



Reinforcing ethical standards in government

The Johnson government was beset by ethical scandals for much of 2021, and 2022 began the same way, with ‘partygate’ dominating the news in January and February. While the prime minister – and backbench Conservatives – wait for the outcome of the Metropolitan Police’s investigation into possible lockdown breaches in Downing Street and the full publication of Sue Gray’s report, there are important reforms ministers should begin now to show they are serious about reinforcing ethical standards in government.

Whatever the Met and Sue Gray find, the prime minister (or his successor) needs to clean up standards in government. While there will always be other things to take up ministers’ and officials’ time – most recently the war in Ukraine – the government needs to use 2022 to show that it has understood the damage caused by more than a year of scandal and that it has a plan to avoid the same thing happening again.

Improving ethical standards in government is not just important for the health of the UK’s democratic system and good government, but it is in ministers’ own interests as well. The prime minister’s personal poll ratings plunged during the Owen Paterson and partygate scandals, helping give the Labour Party a sustained lead over the Conservatives for the first time in years.¹ Public anger at the impression of habitual rule-breaking at the heart of government reached levels not seen since the expenses scandal. Boris Johnson and his ministers will need to change the way they operate to restore faith in politics – and in their government.

The current system for upholding ethical behaviour in government relies too much on good behaviour. It is only by fundamentally reforming the rules and how they are enforced that ministers will be able to show that they understand the depth of the problem.

Throughout 2021, the Institute for Government made recommendations for such reforms. These have covered lobbying, in the fallout of the Greensill scandal; the role of non-executive director appointments after Matt Hancock's resignation as health secretary; the role of various government watchdogs and how to increase their strength; and the ministerial code, which cuts across many of these issues. This Insight paper brings together these recommendations, updated to take into account the most recent events. The changes fall into three categories: legislative, organisational and cultural.

Legislative change

The scale of the failure to meet ethical standards means the government can no longer argue that relying on convention alone is enough to fix the system for enforcing standards. Some of the weaknesses exposed in 2021–22 must be resolved through legislation to ensure watchdogs have sufficient powers and permanency. The Boardman review, commissioned by the government, called for legislation on certain ethical areas. And independent bodies like the Committee on Standards in Public Life (CSPL) have similarly called for wide-ranging changes, including giving certain regulators and the codes they enforce a statutory basis. The time has come for the government to set out primary legislation to show that it is serious about driving this change. A strong enough bill would likely receive support from the opposition parties, who have called for the government to take a tougher line on standards. This section sets out what the new legislation should cover.

The ministerial code and independent adviser

The codes of conduct for civil servants and special advisers both have a basis in law (the Constitutional Reform and Governance Act 2010). The ministerial code, on the other hand, is simply issued by convention and can be withdrawn at any time if a prime minister chooses to.

The ministerial code should be given the same legal basis as its companion codes for civil servants and special advisers. This does not mean the full content of the code should be set out in law – the law should simply set out a requirement for the prime minister to publish one based on the seven principles of public life, or 'Nolan principles'.

The bill should also legislate for the role of the independent adviser on ministerial interests. It should establish their role, their independence and their power to investigate (see below). It should also set out a more transparent appointment process, including that this is done via the 'significant appointment process' (where there is a senior independent member on the panel that interviews candidates), that they must go through a pre-appointment hearing with the Public Administration and Constitutional Affairs Committee (PACAC), and that they will serve one term of five years.

The business appointment rules

The business appointment rules, which set out what employment ministers and civil servants can take on when they leave government, are issued by the government and have no legal basis – they are established by the ministerial code. The rules are enforced by the Advisory Committee on Business Appointments (ACOBA), chaired by Lord Pickles. As the name suggests, ACOBA can only *advise* former ministers and civil servants about how they should approach post-government roles. It cannot require those leaving government to seek its advice, or enforce the conditions it places on them – at most, issuing sternly worded letters. The government should legislate to give both the business rules and the committee a stable footing.

