

# Constitutional guardians



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## About this report

This report has been produced as part of the IfG/Bennett Institute Review of the UK Constitution. Its purpose is to explore the broader ecosystem of different individuals, bodies and institutions that oversee and uphold different parts of the UK constitution – a group we have called 'constitutional guardians'.

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# Summary

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Integral to the functioning of the UK constitution is its system of checks and balances. These are provided by a complex ecosystem of institutions, individuals and organisations both within and around the three branches of government – the executive, legislature and judiciary – and that are fundamental to its operation. In this paper we refer to these entities as 'constitutional guardians' in that they oversee, monitor and uphold different parts of the constitution and collectively protect the democratic integrity of the governance of the UK.

We identify three categories of constitutional guardians that make up this ecosystem, grouped by the different roles they play. (See Annex 1 for the list we have identified.)

- **Core guardians** are the legislature, the executive and the judiciary, as well as the monarchy, which sits across both the legislature and executive. These make up the different branches of government and their relationship to each other forms the key checks and balances of the UK constitution.
- **Auxiliary guardians** are actors integrated within the core institutions who act as 'stewards' of the constitution, interpreting key texts and principles and advising core institutions and other key actors on the functioning of the UK constitution on a day-to-day basis (including both the written rules as well as the unwritten norms and conventions that underpin them). Examples include the cabinet secretary and the attorney general. They act as both guardians and enactors of the constitution.
- **Tertiary guardians** are organisations or individuals that sit outside both the core and auxiliary institutions but are nevertheless integral to the smooth operation of the constitution as a whole. Also called 'fourth branch institutions'<sup>1</sup>, 'guarantor institutions'<sup>2</sup>, or more broadly 'constitutional watchdogs'<sup>3</sup>, these organisations or individuals buttress the system where weaknesses have been exposed, regulating the behaviour of those within institutions and supervising the key relationships between them, as well as protecting democratic rights and principles on behalf of the public.

While the system on the whole does largely function well, pressures in the past decade, and particularly following the EU referendum in 2016, have exposed weaknesses of this ecosystem. As such the first part of this paper analyses the different elements in turn, focusing particularly on our third category of constitutional guardians – those the individuals and organisations outside of the core institutions of government – where most stresses have been felt.

The second part suggests some principles that should be considered if a government wanted to strengthen these constitutional guardians, or establish new ones in the future, encouraging a more comprehensive approach to guardians, rather than the piecemeal approach that has prevailed historically.

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# Introduction

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Study of the UK constitution, and the checks and balances within it, tends to focus on the three branches of government – the legislature, executive and judiciary – the relationship between them, and with the monarchy. But the reality of how the constitution operates is much more complex. It is made up of a broader ecosystem of individuals and organisations both within and around those institutions, all of which play a role in ensuring power does not accrue in one place.

The operation of the constitution does not just rely on those key actors to follow explicit rules – set out in statute or in constitutional documents like codes of conduct and Erskine May – but also on a shared understanding of the significance of the long-standing principles, the meaning of unwritten conventions and the sense that there should be some sort of penalty from politicians, the media or the public for a failure to act in accordance with them. Understanding the wider constitutional ecosystem is vital for any discussion about the effectiveness of the constitution, while recognising that the nature of the UK's uncodified constitution means that what qualifies as constitutional itself is up for debate.

The actors in this ecosystem can be categorised in the following ways:

- Core guardians
- Auxiliary guardians
- Tertiary organisations or individuals.

In this paper we use the term 'constitutional guardian' to describe this whole range of institutions, bodies and individuals who protect the public interest by upholding the integrity of the democratic system of governance in the UK. The media and civil society, while not themselves constitutional guardians – as they have no accountability to any of the core institutions – are nevertheless an important part of this ecosystem, reporting on the proper functioning of the constitution, holding core institutions to account and amplifying the work of tertiary guardians.

The relationship between the core institutions themselves is highly contested and will be covered in greater detail in other work conducted by the IfG/Bennett Institute Review of the UK Constitution. The work undertaken by integrated actors within the constitution has also been explored in other Institute for Government papers and will also be the subject of upcoming publications in the review.\* As such most of this

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\* For example, see Buckland R, *UK government law officers: Understanding the role of the attorney and solicitor general*, Institute for Government, 18 June 2022, [www.instituteforgovernment.org.uk/publications/government-law-officers](http://www.instituteforgovernment.org.uk/publications/government-law-officers) and Thomas A, Clyne R, Bishop M and Lilly A, *A new statutory role for the civil service*, Institute for Government, 3 March 2022, [www.instituteforgovernment.org.uk/publications/statutory-role-civil-service](http://www.instituteforgovernment.org.uk/publications/statutory-role-civil-service)

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paper focuses on the functioning of the tertiary constitutional guardians: mapping this ecosystem allows us to take stock of the coherence of the system that has developed – considering for what purpose bodies were established and whether they have the right tools to achieve their aims, especially as the UK constitution continues to evolve.

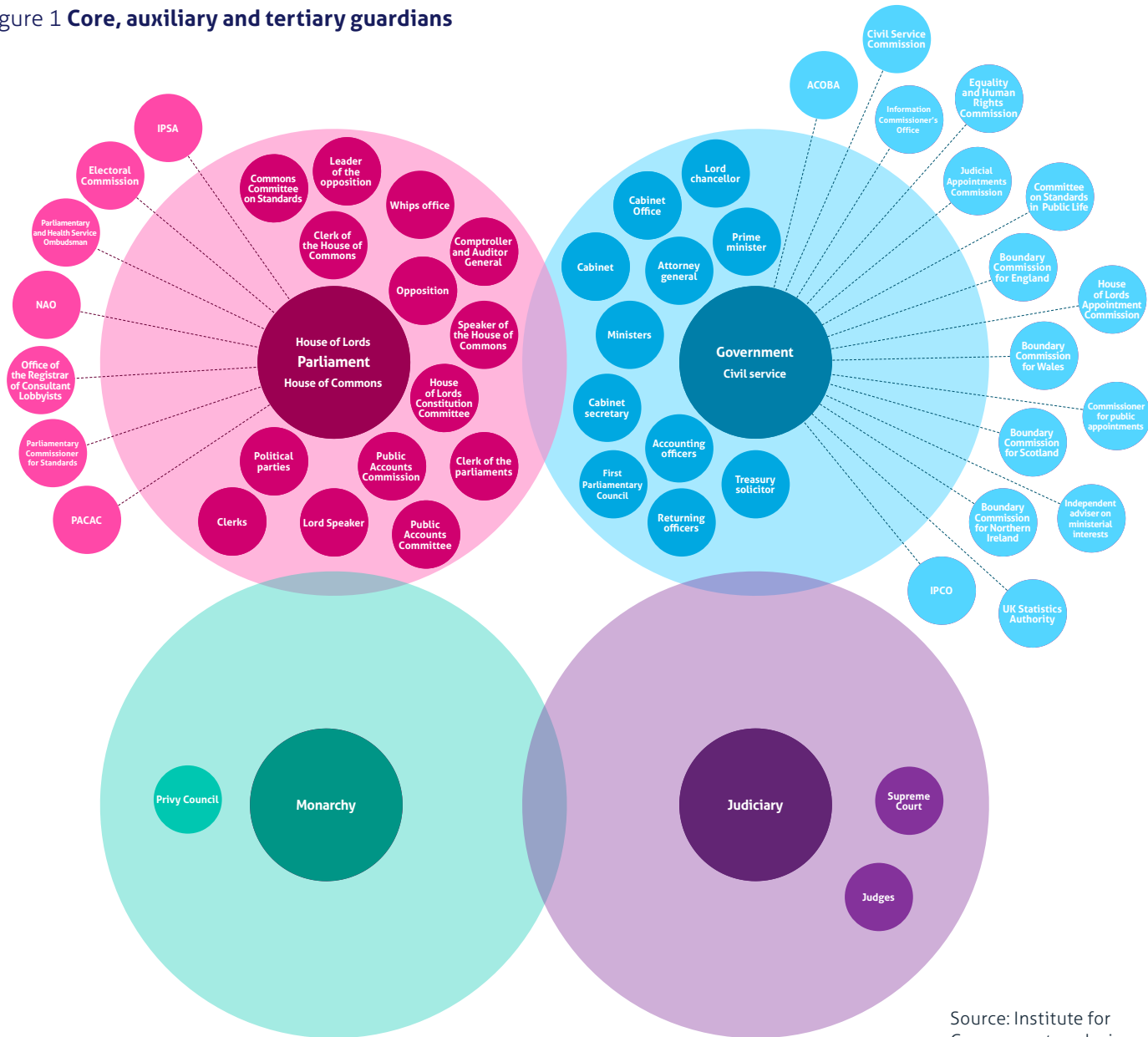
We are aware that the individuals and institutions we have chosen to include in this category could be contested. For instance, we have left out most regulators and individual commissioners as their role is not primarily constitutional (although we recognise there is no agreed definition of what qualifies as constitutional) – and the set of constitutional guardians we have identified have a wide range of roles and powers, which may overlap or differ sometimes without obvious reason.

