

Independent Adviser on Ministers' Interests

Annual Report 2008-09

Foreword

The Green Paper on "The Governance of Britain", presented to Parliament in July 2007¹, identified a number of respects in which the incoming Prime Minister had strengthened the Code of Conduct for Ministers ('the Ministerial Code'). One of these was the appointment of a new Independent Adviser on Ministers' Interests ('the Independent Adviser') with the task of advising on Ministers' interests and also, at the Prime Minister's request, investigating alleged breaches of the Ministerial Code.

The Green Paper committed the Adviser to produce an Annual Report. This is the first such report. It is being published with the first ever List of Ministers' relevant Interests, which it complements and the background to which it fully explains.

The production of both documents reflects the Prime Minister's wish to account regularly to Parliament and the public for what his administration is doing to prevent conflicts of interest and to encourage the maintenance of high standards of conduct in Government. Both documents are being laid before Parliament. I welcome the signal they give of the Prime Minister's intention to achieve transparency and accountability in this aspect of Government and to develop the role of the Independent Adviser as an aid to him and his Ministers in promoting good conduct.

In this, my first annual report, I describe the nature of the Ministerial Code and the context it sets for the work of the Adviser. I discuss the different aspects of the Adviser's role, and set out in some detail what is done in Government to avoid potential conflict between a Minister's personal interests and his or her Ministerial responsibilities. I hope that, in this way, a wider understanding will develop of the challenges which face Ministers in this respect, as well as a deeper confidence in what is done by Ministers and their officials to ensure that these challenges are overcome, so that the public interest in fair and honest government is maintained.

Sir Philip Mawer

March 2009

¹ Cm 7170

Section 1: The Ministerial Code

1.1 On taking up office, each Prime Minister approves a statement of the core principles and practice which underpin the way in which they wish the members of their administration to conduct themselves while holding Ministerial office. In 1992, that statement – known then by the rather prosaic title of “Questions of Procedure for Ministers” – was published for the first time. In 1997, the document was re-titled the Code of Conduct for Ministers (‘the Ministerial Code’).

1.2 The Ministerial Code is distinct from the separate Codes of Conduct approved by each of the Houses of Parliament. Ministers are subject to the relevant Parliamentary Code in the same way as all other Members of their House. The Ministerial Code is additional. It sets out those duties and expectations which apply additionally to Ministers because of the executive functions they discharge, and offers guidance on how those expectations can best be met.

1.3 The Code embodies the “seven principles of public life” first formulated by the Committee on Standards in Public Life under the chairmanship of the late Lord Nolan.² The full text of the Code can be read on the Cabinet Office website at www.cabinet-office.gov.uk After laying out some general principles, it goes on to discuss the application of those principles in relation to:

- Ministers’ relations within Government
- Ministers and public appointments
- Ministers and their departments
- Ministers and civil servants
- Ministers’ constituency and party interests
- Ministers’ private interests
- Ministers and the presentation of policy
- Ministers and Parliament
- Travel by Ministers.

1.4 The Ministerial Code was substantially revised in July 2007, in line with recommendations by the House of Commons Select Committee on Public Administration and the Committee on Standards in Public Life.³ The aim of the revision was to re-focus the Code on key principles. This development was welcomed by the Public Administration Committee in its Seventh Report of Session 2007-08 on “Investigating the Conduct of Ministers”.⁴ The Committee commented: *“A principle-based Code should be simpler for ministers to use and simpler for Parliament and the public to judge them by”*⁵

² First Report of the Committee on Standards in Public Life, “MPs, Ministers and Civil Servants, Executive Quangos”, Cm 2850, 11 May 1995.

³ Public Administration Select Committee, Third Report of Session 2000-01, “The Ministerial Code: Improving the Rule Book”, HC 235; Ninth Report of the Committee on Standards in Public Life, “Defining the Boundaries within the Executive: Ministers, Special Advisers and the permanent Civil Service”, Cm 5775, April 2003.

⁴ HC381.

⁵ Ibid, paragraph 9.

While responsibility for the Code rests with the Prime Minister, it is open to the Independent Adviser to offer suggestions for its continuing improvement where these seem desirable in the light of experience.