In addition to placing ACOBA on a statutory footing, ministers should heed [Nigel Boardman's advice](#) on enforcement of the rules. In his review of the relationship between government and Lex Greensill and his firm, Boardman recommended that ACOBA should develop an "enforcement arm" that ensures that former ministers and civil servants abide by the advice they are given.² He did not believe that this would require a statutory basis, but rather that compliance with the rules should be a contractual arrangement for civil servants, based on "restrictive covenants in the same way as the private sector". For ministers who do not have contracts, Boardman suggested they should "be required to sign a legally enforceable deed of undertaking which binds them to follow the business appointment rules". This arrangement makes sense as it is more straightforward than a legislative route. However, the government could also legislate to give ACOBA the power to enforce its advice itself.

The commissioner for public appointments

Currently, the commissioner for public appointments, who oversees the process of appointing chairs, chief executives and board members of public bodies – from the British Museum to the Environment Agency to the Architects Registration Board – is chosen by the prime minister. The position exists under an Order in Council, not full primary legislation.³

The new standards bill should legislate to formally establish this position, and to guarantee that it should be appointed fully independently via the significant appointments process. It should also provide a legislative basis for the existence of the appointments code. Like the ministerial code, it is right that the content of the code itself is not fixed in law, so successive governments can adapt it to suit their priorities.

The Institute for Government will be publishing more detailed proposals on how the appointments process can be improved in 2022.

The code of conduct for board members of public bodies

Currently, a code of conduct applies to [departmental non-executive directors \(NEDs\)](#), as well as those of public bodies. But it has no statutory basis and, [as we found](#) last year, there is a confusing range of guidance about transparency that applies to NEDs at government departments.

As Boardman recommended, this code should also be given a statutory basis. This would bring it in line with the codes for special advisers, civil servants and, as we have recommended, a new ministerial code. Again, that does not mean the exact provisions of the code should be included in legislation – simply that a code should be issued and board members should have to abide by it.

Organisational change

Updating the law will go only so far – the government must also reform its structures and processes to ensure that the changes stick. This important responsibility falls to both ministers and officials. Ministers need to show that they understand the expectations of the public and can meet them, while civil servants need to put in place the procedures that ensure the government achieves what it has committed to.

The independent adviser must have more powers

Lord Geidt, the prime minister's independent adviser on ministerial interests, has said that he will set out proposals for how his role can be updated and improved.⁴ While we wait to see the outcome of those discussions, it is clear that the role is at present not sufficiently independent and must be strengthened. While setting these powers out in legislation would ensure they were permanent, they do not require legislation to be granted.

Most importantly, as the Institute, the CSPL and others have argued, Lord Geidt must be able to initiate his own investigations into possible breaches of the ministerial code, without requiring the prime minister's permission. He could act because something has been brought to his attention by media reports, by the opposition or by another group, or because of information that he himself has acquired – as the parliamentary commissioner for standards can do. He should also be able to explain when he will *not* investigate something if he does not believe it meets the necessary threshold.

Lord Geidt should be able to publish the findings of any investigations in full, having informed the minister in question and the prime minister of the results of his work. Under the current system, No.10 publishes any reports by the postholder, meaning it has control over what information is made public and when. When Lord Geidt's predecessor, Sir Alex Allan, investigated bullying allegations against Priti Patel (ruling that she had broken the ministerial code; a finding Johnson disagreed with) it took six months for the report to be published.⁵ To reinforce trust in the independence of the process, it is important that the findings are published in a timelier manner than currently.

There is also a question about whether the title of independent adviser on ministerial interests is appropriate for the expanded role. Currently the role is not really independent; these changes would make it so but it would also focus more on standards and behaviour than on ministers' interests (important as that is). And, with more agency, it reaches beyond simply 'adviser'. The 'independent commissioner for the ministerial code' would therefore be more appropriate.