Events of the last few years, in particular since 2016, have raised concerns about whether the constitution is robust enough to withstand political actors who may seek to test it. At a select committee hearing in the summer of 2022, the cabinet secretary said that Boris Johnson’s government “believe they have a mandate to test established boundaries”.<sup>4</sup> Broadly, however, the guardians that play a role in upholding the UK’s political constitution have withstood the political upheaval – though we will highlight some of the weaknesses in the ecosystem that have become evident as those boundaries have been tested.

It is right that these varied roles are performed by different entities, and we do not advocate for one single body or organisation to ‘protect’ or ‘oversee’ the constitution. We conclude that the role of tertiary constitutional guardians has become especially important when auxiliary guardians, integrated within core institutions, have been placed under pressure and it is vital that those performing these roles understand their place and importance within the ecosystem.

What undermines one part of the ecosystem can undermine the whole, and its structure, especially some of the vulnerabilities of tertiary guardians, makes it susceptible to being weakened by the executive. Although there is no one way to fix these problems, political actors need to recognise the risks posed by failing to remedy them and be willing to act to strengthen checks and maintain public trust in our democratic constitution. This paper is our contribution to this aim.

Figure 1 Core, auxiliary and tertiary guardians



Source: Institute for Government analysis.

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# 1. The ecosystem of the UK constitution

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There have been well-documented pressures on the UK constitution in recent years – including those we examine in our paper *A framework for reviewing the UK constitution*.<sup>5</sup> But a further analysis of these pressures that focuses beyond the relationships between the core institutions is important for a holistic view of the health of the constitution.

The functioning of the UK constitution is not just about the health of, and power relations between, the core institutions, but in practice it relies on the more intricate relationships and power dynamics between a broader set of individuals and organisations who play a role in overseeing, interpreting and operating the constitution. To understand, therefore, how the constitution is working, we need to understand in principle how the ecosystem functions and how that is working out in practice. To remedy issues in the constitution, we should think about how this entire ecosystem can be strengthened.

In this chapter, we will define each type of constitutional guardian in turn – exploring how they should deliver their functions in theory, maintaining checks and balances, before, in brief, exploring how the system has come under pressure when confronted with political reality. Whether these pressures are a short-term blip or examples of the start of a longer-term trend remains to be seen.

## **Category one: the core institutions**

As we explored in *A framework for reviewing the UK constitution*, there are a series of checks and balances between the different branches of government: the executive, legislature and judiciary. Each core institution has a different role within the UK constitution and these roles, based on written texts and long-standing constitutional conventions, prevent power from accumulating in one place. For example, as the legislature, one of parliament's key roles is to scrutinise the actions of the executive and accordingly the ministerial code requires that "the most important announcements of government policy should be made in the first instance, in parliament".<sup>6</sup>

There is not a 'formal' separation of powers as is easy to observe in other countries – the executive is drawn from the legislature, for example – and this means that the checks and balances between the core institutions are not always well understood. There can also be gaps between how these checks are supposed to work in theory and how they operate in practice when they come into contact with politics and also individual personalities, for instance that of a prime minister. Compounding this, the exact balance of power between each institution is contested.



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Each institution plays a different role in the UK constitution and relies on a different set of expertise to do so. Parliament is made up of democratically elected representatives in the House of Commons, and appointed and hereditary peers in the House of Lords, and is responsible for scrutinising government activity and passing bills usually drafted by government. The executive is formed of ministers, drawn from parliament and appointed by a prime minister who governs (and can only govern) with the confidence of the House of Commons. Ministers direct the activity of an impartial civil service charged with serving the government of the day. The executive is responsible for delivering a programme for government based on a democratic mandate endorsed by the population in a general election. Judges are politically independent, appointed on their legal expertise, and responsible for applying, interpreting and enforcing the laws passed by parliament.

At the centre of the constitution is parliament. Parliamentary sovereignty means that each parliament can make or unmake any law – courts cannot bind parliament and no parliament can bind its successor. The fact that the executive draws its legitimacy from the confidence of the Commons means that if the executive breaches constitutional principles then it is ultimately the Commons – on behalf of the public – that should hold it accountable. Arguably this does not always happen: MPs hold multiple roles and overlapping responsibilities that can at times distort their willingness to perform this function. MPs are part of a sovereign parliament, but they are also representatives of their constituents, and often more importantly members of political parties. They are elected according to a manifesto from the party they represent and may feel a democratic responsibility to those commitments over the abstract constitutional role of parliament.

While the monarch retains certain prerogative powers<sup>7</sup> – including the power to appoint a new prime minister – in practice, the majority of these are exercised by the executive on behalf of the monarch, or are exercised by the monarch on the advice of their ministers. The monarchy in practice has little ability to assert a check on the government. There are some ways in which the monarch can influence the exercise of executive power by the government – principally through advice given to the prime minister in weekly audiences.

They can also act as a constitutional safeguard through the convention that ministers will not 'embarrass' the monarch by dragging them into politics. This was tested in September 2019 when Boris Johnson asked the Queen to prorogue parliament for five weeks to avoid MPs expressing opposition to a mooted no-deal Brexit. In this case, the judiciary ended up protecting parliamentary sovereignty – as well as the political impartiality of the monarch – by ruling the prime minister's advice to the Queen unlawful on the basis that it undermined the constitutional principle of 'parliamentary accountability', in preventing parliament from being able to execute its duties. As such, the role of the monarch as a 'constitutional backstop' was arguably never tested but the difficulty for the Queen to deny the prorogation raises questions about whether the principle not to embarrass the monarch carries sufficient weight among certain political actors.

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The judiciary applies, interprets and enforces the laws passed by parliament as well as common law, the body of law contained in written opinions and judgments made by judges and tribunals. This is not just about the behaviour of private citizens; higher courts ensure that public authorities, including government, act within powers that they have been given: either from legislation passed by parliament, or the historic prerogative powers that the executive exercises on behalf of the monarch. The courts also, under the Human Rights Act 1998, determine whether public authorities have acted in contravention of the fundamental rights enshrined in the Act.