1.5 The final responsibility for the enforcement, as for the promulgation of the Code rests with the Prime Minister. He is ultimately responsible to Parliament for the conduct of his administration. Individual Ministers are personally responsible for deciding how to conduct themselves in the light of the Code, and for justifying their conduct to Parliament and the public. However, as the Code explains:

*“... Ministers only remain in office for so long as they retain the confidence of the Prime Minister. He is the ultimate judge of the standards of behaviour expected of a Minister and the appropriate consequences of a breach of those standards.”*⁶

1.6 Ministers are assisted in understanding and applying the Code by their officials, led by the Permanent Secretary (the permanent civil service head) of their department. The Cabinet Secretary, assisted by the Propriety and Ethics team in the Cabinet Office, in turn helps officials in giving Ministers advice, drawing on the Cabinet Office’s unique knowledge of practice and precedent from across Whitehall.

1.7 One of the key functions of the Independent Adviser is to provide an independent check and source of advice to Ministers on the handling of their interests. Having set out the context for his work, I turn now to describe the role of the Adviser in some detail.

⁶ Ministerial Code, paragraph 1.5.

Section 2: The Independent Adviser

(a) The Role of the Adviser

2.1 The role of Independent Adviser on Ministers' Interests is relatively new. In March 2006, the then Prime Minister, the Rt Hon Tony Blair MP, announced the appointment of Sir John Bourn KCB (who at that time was also the head of the National Audit Office) as the first Independent Adviser, with a particular responsibility for advising Ministers on how to avoid any conflict between their personal interests and their public responsibilities.⁷

2.2 The role of Adviser is a personal appointment of the Prime Minister of the day. As such, its holder is not a civil servant and steps down when the Prime Minister who appointed them leaves office. Sir John therefore left office in the summer of 2007 when Mr Blair was succeeded by the Rt Hon Gordon Brown MP.

2.3 From the outset, the present Prime Minister has made clear his wish for the role of Independent Adviser to be both deeper and wider than that held by my predecessor. Deeper in the sense that the Prime Minister wishes a proactive approach to be taken to the advisory aspect of the role. Wider in that he has made clear that when, advised by the Cabinet Secretary, he judges that an allegation that a Minister has breached the Ministerial Code requires investigation, he will look to the Adviser to undertake that investigation on his behalf.

2.4 There are therefore two aspects to the job. One is the provision of advice:

- To individual Ministers and their Departmental Permanent Secretaries on specific matters of conduct, including how best to avoid potential conflict between Ministers' private interests and their Ministerial responsibilities. This advisory function is closely aligned with the Adviser's role in assisting in the preparation of the annual List of Ministers' Interests.
- Advice more generally to the Prime Minister and Ministers, for example in relation to revision of the Ministerial Code.

2.5 The other key aspect of the role is the investigation – when the Prime Minister, advised by the Cabinet Secretary, decides that this would be appropriate – of allegations that an individual Minister may have breached the Ministerial Code. I set out the nature of these tasks in greater detail in the following sections of this report.

2.6 Before doing so, it may be appropriate for me to say something more about my own approach to the role, and about the terms and conditions attaching to my appointment.

⁷ Sir John's terms of reference were published by the Cabinet Office on 16 May 2006.

(b) My Approach to the Role

2.7 I took up office as Independent Adviser on 14 January 2008, having been invited to do so some months previously by the Prime Minister. Before I could do so, it was necessary for me to resign my former position as the Parliamentary Commissioner for Standards, one I had occupied for almost six years.

2.8 I have been able to bring to my new role the benefit of the experience I gained in my former one. In the foreword to my last annual report as Parliamentary Commissioner, published some months before I left office, I summed up the approach I had taken to my Parliamentary role as follows:

“Throughout the past five years I have sought to take an approach to my role which is both strategic and proportionate: strategic in the sense that it is proactive and focuses on the key issues; proportionate in that both policy matters and individual cases are handled in a manner appropriate to the intrinsic weight of the issues at stake. This has meant:

- *taking opportunities to strengthen the systems for sustaining high standards among Members*
- *putting more emphasis on preventing problems before they arise – with the aim of fostering a culture of compliance with the House’s rules – rather than simply picking up the pieces afterwards*
- *being as open as possible about the processes and procedures followed, while preserving a proper confidentiality about the investigation of individual cases.”*⁸