The prime minister needs to update the ministerial code

As well as giving the ministerial code a statutory basis, the prime minister should update its content – as he committed to do when he appointed Lord Geidt in April 2021.⁶ As we have [argued previously](#), this update should include several changes:

- **Focus the code on standards of behaviour, not government processes.** Currently the code combines rules on how ministers should behave with more procedural government guidance, such as on 'write-rounds' and the use of government cars. Separating these would make the code easier for ministers and the public to understand.
- **Set out that a range of sanctions may apply to breaches of the code.** The prime minister has clarified that a minister who is found to have broken the ministerial code will not immediately be expected to resign. Explaining what types of breaches are possible and the range of sanctions they may attract – from an apology in parliament to a token fine, up to resignation – will help manage expectations of the code and reduce calls for ministers to resign every time they make a mistake.
- **Update the code to reflect how government works in the 2020s.** As we have argued elsewhere, the new ministerial code needs to include rules on working practices that have emerged in recent years. It should include a ban on using personal phones for substantive government business; a requirement to safeguard all information that a minister receives in their role, whether in formal communications or informal messaging apps, to aid decision making and scrutiny; clearer rules on social media use by ministers; and guidance on whether relationships with staff are acceptable.

Departments need to be more transparent

The IfG, CSPL, Transparency International and others have all called for greater transparency about who ministers meet and what they discuss. In the context of the row over David Cameron's lobbying, concerns over Russian influence in London and criticism over emergency procurement during the pandemic, transparency about who influential government figures meet and their potential conflicts of interest has never been more important. That means:

- **Departments should publish monthly updates on ministerial meetings.** Currently departments have a 'target' to publish information on a quarterly basis on who their ministers meet, what hospitality they have received and where they have travelled – although the government does not define this as within three months of the quarter to which it refers, just that there will be a publication roughly every three months. That means even if the information is published on time, it can refer to a meeting that took place six months ago. Conversely, MPs have to publish all hospitality within a fortnight. Ministers should have to publish monthly all information on meetings (by the end of the subsequent month), hospitality and travel; and, as the CSPL has also argued, they should provide more detail about what they are discussing in meetings, rather than using generic terms like 'to discuss business' and similar.

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- **Special advisers and senior civil servants should have to publish their meetings too.** Currently special advisers only have to declare meetings with journalists, and the only civil servants who have to declare any meetings are permanent secretaries. Special advisers and officials at the senior civil service (SCS) level are hugely influential in government policy making, so they should have to declare their meetings in the same way that ministers do.
 - **Civil servants should declare all their external financial interests to departments, and those of the SCS should be published.** One of the key concerns raised by the Greensill scandal was the fact of senior civil servants working closely with, or even for, private sector companies with whom they held a relationship as part of the government. Every official should have to declare to their department their external financial interests, and all those of the senior civil service should be published.
 - **Departments should publish a comprehensive quarterly register of interests for their non-executive directors.** While departments publish some information about [their NEDs' interests](#), there is no consistent format or level of detail provided.⁷ Departments need to take a more consistent approach and publish a full register of interests for their NEDs, update it regularly (as the Ministry of Justice does) and make it accessible on their website (as the Department for Education does).
 - **The commissioner for public appointments should oversee the appointment of departmental board members.** Currently board members are appointed on the say-so of the relevant secretary of state, with no transparency into how these decisions are made. Matt Hancock's resignation, prompted by an affair he was having with a personal acquaintance he had employed as an NED in the health department, raised questions about how NEDs are appointed that have still not been answered.⁸ Bringing their appointment into the purview of the commissioner, who already oversees the appointment of NEDs to public bodies, would increase transparency and ensure the best people take the roles.
 - **Ministers should provide more transparency about the roles and interests of ad hoc appointees.** During the pandemic, many 'tsars' were appointed to deal with particular problems. While it is right that government should make use of external expertise, these ad hoc appointees should still meet certain levels of transparency. That means the [details of their role](#), including their responsibilities, the duration of their appointment, their pay and how they will be accountable to the relevant select committee, should be published on the relevant department's website. They should also have to publish a register of interests to avoid any perception of conflict of interest.
 - **This data should be properly accessible and searchable.** The data that departments currently publish is not always in usable or uniform formats, or where it should be on gov.uk. Making this data easy to find, download and analyse by those outside government will show that ministers and officials are really committed to, and understand, the importance of transparency.