The judiciary, therefore, is an important check on executive power. However, parliamentary sovereignty means that if the executive disagrees with an outcome of a legal case, and holds a majority in parliament, it can enact legislation to change the underlying law.

### **Category two: Auxiliary institutions integrated within the core**

There are a secondary set of constitutional guardians that are part of these institutions, which interpret and advise on the constitution – including both officials such as parliamentary clerks or the cabinet secretary and directly elected politicians who also hold roles such as the lord chancellor or attorney general – to inform how the institutions perform their role. These roles are integrated in the core institutions and play a dual role, both as a guardian as well as an operator of the constitution. These tend to be roles that have emerged over time reflecting the long history of the UK constitution.

The civil service code, for example, sets out its core values: integrity, honesty, objectivity and impartiality, as well as expected standards of behaviour, which includes to “comply with the law and uphold the administration of justice”,<sup>8</sup> which places a constitutional duty on all civil servants. But there are specific senior civil servants who have a more direct role. At the top is the cabinet secretary, a role first established in 1916. Their primary role is as adviser to the prime minister and their cabinet, supporting on the running of cabinet and cabinet committees and advising on the workings of government and delivering priority issues. But they also have a role in advising the prime minister on constitutional matters as the overseer of propriety and ethics. The personalities of both the cabinet secretary and the serving prime minister can shape how this role works in practice. For example, as cabinet secretary, Richard Wilson felt that Tony Blair preferred more informal politics, which was at times in tension with the constitutional principle of collective responsibility,<sup>9</sup> which Wilson had to pay particular attention to maintaining.

Others in the Cabinet Office also have an important role – for example, the director general for propriety and ethics, who is responsible for advising on the policies and codes governing ministers and special advisers, managing government’s relationship with independent offices like the Civil Service Commission and advising on public appointments. On the legislative side, the first parliamentary counsel oversees the parliamentary counsel and business managers in both Houses and the Treasury solicitor runs the Government Legal Department, which offers legal advice.

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The other important constitutional role in the civil service is that of the accounting officers – generally permanent secretaries of government departments and chief executives of public bodies. They are required to provide assurance to parliament and the general public that public funds have been well managed and that public spending meets the criteria of regularity, propriety, value for money, and feasibility. In instances where accounting officers believe a spending proposal cannot meet one of these criteria they can request a ministerial direction,<sup>10</sup> which makes the minister – not the accounting officer – accountable for the decision to implement. Although there has been an increase in the number of ministerial and ‘technical’ directions needed to authorise spending on preparing for Brexit before legislation allowing them to do so was passed, as well as sanction emergency spending during the pandemic, these are still a tool for permanent secretaries to call out expenditure they think cannot be justified.

In parliament, clerks play a vital role in informing parliamentarians about the rules governing complex procedure – unlike government officials, they have a duty to provide impartial advice to the opposition as well as the government. This includes the clerk of the House of Commons, who is the principal constitutional adviser to the Commons Speaker, including on parliamentary privilege,<sup>11</sup> and the clerk of parliaments, who provides “authoritative advice on procedural matters on a daily basis” to the Lord Speaker, leader of the House and other members of the House of Lords.<sup>12</sup>

It is not just officials who have a role to play in preserving constitutional conventions and principles. Certain elected politicians also play a part. In parliament, this includes those who sit on select committees charged with overseeing the functioning of the constitution; for example, the Constitution Committee in the House of Lords and the Public Administration and Constitutional Affairs Committee (PACAC) in the Commons. There is also the Privileges Committee as well as the Committee on Standards, which oversees the work of the parliamentary commissioner for standards and had an instrumental role in the Owen Paterson scandal, recommending his suspension for 30 days over breaches of lobbying rules in November 2021.

The Speaker of the House of Commons has a long history dating back to the 14th century and has been a contested position, as opposed to a royal appointee, since the late 17th century, though the current rules for this, which include a secret ballot, were adopted in 2001.<sup>13</sup> The Speaker is charged with acting as a “neutral referee between the different sides of the House of Commons” and is required to be politically impartial.<sup>14</sup> They are also charged with representing the institution and its rights – as is evident when Speakers have criticised government’s handling of parliament.

Members of the government also have long-standing constitutional responsibilities. For example, the lord chancellor and the law officers – the attorney general, solicitor general and advocate general for Scotland.<sup>15</sup> These roles have changed over time. For instance, the Constitution Reform Act 2005 removed the ability of the lord chancellor to sit as a judge, preside over proceedings in the House of Lords and, with the creation of the Judicial Appointments Commission, restricted their patronage in appointing judges, although they are still required to swear an oath to defend the independence

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of the judiciary and “respect the rule of law”.<sup>16</sup> The lord chancellor was also traditionally legally qualified, with every chancellor from 1673 to 2012 being a lawyer. However, that has changed in the past few years, with four successive chancellors between 2012 and 2018 not being lawyers. This has raised questions as to whether the role has become more about political acumen than legal expertise.

The role of the attorney general initially began as the individual charged with representing the crown in litigation (dating back to the 13th century) before evolving into its current role in the 20th century: a blend of a political role as a minister in government while remaining the government’s primary legal adviser.<sup>17</sup>

### **Category three: tertiary organisations or individuals**

The institutions and constitutional guardians within them have a long tradition, even if the way they perform their role has changed over time. But in the second half of the 20th century the government and parliament have established an increasing number of tertiary bodies, which buttress the core institutions to supervise the functioning of the UK constitution and regulate the behaviour of the actors within it.

These bodies are not integrated into the constitution in the same manner as the auxiliary guardians. They are outside of, but remain accountable to, the core institutions of parliament, the government or both, and while they help oversee the proper functioning of the constitution they are not essential for the constitution to operate. Tertiary guardians may also have functions that go beyond constitutional guardianship. For example, the Information Commissioner’s Office regulates Freedom of Information requests to public authorities but also supports and monitors the private sector’s efforts to maintain good data practices. For a full list of the individuals and organisations we have included within this category see Annex 1.

Government has generally decided to establish new such bodies for three reasons: in response to scandals and at moments of crisis; in response to broader societal changes that have had an impact on public perceptions about the role and duties of the state; and in response to the growth in the size, capacity and complexity of the state.

Bodies that oversee standards in public life – including the Committee on Standards in Public Life (CSPL), the parliamentary commissioner for standards, and the independent adviser on ministerial interests – have been established by government and parliament in response to moments of crisis or in times of pressure on the constitution as a way to strengthen checks where weaknesses have emerged. For example, the CSPL was established in 1994 by the then prime minister John Major following the ‘cash for questions’ scandal, and the Independent Parliamentary Standards Authority was set up in 2009 as a direct response to the MPs’ expenses scandal.

The political scandals under Major’s government also led him to create the Public Appointments Commissioner – not regulating behaviour per se, but acting as a check on unlimited ministerial power to appoint non-executive chairs and directors of public bodies, statutory office holders and members of advisory committees. Because these have often been established in response to a specific crisis, they have not been

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conceived in a systematised way and exist primarily to avoid repeats of the issue that caused a crisis rather than having a pre-emptive effect to guard against future standards issues.