2.9 I hope to be able to adapt this approach successfully in my current role, with the aim of establishing the position of Adviser as an indispensable component in helping to maintain high standards of conduct amongst the members of governments of any political persuasion. If this is to be achieved, the establishment of confidence in the new arrangements, both among the public and Parliament and among Ministers who are subject to regulation, will be essential. It will thus be necessary to help ensure:

- as much clarity and simplicity as is possible in delineating the standards with which Ministers are expected to comply.
- the ready availability of advice to Ministers, through their officials, on how to meet those standards.
- fairness, independence and impartiality in the investigation of any allegations that Ministers may have fallen short of the expected standards and breached the Ministerial Code.

In later sections of this report, I describe in more detail how, working with the Cabinet Office and departments, I have begun to try to achieve these objectives.

(c) Report by the Public Administration Select Committee

2.10 Shortly after I took up my role, I was asked to give evidence to the Public Administration Select Committee of the House of Commons, whose long-standing

⁸ HC 1012, Session 2006-07.

interest in the Ministerial Code and the mechanisms for its enforcement I have already noted. I appeared before the Committee on 28 February 2008.

2.11 In a subsequent report, the Select Committee welcomed a number of the changes made by the present Prime Minister on entering office, including his adoption of a principles-based Ministerial Code and his decision to publish an annual List of Ministers' Interests.⁹ It described the Prime Minister's appointment of an investigator as "a significant step towards fair, defined accountability for ministerial conduct".¹⁰ However, the Committee expressed reservations about some aspects of the basis on which my role had been constituted, especially the fact that the decision to instigate an investigation into an alleged breach of the Code still rests with the Prime Minister. The Committee was also critical of the personal nature of the Independent Adviser's appointment and of the fact that the Adviser is staffed and resourced by the Cabinet Office. While these features continued, it felt it "inappropriate to refer to the new investigator as an Independent Adviser".¹¹

2.12 The Select Committee's criticisms were directed at some aspects of the way in which the Government had set up my role, not at my personal independence of character in undertaking it. It was not, therefore, for me to respond to the Committee's report: that was done by the Government in the normal way. I set out the main features of the Government's response immediately below. My personal determination remains to demonstrate independence, fairness and impartiality in the way I do the job, thereby hopefully fostering the credibility of the role which both the Select Committee and I seek.

(d) The Government's Response to the Select Committee

2.13 The Government's response to the Public Administration Select Committee was published by the House of Commons on 14 October 2008.¹² The response noted the Select Committee's welcome for several aspects of the new arrangements put in place by the Prime Minister. In response to the Select Committee's main criticism – that the decision whether or not to instigate an investigation into an alleged breach of the Code still rested with the Prime Minister – the Government reasserted its position, emphasising the Prime Minister's ultimate responsibility to account to Parliament for his decisions and actions in relation to the appointment of his Ministers and the need for the Prime Minister to take account of a range of factors when deciding whether or not to call in the Adviser, including whether the facts surrounding an allegation were already known.¹³

2.14 As regards the personal nature of the Adviser's appointment, the Government held that, because of the need for trust and confidence between the Prime Minister and individual Ministers on the one hand and the Independent Adviser on the other in handling often highly sensitive matters, it was appropriate for the postholder to be a personal appointment by the Prime Minister, for which he or she would be

⁹ Public Administration Select Committee, Seventh Report of Session 2007-08, "Investigating the conduct of ministers", HC 381.

¹⁰ Ibid, paragraph 34.

¹¹ Ibid.

¹² Ninth Special Report of Session 2007-08, HC 1056.

¹³ Ibid, section 7.

accountable.¹⁴ The Government believed that the role was more suitable for post-appointment rather than pre-appointment scrutiny by the House, but undertook to keep this and the arrangements for providing administrative support to the Adviser under review in the light of experience.¹⁵

2.15 It may be helpful if I offer a personal comment on two related matters:

- the terms of my appointment, and
- the nature of my administrative support.

