local Government Association
- Rt Hon Carwyn Jones AM, First Minister
- David Richards, Director of Governance, Welsh Government
- Mick Antoniw AM, Chair, and Kirsty Williams AM, Member, Standards of Conduct Committee, National Assembly for Wales
- Peter Tyndall, Public Services Ombudsman for Wales
- Gerard Elias QC, National Assembly Commissioner for Standards

Appendix 6:
The seven principles of public life

In **Chapter 3** we set out amended descriptions for the seven principles of conduct in public life. Below, for reference, we set out the original descriptions as formulated in the Committee's First Report.

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

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

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

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

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

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

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

These principles apply to all aspects of public life. The Committee has set them out here for the benefit of all who serve the public in any way.

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