Other bodies have been set up in statute in response to changing perceptions about what role the state should play in the lives of the public, as well as broader social and cultural changes. For instance, the Equality and Human Rights Commission was set up under the Equality Act 2006 and merged the duties of three existing equalities commissions: the Commission for Racial Equality, established in 1976; the Equal Opportunities Commission, which tackled sex discrimination and was set up in 1975; and the Disability Rights Commission established in 1999, which clearly reflects a shifting view in society of the state's role in tackling discrimination both by private companies and public authorities.

The establishment of the predecessor of the Information Commissioner's Office (ICO) under the Data Protection Act 1984 came out of a growing campaign in the second half of the 20th century based on the principle that the public has a right to access information held by public bodies.<sup>18</sup> The ICO's role has expanded throughout the 21st century due to the increasing complexity of the role that data plays across the public and private sectors – with public appetite for more advice about how to use data responsibly and prevent the harm or misuse of personal data.

The final set of constitutional guardians established in the second half of the 20th century are linked to the increasing size and complexity of the state. Since the Second World War, the state has taken on much more responsibility in the lives of its citizens. The way that this responsibility is discharged has also changed, with an increasing number of government departments and arm's length bodies – as well as civil servants to deliver these services. This has driven a greater interest in ensuring that public money is spent properly, with politicians concerned about relying solely on the executive to act as guarantors.

The National Audit Office (NAO) was established under the National Audit Act 1983 – moving the office of the Comptroller and Auditor General (CAG) from being part of the executive to being an officer of the House of Commons and giving the NAO the ability to make value-for-money assessments on government spending. This strengthened the independence of the CAG and expanded the role of the NAO – which exists in its current form as a tool of parliament, in particular the Public Accounts Committee, to enable proper scrutiny of public spending. The Parliamentary and Health Service Ombudsman, which deals with complaints against NHS England and other government departments and public organisations, is another body parliament set up in response to the changing role of the state.<sup>19</sup>

The composition, duties and enforcement tools of these bodies vary considerably. They also vary in their relationship to the core institutions. They are a mix of executive non-departmental public bodies, advisory non-departmental public bodies, independent parliamentary bodies, statutory office holders and advisory roles. This range is largely due to the ad hoc way in which they were set up – a process

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of evolution, which is not necessarily a bad thing. It has allowed the executive and the legislature to respond to evolving political and social trends and tailor the development of these constitutional guardians to the specific needs of the moment.

These tertiary guardians do not exist in a vacuum. They can offer support to one another, and their work will often overlap or feed into each other's work. For example, most ministers are also MPs and so their codes of conduct are overseen by both the independent adviser on ministerial interests and the parliamentary commissioner for standards. Another example is the Electoral Commission, which maintains a register of political donations used by the assorted appointments commissions as part of its assessment of the neutrality or political affiliations of any candidates for public roles. This means that strengthening or weakening one part of this ecosystem can have implications across the constitution. When the remits of guardians overlap there may be times when it may be appropriate for them to collaborate with one another, not on the specifics of cases, but certainly on approaches to their work to avoid undue duplication.

### **An increasingly polarised political environment has put pressure on guardians' roles and has led to a weakening of checks and balances**

Exactly how the core institutions ought to relate to and provide checks and balances on each other is subject to debate. For instance, certain members of the most recent governments as well as some academics are in favour of strong executive control of parliament to ensure government is able to deliver the programme on which it was democratically elected. Some of the same people, and others, are concerned that the judiciary's role in the constitution has expanded too far and there should be new limits placed on judicial review.<sup>20</sup>

Since 2016, we have observed a tendency by the government towards limiting the ability of these institutions to hold the executive to account. In part this has been the result of the unprecedented effects of the coronavirus pandemic and Brexit, which required strong, rapid executive action and strained executive–parliamentary relations respectively. In these unusual circumstances the executive branch has increasingly drawn on the democratic mandate of the 2016 referendum result and the most recent general election to justify its own actions and to seek to delegitimise checks on its exercise of power.

But these mandates did not explicitly endorse shifting this balance of power. Parliament is made up of MPs representing 650 constituencies, many of whom are not members of the governing party. The 2016 referendum result only endorsed the fact of exiting the EU, not what the future relationship with the EU should look like or what consequences there should be for UK institutions. Judicial review – the right of individuals to bring legal cases against the government – is a fundamentally important means of making sure ministers do not act beyond the powers given to them in law.<sup>21</sup>

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Solely focusing on the relationships between the core institutions gives a limited understanding of how the constitution has come under pressure. It is just as important to assess the more subtle shifting responsibilities and dynamics in other parts of the UK constitution. For instance, the role of convention and precedent in the UK constitution means that 'institutional memory' is incredibly important. While interpretations of these conventions may evolve and new precedents may be set, it is vital that there is a historical understanding of how the constitution has worked in the past and how this has evolved over time. This is a key role of constitutional guardians.

Constitutional actors need to understand precedents as a prerequisite to being able to apply them, but whether they are applied is always a matter of choice. As the constitution has come under pressure, new precedents have been set that have an impact on the role these constitutional guardians play. For instance, the process of delivering Brexit led to increasing speculation about the role of the civil service – and whether or not it was being performed properly. Following the then chancellor George Osborne's decision to publish Treasury analysis of the possible immediate economic impact of a vote to leave the EU, the Treasury was branded an architect of 'Project Fear' and the question about whether or not the civil service was sufficiently supportive of the Brexit project was raised in select committee meetings.<sup>22</sup> This was just one example of constitutional norms being tested by assorted constitutional actors during this time.

Anonymous briefings that No.10 would consider breaking international law in autumn 2019 following the passage of the Benn Act<sup>23</sup> (which required the government to seek an extension to Article 50 if it could not gain the support of parliament to approve a Brexit deal or vote in favour of no deal) raised questions about what integrated guardians such as the cabinet secretary – and other senior civil servants – should, or could, do in such a circumstance. At present their options are limited. When the government introduced the UK Internal Market Bill 2020, which would have undermined the withdrawal agreement signed with the EU earlier that year, the Treasury solicitor resigned<sup>24</sup> – but this didn't prevent the government pressing ahead, at least in the immediate aftermath.

It was not just the executive branch that set new precedents during the Brexit period, undermining long-standing convention in pursuit of what they might argue were more important constitutional principles. In 2019, during the parliamentary showdowns over Theresa May's deal and the possibilities of a no-deal Brexit, the then Commons Speaker, a secondary guardian, also broke with precedent to allow an amendment to a normally neutral emergency debate motion (which cannot be amended) so that the House of Commons could take control of the order paper. Although some argued that this was right as the government was using its control over the parliamentary timetable to limit opportunities for MPs to have a say and thus undermine parliamentary sovereignty,<sup>25</sup> it still broke with the rules as they had previously been understood and demonstrated a willingness to do so to achieve political aims. In response to this politically charged period, when the new Speaker took over the role in 2019 he committed to publishing any advice from clerks if he chose not to follow it.<sup>26</sup>

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But interpretation and institutional memory rely on core actors caring enough to make use of them. While secondary guardians all help to interpret the constitution and how it ought to function, it is the core guardians that enforce it. When constitutional norms and conventions come up against political imperatives, there has been an increased trend towards the political taking priority. While politics and the political is integral to the functioning of the UK constitution, it also relies on actors being willing to be constrained within a set of rules, conventions and principles – the so-called ‘good chaps theory’. Increasingly, it appears there is less willingness to adhere to this. It is for this reason that the tertiary constitutional guardians are so important – although they too have come under pressure.