(e) The Terms of my Appointment

2.16 As I have already noted, my appointment is a personal one by the Prime Minister. I am not therefore a civil servant but, contractually, a consultant employed by the Cabinet Office. It would be open to the Prime Minister to terminate my appointment, after giving notice, at any time.

2.17 This may seem a somewhat flimsy basis for safeguarding the Adviser's independence. It clearly seemed so to the Public Administration Select Committee.

2.18 Without taking sides in the debate between the Select Committee and the Government, there are, I think, three relevant points I can usefully contribute here:

- i) Mutual confidence in the relationship between the Prime Minister and his or her Adviser is crucial. A Prime Minister could no more tolerate the continuation in office of an Adviser in whom he or she had lost confidence than an Adviser could contemplate remaining in office if they had lost confidence in the commitment of the Prime Minister by whom they were appointed to high standards in the conduct of government.
- ii) A Prime Minister who dismissed an Adviser on any questionable ground would immediately be subject to the most rigorous questioning in Parliament and by the media. That is one safeguard of an Adviser's independence.
- iii) The other safeguard is the willingness of any Adviser to resign their position if their ability to discharge their role independently and impartially were to be compromised. As I observed to the Select Committee, that is not a sanction to be deployed lightly, but it is the other safeguard of any Adviser's independence.¹⁶

2.19 Under the terms of my contract, I am paid £30,000 a year (the same as my predecessor), for which I am expected to devote one day a week to my duties. However, I regard this as a nominal statement of the expected commitment. In the initial stages of the post, the commitment was somewhat greater and it is likely to be so should I be called upon to undertake an inquiry. As for many others, both inside and outside the public service, the commitment I give will be driven by the needs of the job rather than the precise terms of my contract.

¹⁴ Ibid, section 13.

¹⁵ Ibid, sections 11 and 13.

¹⁶ HC 381-I, Session 2007-08, Q46.

(f) Administrative Support

2.20 In carrying out my role, I work closely with the members of the Propriety and Ethics Team in the Cabinet Office. It is the members of this team who are in the forefront of advising Whitehall Departments on ethical matters, including the application of the Ministerial Code. They are therefore able readily to consult me on difficult issues, and provide a pool of knowledgeable officials on which I can draw for support as necessary in handling individual cases. I have been impressed by their professionalism and their toughness in dealing with a challenging range of matters. Whilst the arrangement is one which both the Cabinet Office and I will need to keep under review in the light of experience, and bearing in mind the comments of the Select Committee, so far it has worked well.

Section 3: The Independent Adviser's Role – (1) Advice

3.1 In the preceding section of this report, I identified the two different aspects of the Independent Adviser's role as:

- (1) advice, to individual Ministers and their departmental Permanent Secretaries, and more generally; and
- (2) investigation, when the Prime Minister so decides, of alleged breaches of the Ministerial Code.

I turn now to describe in more detail the first of these functions.

(a) Avoiding Conflicts of Interest

3.2 Section 7.1 of the Ministerial Code states the principle that:

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

The Code goes on to make clear that it is a personal responsibility falling on each Minister to take whatever action is needed to avoid an actual or perceived conflict, taking account of advice they receive from their Permanent Secretary and the Independent Adviser.

3.3 On first entering office, and after any subsequent move to a different department, Ministers are required by the Code to provide their Permanent Secretary with a full list in writing of all their interests which might be thought to give rise to a conflict. In many instances they discuss this list with their Permanent Secretary, either before or after its formal submission. Following discussion, if any obvious potential conflict emerges, they agree remedial action with their Permanent Secretary and record what has been done.

3.4 Each Minister's declaration of their interests is then forwarded to the Cabinet Office with the record of the action taken. These returns are examined by officials in the Propriety and Ethics team and by the Independent Adviser. Many are straightforward and require no further action. Some, however, prompt questions, either to clarify the facts or because a potential conflict is disclosed. Informed by the views of the Adviser, Cabinet Office officials then engage in dialogue with the Permanent Secretary of the Department and the Minister concerned, with a view to clarifying the position and, where necessary, putting in place arrangements to prevent any conflict.

3.5 The reason for this careful process of declaration and examination of interests is simple. In their executive role, Ministers are regularly taking decisions, on behalf of the public, over such matters as the award of Government contracts or developments in policy which can have a clear financial impact. It is vital that Ministers' conduct is guided by the public interest rather than by any personal involvement, financial or otherwise.