Cultural change

The hardest but most important change that is needed now is a change to the culture in government. This has to come from the top – the prime minister and senior ministers need to recognise the severity of the failures over the last 18 months and drive change to ensure they do not happen again.

This culture also needs to be replicated among officials in departments. Permanent secretaries in particular need to impress upon officials in their departments that meeting public expectations of transparency and ethical behaviour is a core part of the job, not an optional extra. Successive scandals have revealed that government frequently fails to meet the expectations of the public and everyone in government needs to step up to change this.

Leadership must come from the top

The Institute has published many calls for the prime minister to take the lead on improving standards in government. That means setting out a new ministerial code that makes clear what he expects of his ministers and then – crucially – holding them to it, including by allowing Lord Geidt to start his own investigations into alleged misdeeds. If the prime minister truly wants to show renewed leadership on this issue, and to reinforce the code issued in his name, he needs to stamp out any misleading of parliament, inadvertent or otherwise – and particularly ensure that he does not do so himself.

Boris Johnson has so far failed to make the changes necessary – ahead of the partygate investigations concluding he has a chance, and a reason, to do so. The Commons Liaison Committee should hold Johnson to account for his progress on improving standards across government in their regular hearings with the prime minister.

The whole culture of government must change to expect compliance

Nigel Boardman set out a series of strong recommendations for embedding much more of a culture of compliance in government, comparing it unfavourably with the private sector where he had spent much of his career. He suggested the creation of a “cross-government compliance function”, co-ordinated by the Cabinet Office, which would be able to investigate officials (including special advisers) and would be tasked with enforcing expected standards on conflicts of interest, lobbying, secondary employment and other areas.

Boardman also called for “greater emphasis... on embedding integrity in the civil service” and placing “greater responsibility on individual line managers to ensure their teams are aware of and understand the responsibilities on them as civil servants”. He also suggested mandatory propriety and ethics training for all officials should be introduced, to help instil the need for this to be a responsibility for all government officials. These proposals are all sensible and should be a priority for officials.

There need to be more routes for whistle-blowing

Sue Gray's "update" on her investigations into potential lockdown breaches in Whitehall – particularly surrounding "failures of leadership" – will have made for difficult reading for the prime minister and senior officials in Downing Street and the Cabinet Office. She did not make many recommendations but did note that "staff wanted to raise concerns... but at times felt unable to do so".

Gray said that "there should be easier ways for staff to raise such concerns informally", so that individuals can whistle-blow about poor behaviour in Downing Street without needing to go via their line manager. As part of the refresh of culture, such routes should be set up across all of central government, not just in No.10. A key test for the new Office of the Prime Minister, and for the wider change in the culture in government, is whether officials feel comfortable in raising concerns.

Senior officials need to take responsibility for their departments' performance on transparency

There are various transparency requirements on government – departments are supposed to publish information on ministers' meetings, travel and hospitality, and similar information for special advisers and certain senior officials. They are also supposed to publish information on their NEDs' financial interests. However, as [we found](#) in 2021, departments' performance on publishing this information varies dramatically, with many often late or not publishing all the information they should.

Given the huge interest in who ministers meet and how senior officials spend their time, revealed by the scandals over the last year, it is essential that departments publish all the information they are supposed to, on time and in full. Rather than leaving this to junior administrative staff, senior officials – including permanent secretaries – need to take personal responsibility for ensuring their departments publish what they have committed to. If departments are regularly underperforming, departmental select committees in parliament should ask the permanent secretary to explain why, and what they are going to do to deliver improvement.

Conclusion

Events – like the war in Ukraine – will always buffet the government and take attention away from ethical scandals. That does not mean that the underlying causes of the recent failures of the UK government to uphold expected standards of behaviour have gone away. When the Metropolitan Police investigation is complete and Sue Gray's full report is published, there will be renewed calls for the prime minister to clean up government – potentially alongside a full-scale challenge to his leadership. Regardless of the reaction of his backbenchers to the reports on the Downing Street parties, Boris Johnson should take the steps outlined here to establish and enforce the high standards the public expects of the government and to help restore trust in public life.

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