It is evident, for instance, in the government’s approach to public appointments.<sup>27</sup> It is important that leaders of important bodies such as regulators, or individuals in specific roles, feel confident that their appointment was not an act of political patronage and feel able to hold actors in other institutions to account. In the summer of 2020 the applications for the BBC and Ofcom chairs were undermined by consistent briefings that Charles Moore and Paul Dacre, two Johnson allies, were the government’s preferred candidates for the roles – something that was criticised by the then commissioner for public appointments, Peter Riddell, as having a “chilling effect” on open competition for the roles.<sup>28</sup>

The government has also changed the way that the Electoral Commission is to operate. Following the passage of the Elections Act 2022, the commission is now required to “have regard” to a strategy and policy statement published by the government and approved by parliament. The government has argued that this is necessary to strengthen accountability over the Electoral Commission<sup>29</sup> but in February this year, the commissioners of the Electoral Commission took the extraordinary step of writing to a group of ministers expressing their concerns that this provision would give the government influence over its operational functions and decision making that is “inconsistent with the role that an independent electoral commission plays in a healthy democracy”, suggesting alternate means to strengthen their accountability.<sup>30</sup> In particular, they noted their concern that even if the current government had no intention to abuse this position, there was no safeguard against a future government doing so. The government pressed ahead with these changes regardless.

Although the balances within the constitution have largely held up against recent threats, and there are questions over the extent to which the more recent governments’ approach is a blip in normal practice or a broader cultural shift, they remain a concerning trend.



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## 2. The importance and make-up of tertiary guardians

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As we have demonstrated, tertiary constitutional guardians are incredibly varied in their function, conducting a range of roles across parliament, government and the judiciary. Partly as a result of this, and partly due to the varied reasons for their establishment, the form they take is also wide-ranging. For instance, they vary in:

- **Permanence:** Some constitutional guardians are established in statute, but many are not. While those that have enforcement powers over private entities as well as public authorities, such as the ICO and the Equality and Human Rights Commission (EHRC), required legislation to transfer those powers, many of the constitutional guardians overseeing standards in public life are non-statutory or, in the case of the commissioner for public appointments, are established under an Order in Council, which is easy to change. The parliamentary commissioner for standards was established in standing orders of the House of Commons, which are also easily changed if a government has a majority.
- **Governance:** Even those constitutional guardians that are established in statute vary in their governance arrangements. For instance, some are advisory non-departmental public bodies, others are executive non-departmental public bodies and the UK Statistics Agency is a non-ministerial department. A subset of constitutional guardians are also parliamentary bodies and their leaders are officers of the House of Commons – for instance, the comptroller and attorney general, head of the NAO – which means they are entirely independent of government.

Bodies that have the same constitutional basis can also have varying governance arrangements. For instance, the ICO and the EHRC are both executive non-departmental bodies and set their own strategic plans, which are laid before parliament, but the information commissioner is directly held accountable by the Culture Select Committee, whereas the minister for equalities accounts for the EHRC's business in parliament. The Independent Parliamentary Standards Authority (IPSA) and the Electoral Commission are both overseen by dedicated Speaker's committees – but the Speaker's Committee for IPSA includes lay members while the Speaker's Committee for the Electoral Commission does not.

- **Appointments:** Nearly all the non-parliamentary constitutional guardians are categorised as 'significant appointments' within the public appointments process, meaning a senior independent panel member is required to sit on the assessment panel, usually alongside civil servants from the relevant department and others. Ministers have discretion to choose that senior member, although that panel member cannot be someone who is 'politically active' and by convention should be chosen following a consultation with the public appointments commissioner. This

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panel judges whether candidates are 'appointable' judged against the job criteria, although ministers make the final decision. If they decide to appoint someone who has been judged 'unappointable' they have to publicly justify their decision.\*

Parliament has also held pre-appointment hearings for several constitutional guardians since 2008, including the chair of the Advisory Committee on Business Appointments (ACOBA), the chair of the CSPL, and the chair of the House of Lords Appointments Commission (HOLAC),<sup>31</sup> but the recommendation of select committees on whether to appoint the candidate following these hearings is not binding on ministers' decisions.

For parliamentary constitutional guardians the process is different. Where they are overseen by a Speaker's committee – such as for the Electoral Commission and IPSA – these committees oversee the appointment process, and the commissioners (in the case of the Electoral Commission<sup>32</sup>) or members of the board (in the case of IPSA<sup>33</sup>) are approved by the House of Commons. The parliamentary commissioner for standards is also appointed following approval by the House, although in this case the House of Commons Commission oversees the recruitment process.<sup>34</sup>

- **Powers:** Some constitutional guardians are merely advisory. For instance, ACOBA advises former ministers and senior civil servants on appointments once they have left government, as set out in business appointment rules, and the independent adviser on ministerial interests investigates possible breaches of the ministerial code at the prime minister's request. Advisory constitutional guardians like the CSPL also conduct investigations and publish reports with their findings, assessing the current state of an issue and potential shortcomings, and suggesting areas for improvement.

Reports are also a tool for constitutional guardians given specific powers to oversee the functioning of a particular aspect of the constitution; for instance, the Office for Statistics Regulation, one part of the UK Statistics Authority, produces regular reports and correspondence on the use of statistics across government in England and Wales. The NAO also publishes reports on its financial audits of government departments and central agencies as well as specific reports on the 'value for money' of public spending. NAO reports are always followed by a corresponding hearing and report from the Public Accounts Committee, and ministers are then required to respond to each of the recommendations made by the PAC.

Other guardians, alongside providing oversight, have specific enforcement powers if breaches in regulations are identified, including reporting, issuing sanctions, setting monetary fines and issuing civil penalties. For example, the Electoral Commission enforces rules on party finance and oversees the running of referendums, with powers to require documents, information or explanation as part of investigations into breaches of the Political Parties, Elections and Referendums Act 2000 (PPERA), with a criminal penalty for non-compliance.<sup>35</sup> It can issue a 'stop

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\* For a full explanation of the process, see Gill M and Dalton G, *Reforming Public Appointments*, Institute for Government, 18 August 2022, [www.instituteforgovernment.org.uk/publications/reforming-public-appointments](http://www.instituteforgovernment.org.uk/publications/reforming-public-appointments)

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notice', which requires an individual or organisation to cease, or not undertake, an action that breaches the PPERA and can issue sanctions including a monetary penalty for more extreme cases.

Finally, there are a set of tertiary guardians that are responsible for setting, or shaping, the rules around a specific element of the constitution. The four boundary commissions in the UK (one for each nation) are responsible for reviewing constituency boundaries every eight years with the intention of updating them if deemed necessary. Several constitutional actors are involved but they may not alter the commission's recommendations in any way. IPSA is responsible for setting rules governing MPs pay and expenses.

Each aspect of the way in which a constitutional guardian is established feeds into the degree to which tertiary guardians are independent from the actors whose decisions they are informing or behaviour they are overseeing. It also affects the ways in which they are held to account – crucial to any democracy. Balancing these two elements is the key trade-off when considering the effectiveness of each constitutional guardian. Understanding the vulnerabilities in each is a useful tool to analyse the health of the system. And while it is near impossible to set up a body or organisation that can perfectly embody a constitutional guardian, based on our analysis there are clear opportunities for improvement.

### **Tertiary guardians that lack statutory underpinning are more insecure and vulnerable to political influence or abolition**

While many of the tertiary guardians are underpinned by statute, a number of the guardians that oversee standards in public life – including ACOBA, the independent adviser on ministerial interests, CSPL and HOLAC – are not. While this may have been because it was quicker to set them up without the need to pass legislation, or a statutory basis was deemed unnecessary at the time, it makes these institutions vulnerable.