3.6 As a Member of one or other House of Parliament, a Minister is obliged by the rules of their House to provide information in the relevant Parliamentary Register of:

“... any pecuniary interest or other material benefit [he or she] receives which might reasonably be thought by others to influence his or her actions, speeches or votes in Parliament, or actions taken in his or her capacity as a Member of Parliament”¹⁷.

However, because of their executive responsibilities, the obligation on Ministers to declare their interests on taking office goes wider than the obligation they are already under to do so as Members of Parliament (at least in respect of Members of the lower House). It includes, for example, the disclosure of active links with charities and the relevant interests (financial or non-financial) of their spouse or partner and close family members¹⁸.

(b) Some Examples of Advice Given

3.7 The advice given by officials and the Independent Adviser to individual Ministers is confidential and it would not be appropriate to reveal it here. It is, however, possible to give some examples of issues which can arise and of the types of advice given to resolve them.

3.8 Shareholdings – like other people, many Ministers hold some of their personal savings in the form of equity investments (in stocks, shares or bonds). Most of these investments are in generally managed funds (unit trusts or OEICs) which invest in firms in a particular geographical region or sector of the market. Ministers who hold investments of this type have no control over precisely where their money is invested, nor will they know specifically where it is placed at any particular point in time.

3.9 A few Ministers, however, may, on appointment, have a significant shareholding in a particular company or companies. In such cases they will be advised to examine their holdings and to take action to avoid a conflict of interest.¹⁹ This may involve, for example, disposing of any individual shareholding which could represent a conflict of interest, or lodging their shareholdings in a “blind trust”²⁰.

3.10 Charities – many Ministers are trustees or patrons of charities. Paragraph 7.12 of the Ministerial Code provides that Ministers should take care to ensure that they do not become associated with non-public organisations whose objectives may in any degree conflict with Government policy and thus give rise to a conflict of interest. If the focus and activities of a charity do not represent a potential conflict of interest, and a Minister can appropriately continue their association with it, they will nevertheless be advised to avoid participating while a Minister in fundraising for the

¹⁷ Paragraph 9 of the Guide to the Rules relating to the Conduct of Members (HC 351, Session 2005-06) refers. A similar obligation is placed on Members of the House of Lords by paragraphs 8 and 9 of that House’s Code of Conduct.

¹⁸ A full description of the eight categories of interest Ministers are required to disclose is given in the Foreword to the List of Ministers’ Interests.

¹⁹ See paragraph 7.7 of the Ministerial Code.

²⁰ That is, the shares will be held by a third party and managed in trust for the Minister while he or she is in office.

charity which would, or might appear to, place them under an obligation to those to whom appeals for fundraising are being directed.²¹

3.11 Interests of Close Family Members – on occasion, a member of a Minister's close family may be known to hold an interest which is relevant to a Minister's responsibilities. For example they may be employed by a company which holds or is bidding for Government contracts. In any such cases, arrangements will be made to ensure that the Minister concerned is not a party to decisions about those contracts.

(c) The Part played by the Independent Adviser

3.12 My first task on taking up my appointment was to go through all the returns of interests submitted by Ministers through their Departments following the formation of the present administration in the summer of 2007. In some instances, the responsibilities of individual ministers changed subsequently and updated returns appropriate to their new Department and role were submitted. Fresh returns were made by all Ministers following the reshuffle undertaken by the Prime Minister early in October 2008. In view of the Government's close involvement at that point in discussions with financial and other institutions as a result of the economic situation, the particular attention of Ministers was drawn to the importance of them disclosing their financial interests and relationships with such institutions, and seeking advice from their officials as necessary on the position. Together with Cabinet Office officials, I have gone through all of these returns on each occasion, probing them where necessary and offering appropriate advice where potential difficulties emerged, in order to satisfy myself that measures have been put in place to avoid a conflict of interest.