For instance, on taking office Liz Truss refused to commit to appointing a new adviser on ministerial interests, on the basis that she "has always acted with integrity".<sup>36</sup> Rishi Sunak has since committed to appointing a new adviser, but it remains at his discretion whether or not to have one at all.<sup>37</sup> And as prime minister, David Cameron came close to abolishing, or stripping back, the CSPL in 2012 until the former director of the Institute for Government, Peter Riddell, concluded in his triennial review that it was worth keeping as a permanent body.<sup>38</sup> And while the public appointments commissioner is a role set up under an Order in Council, legislation approved by the monarch on the advice of the Privy Council, it would be possible to abolish it without a vote in parliament.

This precarity can affect how effective a guardian is at holding a government to account. If a government has shown a willingness to abolish non-statutory bodies, then guardians may be less willing to criticise or embarrass government, for risk of being undermined, ignored or abolished altogether.

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Although parliamentary sovereignty means that even a statutory body will never be permanent – one parliament cannot bind its successor – a lack of statutory underpinning means that the executive would be able to alter its remit or abolish it entirely without a parliamentary debate.

### **Tertiary guardians do not always have sufficient independence**

Even if tertiary guardians are established in statute, it can still be difficult to guarantee independence from the influence of the institutions they are overseeing. For those constitutional guardians that are non-departmental public bodies (NDPBs), being 'at arm's length' in theory gives them the freedom to perform their role in the way that they see fit. NDPBs can initiate inquiries and issue penalties while preserving political accountability through the oversight by the sponsor department and therefore by ministers. But this governance arrangement does not always strike the right balance between accountability and independence. Previous Institute for Government research has recommended that 'independent public interest bodies' should have a stronger relationship with parliamentary select committees to insulate them from ministerial influence.<sup>39</sup> A good precedent for this can be found in the ICO. It reports to parliament directly, which helps maintain its independence from government.

Tertiary guardians that are parliamentary bodies in theory have greater independence from the executive. For instance, the comptroller and auditor general (leader of the NAO) is an officer of the House of Commons, with oversight provided by the Public Accounts Commission, which also appoints non-executive members of the NAO's board. This is particularly effective given the NAO's role in scrutinising government spending as it gives it institutional independence while maintaining democratic accountability. There is a balance to be struck, though. When the comptroller and auditor general was first made an officer of the House, there was very little oversight over their work and the role of the NAO. In 2011 parliament legislated to establish a board to ensure effective oversight and have input into the strategic direction.<sup>40</sup> The board is appointed by the Public Accounts Commission to maintain independence but ensures greater oversight of the functioning of the NAO.

Where these guardians are charged with regulating the behaviour of parliamentarians, rather than government, this set-up can be more complex. For instance, the Independent Parliamentary Standards Authority, which regulates the business costs and pay of MPs, is set up in statute but its governance is overseen by the Speaker's Committee for IPSA. This places governance of the body that regulates MPs' salaries and expenses largely in the hands of MPs themselves. Although there are three lay members (to seven MPs, including the Speaker) on the committee, a recent paper by the Constitution Unit found that they struggled to make a significant contribution "in a group of articulate, self-confident MPs" – which may in part be because they are outnumbered.\*

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\* For more, see Hazell R, Boo M and Pullar Z, *Parliament's Watchdogs: Independence and accountability of five constitutional regulators*, The Constitution Unit, July 2022, [www.ucl.ac.uk/constitution-unit/sites/constitution\\_unit/files/195\\_parliaments\\_watchdogs\\_july\\_2022\\_0.pdf](http://www.ucl.ac.uk/constitution-unit/sites/constitution_unit/files/195_parliaments_watchdogs_july_2022_0.pdf)

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And even where there is some institutional independence it doesn't prevent the potential for interference. This concern has been raised in relation to the new requirement placed by the Johnson government on the Electoral Commission to 'have regard to' a strategy statement from the government. Although the first published strategy statement does not appear to conflict with the work that the Electoral Commission would do of its own volition, this change does represent a possibility of greater executive interference in the work of this tertiary guardian – as well as the limits to the protection offered to these guardians by being placed in statute.

This is also why it is important that constitutional guardians are appropriately resourced. This doesn't necessarily mean equally. For instance, the CSPL's secretariat is made up of five civil servants, employed by the Cabinet Office<sup>41</sup> – which reflects the expectations of the role they are supposed to play, publishing intermittent reports but without regulatory duties – while the Equality and Human Rights Commission has around 200 employees (including secondments and short-term workers).<sup>42</sup> But the CSPL's budget was reduced in 2001 and again in 2012 – reflecting ministerial influence over the way it performs its role.

There is a different process for the parliamentary bodies. For instance, the NAO sets out its own annual budget (its 'estimate') and submits it to the Public Accounts Commission, which is responsible for scrutinising the estimate and laying it before parliament. Similarly, the Electoral Commission and IPSA both submit their estimates to the Speaker's committee, which can ask for input from the Treasury before taking evidence with each body and approving their budget. The Constitution Unit report argued that "if anything this process is too easy" with very little pushback to these budgets.<sup>43</sup>

### **It is too easy to ignore advice offered by constitutional guardians**

Where constitutional guardians have no enforcement powers – for instance, ACOBA – it is relatively easy for actors in core institutions to ignore their advice or published reports. For example, the business appointments rules are not legally enforceable so in theory former ministers and senior civil servants can avoid making an application to ACOBA altogether. This inherent weakness has also been evident in the role of the independent adviser on ministerial interests. In 2020 the adviser at the time, Sir Alex Allan, publicly investigated Priti Patel for allegations of bullying, concluding that she had broken the ministerial code, but because Prime Minister Boris Johnson disagreed, Patel remained in her post as home secretary.<sup>44</sup>

When their advice is ignored, these advisory guardians can still draw on their informal powers. This could include an exchange of letters, which, while unable to force ministers to change their behaviour, can be embarrassing and the risk of bringing attention to a disagreement can dissuade an individual from ignoring advice. For instance, if a minister decides to appoint a candidate to a public appointment who has been judged 'unappointable' by an appointment panel, ministers have to consult the public appointments commissioner and publicly justify their decision. Public statements can also be a tool to raise concerns or issues about a possible abuse of power in one part of the system.

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This ability to use transparency is useful for many constitutional guardians. However, this relies on politicians or other constitutional actors amending their behaviour in response to embarrassment or a possible public backlash – which isn't necessarily successful. For example, in 2020 Boris Johnson appointed Peter Cruddas to the House of Lords, despite the House of Lords Appointments Commission (HOLAC) advising against it in a letter sent to the chair of the Public Administration and Constitutional Affairs Committee (PACAC).<sup>45</sup> The prime minister also chose to publish a letter justifying his decision, perhaps as he knew that the advice would be made public. HOLAC did use transparency to try to influence the decision – and did successfully generate some political controversy – but the decision was not reversed.

In extremis, individuals in advisory bodies might choose to resign. This was the choice made by Sir Alex Allan when the prime minister ignored his advice on Patel and was also the route taken by his replacement, Lord Geidt, who resigned in June 2022 when the prime minister asked him to advise on an issue he believed would directly breach the ministerial code.<sup>46</sup> This did increase the pressure on the Johnson government over a perceived lack of regard for standards but the resignation alone did not lead to change.

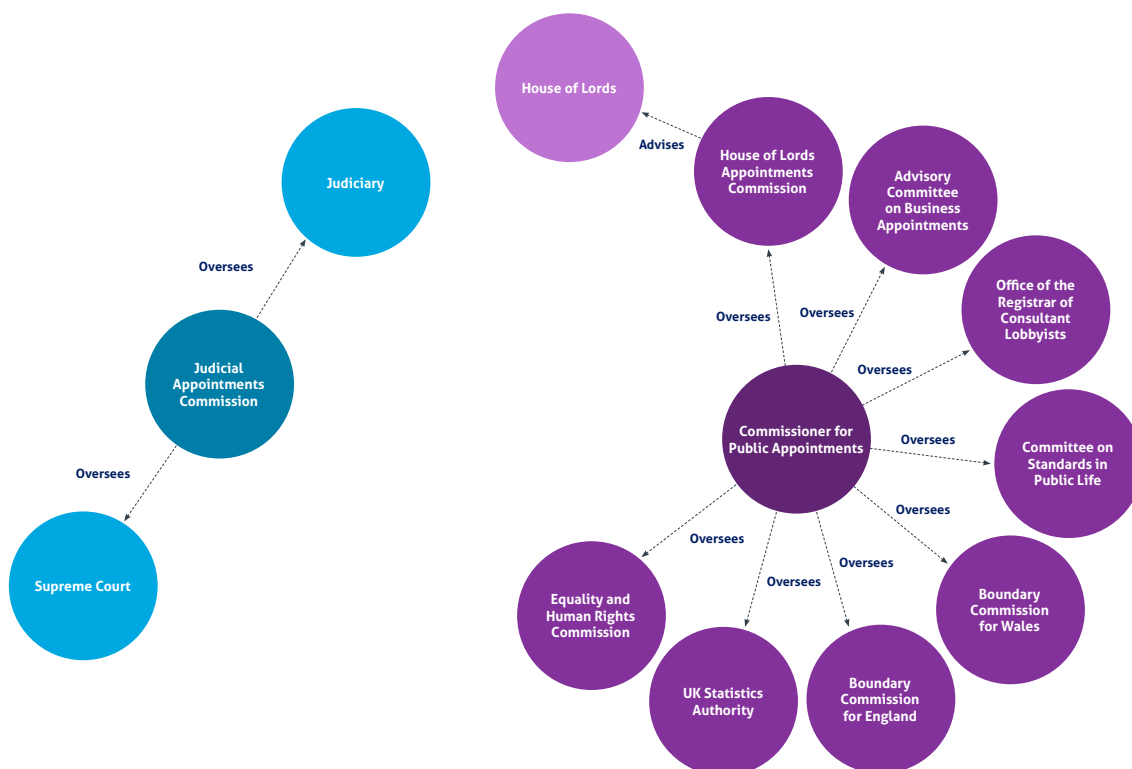
Influence can also change over time. When the CSPL was established its reports were incredibly influential. Its first report set out 'seven principles for public life': selflessness, integrity, objectivity, accountability, openness, honesty and leadership – also known as the Nolan principles, named after the first chair of the committee – and they are still the foundation of standards across public life. They appear in the civil service code, the ministerial code, and codes of conduct for councillors. And the government also accepted multiple recommendations from the CSPL to establish further constitutional guardians to fill gaps that they have identified. This includes the public appointments commissioner, the parliamentary commissioner for standards, and the Electoral Commission. Its 2009 report in response to the expenses scandal shaped how the newly established IPSA would implement the allowances scheme. This demonstrates the power of reports when politicians are interested in what constitutional guardians have to say.

But more recently its influence has waned. For example, the CSPL's report, *Upholding standards in public life*, published in November 2021, highlighted problems in standards across public life, including that "the processes and procedures designed to uphold high standards are too easily ignored or disregarded".<sup>47</sup> An opposition day motion was tabled to debate the recommendations of the report<sup>48</sup> – but the majority of recommendations will require government will to implement. While governments have traditionally responded to CSPL reports, neither the current administration nor Johnson's at the time have done so. The public nature of reports does remind the public of the important role of constitutional guardians and acts as a tool for those outside the branches of government to hold them to account – but it can be insufficient.

## There can be too much political influence over appointments – with few sanctions

The impact of personality and character in how constitutional guardians perform their role means that the appointments process is incredibly important. The complex constitutional relationships – including government departments and their ministers, individual parliamentarians and select committees as well as in some cases a specific relationship with the prime minister – means navigating a highly political landscape.

Figure 2 **Appointments frameworks of tertiary guardians**



Source: Institute for Government analysis.

There is an inherent trade-off to be made between being overtly critical of the parts of the system they are overseeing – for instance, upholding public standards, overseeing the proper use of statistics or regulating MPs expenses – and provoking a backlash that may undermine the independence of the organisation. On the other hand, being too close to politicians may hinder their ability to identify problems – and a perception of being too close to politicians may undermine public trust in the system as a whole.

This can be an especially difficult balancing act when placed under political pressure. A recent example was the way that Kathryn Stone, as parliamentary commissioner for standards, was criticised by multiple MPs for her handling of the Owen Paterson affair despite no evidence that she had behaved inappropriately.<sup>49</sup> There is a real risk that when these positions come under pressure there will be reduced appetite for individuals to want to take on these roles, undermining the integrity of the system as a whole. For instance, 81 people applied to be PCS in 2017 compared to only 21 in the latest recruitment.<sup>50</sup>

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When Lord Grimstone reviewed the public appointments system for David Cameron he recommended giving the executive – through ministers and permanent secretaries – greater discretion over how appointments are made. This was to reflect Lord Grimstone’s starting point that “ministers should be at the centre of the appointments process”.<sup>51</sup> But a recent Institute for Government report found evidence that the political appointment of candidates is playing a greater role in senior appointments. This was not just the case with the chair of Ofcom, as mentioned earlier in the paper, but there were also instances where candidates’ views on Brexit allegedly played a part in appointment decisions for roles that were not Brexit-related,<sup>52</sup> or where candidates were required to sign a statement agreeing with government policies to be considered for appointment.<sup>53</sup>

Parliament’s role in the public appointments process is too limited. Although select committees have held pre-appointment hearings for several constitutional guardians since 2008,<sup>54</sup> only in very limited cases – for instance, for members of the Office for Budget Responsibility’s Budget Responsibility Committee – can they exercise a veto. Where external bodies have a role in monitoring or regulating executive behaviour it would make sense to give parliamentary committees a veto over appointments, to give greater independence from government without removing political oversight.

Moreover, the public appointments system does not regulate appointments to all the constitutional guardians we have identified. Unregulated roles include, for instance, the first civil service commissioner, a job which – by convention – is not usually awarded to a candidate with a political background. However the incumbent, Baroness Stuart, was a former Labour minister and chair of Vote Leave – the first politician appointed to this role in more than a century. While there is nothing to suggest she is not performing the job well, the fact this appointment was not regulated could, in theory, undermine public trust.

## **The constitutional ecosystem needs to be strengthened**

Recent strains have revealed how the UK constitution can be bent, although – so far – it has not broken. But equally it has highlighted some of the gaps that have emerged in the ecosystem that upholds the democratic integrity of the UK. While some have called for new bodies to be established in response, others – including the Institute for Government – have identified areas where the ecosystem can be strengthened. Whichever route this, or a future, government takes it should be mindful of the importance of this broader ecosystem and therefore should make conscious choices about what structures and power these crucial tertiary guardians need.