3.13 It is important to emphasise that the ultimate responsibility for making known their interests rests with individual Ministers. Only they know what their interests are. Permanent Secretaries and the Cabinet Office have, over the years, amassed a wealth of experience which can help Ministers identify relevant interests and decide how to cope with them. The Independent Adviser stands in support of officials, as a further check on the process and on the action taken and an independent source of advice to Ministers and officials on how to handle the most difficult circumstances. At the end of the day, however, only Ministers themselves can take the action needed to ensure that any conflict between their private interest and their public responsibilities is avoided.

²¹ Ministerial Code, paragraph 7.13.

Section 4: The List of Ministers' Interests

4.1 Paragraph 121 of the Green Paper on "The Governance of Britain" presented to Parliament by the Secretary of State for Justice and Lord Chancellor in July 2007 said:

*"the Independent Adviser on Ministers' Interests will publish an Annual Report and List of Ministers' Interests. Subsequent lists will be published with the Independent Adviser's Annual Report."*²²

The Government's intention to publish such a List was welcomed by the Public Administration Select Committee, which described it as "*an important safeguard against impropriety*".²³ The first List of Ministers' relevant Interests, in the preparation of which I have been consulted and involved, is being published by the Cabinet Office alongside this report.

4.2 The purpose and nature of the List are described in the introduction to the first edition and there is no need for me to repeat that description at length here. However, there are a few key points which it may be helpful to underline.

4.3 The aim of the List is to provide reassurance to Parliament and the public that no conflict exists between a Minister's public duties and their private interests, financial or otherwise. It does not aim to repeat (let alone supplant) the information given in the separate Registers of Members' Interests produced by either House of Parliament but, in view of the wider disclosure obligations on Ministers to which I have previously referred²⁴, to supplement that information with additional material where appropriate. It therefore needs to be read alongside the published Parliamentary Registers of Members' Interests, as well as relevant information published by the Electoral Commission.²⁵

4.4 Since a good deal of information about Ministers' interests is already in the public domain through the medium of the Parliamentary Registers, the number of additional interests disclosed is small and the List is relatively short. Moreover, the List is not one of all the interests of Ministers and members of their close family: if it were it would involve an unjustifiable intrusion into the private affairs not only of Ministers but of their close family. It does not therefore record all the information in the returns made by Ministers to the Cabinet Office but only those interests they currently hold which are additional to those in the Parliamentary Registers and which the Minister concerned, after advice from officials, considers are, or can reasonably be perceived to be, directly relevant to that Minister's particular responsibilities in government.

²² CM 7170.

²³ Seventh Report of Session 2007-08, HC 381, paragraph 10.

²⁴ See paragraph 3.6 above.

²⁵ It follows that where the List describes a Minister as having "no relevant interest", that means that they have disclosed no interest relevant to their Ministerial responsibilities which is additional to any they may have already disclosed in the relevant Parliamentary Register or to the Commission.

4.5 The List has been prepared by the Cabinet Office, in consultation with me, on the basis of the individual returns of their interests made by Ministers through their Permanent Secretary. Each Minister has personally approved their own entry in the List.

4.6 It is important to recognise that the List is a snapshot taken at a particular point in time. It represents Ministers' relevant interests at the date of publication, not any potentially relevant interests they might have held prior to or on accepting appointment. It reflects, in short, the position reached at the end of the process of initial disclosure by Ministers and follow-up dialogue and action which I have described in the preceding section of this report.

4.7 The circumstances of individual Ministers and members of their close family will change. There is a continuing responsibility on Ministers to inform their Permanent Secretary of any relevant alteration in their interests. Moreover, Ministers are under an obligation both to declare any relevant interest during proceedings in Parliament²⁶ and to alert their Ministerial colleagues to any such interest. Paragraph 7.6 of the Ministerial Code states:

“Where it is proper for a Minister to retain a private interest, he or she should declare that interest to Ministerial colleagues if they have to discuss public business which in any way affects it and the Minister should remain entirely detached from the consideration of that business.”

4.8 Publication of the List of Ministers' Interests therefore has to be seen alongside a range of provisions which are aimed at ensuring that conflict between a Minister's private interests and their public responsibilities is prevented. It represents, I believe, a welcome addition to the transparency which already attends these matters.

4.9 The discipline which the publication of the List entails is also a welcome strengthening of the safeguards in this area. The process of producing the List requires Ministers and their officials to review Ministers' interests and the arrangements made to handle them in a formal and regular way, in consultation with the Cabinet Office and the Independent Adviser.

4.10 As 2009 is the first time the List has been produced, the experience has been a novel one for all concerned. The Cabinet Office and I will review the experience to see if there are any improvements we can make, so as to ensure that the Prime Minister's objectives in introducing the List are met without imposing a disproportionate administrative burden.

²⁶ See paragraphs 55 et seq of the “Guide to the Rules relating to the Conduct of Members” (op cit) and paragraph 8 (b) of the House of Lords Code of Conduct.

Section 5: The Independent Adviser's Role – (2) Investigation

5.1 The second key function of the Independent Adviser, in addition to the provision of advice to Ministers individually and collectively, is the investigation of alleged breaches of the Ministerial Code. The Green Paper on “The Governance of Britain” published in July 2007 said:

“a new Independent Adviser will be appointed to advise on Ministers’ interests. He or she will be able, at the Prime Minister’s request, to investigate alleged breaches of the Ministerial Code”²⁷

5.2 This passage from the Green Paper makes clear that the Independent Adviser’s investigatory function is triggered by a request from the Prime Minister. Unlike the Parliamentary Commissioner for Standards in respect of Members of Parliament, the Independent Adviser does not directly receive complaints against Government Ministers and himself decide whether or not to investigate them. Rather, any such complaints are directed to the Cabinet Secretary. It is he who advises the Prime Minister whether or not the Independent Adviser should be brought in.

5.3 This arrangement was questioned by the acting Chair of the Select Committee on Public Administration, Mr Gordon Prentice MP, when I appeared before that Committee on 28 February 2008.²⁸ In reply I explained my understanding of the position as follows:

“Obviously, I am used, in the Parliamentary context, to a situation in which complaints come in to the independent commissioner; he or she decides whether or not they should be investigated, and so on. The Prime Minister’s position is different to this extent, I think, that he remains ultimately responsible for the conduct of his administration and, because of that, the first question that is inevitably asked when a newspaper story breaks is: what is the Prime Minister going to do about it? My understanding, therefore, is that the Cabinet Secretary will do a preliminary recce, if you like, to establish the facts on the basis of which the Prime Minister can answer that question, and obviously one potential answer is (and I expect this will be the answer in serious cases) that the independent adviser should be brought in. I see this as a sort of preliminary look by the Cabinet Secretary at the facts in order to advise the Prime Minister on what to do and enable him to answer the inevitable media attention.”²⁹

5.4 It is, I hope, clear from this that it is not the intention that the Cabinet Secretary will himself investigate Ministers. Rather he will undertake a preliminary examination of the known circumstances surrounding an allegation against a Minister in order to advise the Prime Minister on whether there is sufficient prima facie evidence of a breach of the Code to warrant the Prime Minister asking the Independent Adviser to investigate it.

²⁷ CM 7170, paragraph 121.

²⁸ HC 381-I, Session 2007-08, Q5 et seq.

²⁹ Ibid

5.5 In further exchanges with Mr Prentice, I assured him that if it appeared to me that a particular allegation against a Minister was such as to warrant investigation by me, I would not hesitate to draw my view to the attention of the Cabinet Secretary, and through him of the Prime Minister.

5.6 The Government set out its arguments in favour of retaining the Prime Minister's discretion in relation to whether or not to call in the Independent Adviser in its response to the Select Committee's Seventh Report of Session 2007-08 (see paragraph 2.13 above).

5.7 I was also questioned by the Committee on whether I would include details of any investigations I had conducted in my annual report, and whether the reports of any such investigations would themselves be published. On the first point, I was able to assure the Committee that I would certainly refer to any such investigations in my annual report, whilst avoiding repeating what had happened in unnecessary detail.³⁰ On the latter, I pointed out that the decision whether or not to publish the report of an investigation I had conducted would be for the Prime Minister. He had already made clear that he would make public the facts on the basis of which he reached decisions about what to do in a particular case. In the light of this, it was highly likely that the findings of any investigation I conducted would be made public.³¹ The Government's response to the Select Committee subsequently said on this point:

*"The Government believes that it is important for the Prime Minister to be able to make decisions after a balanced consideration of the facts of an individual case. It must therefore be for the Prime Minister to account for his decision, including making public any findings of relevant fact."*³²

5.8 In the year since I took up office, I have not been asked by the Prime Minister to undertake any investigation of alleged breaches of the Ministerial Code. The reason for this is simple: there have been no such allegations of any substance.

5.9 I have, however, taken the opportunity to think through the procedure I would follow if I were asked to conduct such an investigation. It is important that any Minister who is the subject of an inquiry by me, and anyone else who becomes involved in one (for example, as a witness), is aware of the process involved and of their rights and responsibilities as part of that process. The procedure I have in mind draws substantially on the tried and tested process used in the Parliamentary context. At the same time it will need to be kept under review and to be modified as necessary in the light of experience. It would be premature for me to go into further detail before I have actually conducted an investigation but this is a subject to which, as events require, I am likely to return in future reports.

³⁰ Ibid, Q48-52.

³¹ Ibid, Q56.

³² Government Response to the Seventh Report of Session 2007-08, HC 1056 , section 6.

Section 6: Explaining what the Independent Adviser does

6.1 It would not be appropriate for me to conclude this report without setting out the approach I intend to take to publicising and explaining the work of the Independent Adviser.

6.2 The Adviser is not appointed to provide a running commentary on matters concerning the standards of conduct of Government Ministers. Ministers are accountable to Parliament and it is in that forum, and through the cut and thrust of political debate, that their actions should primarily be questioned.

6.3 It is crucial to both Ministerial and public confidence in the new arrangements introduced by the present Prime Minister that the ability of the Adviser to examine individual cases independently, fairly and impartially should be evident. For that reason, it will not be my practice to comment on the substance of individual cases or to reveal the advice I may have given to the Prime Minister or to other Ministers.

6.4 Public confidence in the new arrangements does, however, require a proper accounting to Parliament for what is being done. It is for that reason that the Prime Minister has authorised the publication of this annual report and was happy to approve my appearance before the Public Administration Select Committee in February 2008 to answer questions about my role.

6.5 My aim will be to strike a balance between a proper confidentiality about the advice given in, and the investigation of, individual cases (which is essential if such investigation is to be both fair and effective) and openness about the standards expected of Ministers (set out in the Code) and the systems and procedures in place to deliver those standards. I hope that the publication of this first annual report represents a substantial step in getting right that balance.

6.6 I have also responded to the suggestion by the Select Committee that I should have a dedicated website, and have established a webpage which can be accessed from the Cabinet Office website at www.cabinetoffice.gov.uk/propriety_and_ethics.aspx Information on the nature of the Independent Adviser's role and contact details can be found on this webpage, as well as links to other relevant sites.

Section 7: Conclusion

7.1 In this, my first annual report as Independent Adviser, I have taken the opportunity to set out in some detail both the context in which the Adviser functions and the approach I have taken, in my first year in office, to doing the job. This is, I believe, an important step forward in terms of the transparency surrounding the role, and one which I hope will be welcomed.

7.2 The developments in the Ministerial Code and in the Independent Adviser's role authorised by the Prime Minister have the potential to represent a significant strengthening of the arrangements for ensuring high standards of conduct in government. It is encouraging that in its response to the Public Administration Select Committee's Seventh Report of Session 2007-08 the Government said:

*"The Government shares the Committee's view that the post of independent adviser should become a permanent part of the regulatory framework for conduct in public life."*³³

The challenge now is to take the opportunity the Prime Minister has provided to deliver solid and lasting change, thereby helping further to build Parliamentary and public confidence in the institutions of government.

7.3 In the coming year, I shall seek to extend the initial relationship I have built with Ministers and officials, described in this report, with a view to developing the emphasis on advice and prevention which I believe is a key part of the strategy for delivering that change. Together with Cabinet Office officials, I will also review the first List of Ministers' Interests, in the light of Ministerial, Parliamentary and public reaction to the List's publication.

7.4 I close with an expression of thanks to the individual members of staff of the Cabinet Office who have assisted me in my first year in the role. In spite of very heavy workloads, their commitment to making the new arrangements effective has never been in doubt. The public, as well as I, are in their debt.

Sir Philip Mawer

March 2009

³³ Ibid, section 10.