It is also important that these organisations and individuals with a vital role in overseeing, monitoring and protecting the UK constitution are aware of their place in the ecosystem. While their individual roles oversee aspects of the constitution, it is their cumulative efforts that maintain the entire constitutional system. Understanding that what they do contributes to this greater whole is important in ensuring they can act as true guardians of the constitution.



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To inform this thinking, we have identified the following principles to strengthen the constitutional ecosystem:

**All constitutional guardians should be underpinned by statute, unless there is a clear reason why this would hinder their operation**

For instance, a Constitution Unit paper recently argued against placing the parliamentary commissioner for standards on a statutory footing because it would open their judgments to judicial review.<sup>55</sup> Although even guardians with a statutory underpinning can still be abolished or have their remit changed, this status raises the bar for executive interference. And the process of legislating to set out the framework and agreed function both requires proper consideration from the government as well as a degree of cross-party support in parliament.

The Institute for Government has already recommended that the government place ACOBA, the public appointments commissioner and the independent adviser on ministerial standards on a statutory footing, as well as the ministerial code, which the adviser enforces.<sup>56</sup> Placing these bodies on a statutory footing should not prevent a willingness to reflect on, and update, how these guardians discharge their roles. Legislation should establish that these bodies should exist, while not being overly prescriptive in their role and composition, allowing for flexibility in their form and function.

**The relationship between constitutional guardians and parliament should be strengthened**

It would be wrong to place the oversight of political actors and their behaviour in the hands of unelected technocrats who are not directly accountable to the public in the way that MPs and ministers are. But equally, as we have demonstrated, if constitutional guardians are exclusively accountable to those whose homework they are marking there risks being either a chilling effect on how those roles are performed or increasing executive interference. Strengthening the relationship between constitutional guardians and parliament is fundamental to resolving this tension – accountability to parliament allows for greater transparency on how guardians operate, ensuring that parliament and the public remain informed on this, and allows for criticisms and scrutiny if they are doing a poor job.

For this reason, a recent Institute for Government report recommended that select committees should be able to exercise a veto over appointments to all “constitutional watchdogs”, which would include the guardians we have set out in this paper, as well as a few other executive bodies.\* David Isaac, the former chair of the EHRC, has recommended that the Women and Equalities Select Committee rather than the secretary of state for equalities, should be responsible for appointing the EHRC board.<sup>57</sup>

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\* For further recommendations about improving the public appointments process, see Gill M and Dalton G, *Reforming Public Appointments*, Institute for Government, 18 August 2022, [www.instituteforgovernment.org.uk/publications/reforming-public-appointments](http://www.instituteforgovernment.org.uk/publications/reforming-public-appointments)

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While appointments to parliamentary bodies that oversee functions of parliament are approved by it (the body that they are overseeing), the need for approval by the House as a whole means that an element of cross-party support is usually required. Beyond appointments, some constitutional guardians are regularly called to give evidence to select committees, including the public appointments commissioner, the Electoral Commission and the NAO. For this reason, even those constitutional guardians that are public bodies, with oversight conducted by government departments, should work to establish strong links with relevant select committees in parliament and the select committees should hold regular hearings with them to understand and scrutinise their work. Equally, parliamentarians of all political parties should take a greater interest in constitutional guardians – understanding the roles they play and what they need to continue to be able to do so.

### **Constitutional guardians should be able to initiate and publish the results of their own inquiries**

Many of the constitutional guardians we have identified in this paper already have this power but crucially not all. Ensuring all constitutional guardians are able to undertake inquiries into issues they have identified and be able to publish the outcomes when they deem it necessary, rather than waiting for the government or individual ministers to approve publication, is vital as it gives them greater independence from specific institutions without undermining their accountability. This is a particular problem for the independent adviser on ministerial interests, as has already been identified by the Institute for Government.

There should also be a statutory duty placed on the government to respond to these published reports where they make recommendations for change.<sup>58</sup> If the government decides not to adopt their proposals it should be required to justify its decision.

This would also increase guardians' democratic accountability to the public. As we have demonstrated, transparency is a crucial tool for these guardians. Whether that is by highlighting where they disagree with decisions made by political actors (while respecting their right to make those decisions) or being able to raise concerns about behaviour or practice, or highlighting incorrect use of data. It helps maintain public trust in institutions by ensuring that the executive and parliamentarians aren't able to abuse their power, but is also practically useful to the media as they hold different political actors to account.

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# Conclusion

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Ultimately, it does not matter if these constitutional guardians are strengthened, or designed, in a way to ensure greater independence from the institutions they are overseeing if there is not political buy-in to the system as a whole. For instance, those who lead these organisations, or perform individual roles, have to recognise their role as guardians, their place within the ecosystem that upholds the integrity of the constitution and democracy in the UK, and their responsibility to the public.

Not all the organisations we have identified in this report may necessarily view themselves as constitutional guardians – and some may deliver other functions alongside the role as a constitutional guardian we have identified for them. Such institutions become more vulnerable to being undermined in slow and less perceptible ways if their constitutional role is not recognised – especially by members of parliament responsible for scrutinising executive activity.

But it is important that ministers also recognise the value of the way these individuals and organisations protect and support democracy in the UK. Office for National Statistics polling in June 2022 found that just 35% of the UK population trusted government, a figure lower than the Organisation for Economic Co-operation and Development (OECD) average of 41%.<sup>59</sup> Only 34% of the population trusted parliament. For the constitution to function properly the public must have faith in it. This requires independent constitutional guardians to protect systems from perceived political influence.

For example, if the government is seen to have undue influence over the Electoral Commission, or the UK Statistics Authority, then trust in fair elections or accurate statistics will be undermined. If the government is seen to have improper influence over appointments, then guardians will lose the trust of the public, and those they are supposed to regulate.

This also extends to standards, with recent criticism of the government, including from the Institute for Government, that the government was “marking its own homework”.<sup>60</sup> Maintaining strong and independent guardians was not a priority under the Johnson administration, but disregarding standards in public life was ultimately what brought down Boris Johnson as prime minister – not just losing support of his party but also of the wider public.

And the organisations we have highlighted in this paper are fundamental to the functioning of the UK’s democracy over the longer term. A government that acts in its short-term interest may regret undermining these bodies if it were to find itself in opposition in the future. All political actors – MPs and ministers – should recognise the value of protecting and bolstering this ecosystem to both maintain public trust in the governance of the UK as well as protect core democratic principles.

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# Annex 1

## 1.1 Core guardians

<b>Parliament</b>	House of Lords	House of Commons
<b>Government</b>	Civil service	Ministers
<b>Judiciary</b>		
<b>Monarchy</b>		

## 1.2 Auxiliary guardians

<b>Guardian</b>	<b>Integrated into</b>	<b>Guardian</b>	<b>Integrated into</b>
Accounting officers	Government	Lord Speaker	Parliament
Attorney general	Government	Ministers	Government
Cabinet	Government	Opposition	Parliament
Cabinet Office	Government	Political parties	Parliament
Cabinet secretary	Government	Prime minister	Government
Clerk of the House of Commons	Parliament	Privy Council	Monarch
Clerk of the parliaments	Parliament	Public Accounts Commission	Parliament
Commons Committee on Standards	Parliament	Public Accounts Committee	Parliament
Comptroller and Auditor General	Parliament	Returning officers	Government
First Parliamentary Council	Government	Speaker of the House of Commons	Parliament
House of Lords Constitution Committee	Parliament	Supreme Court	Judiciary
Leader of the opposition	Parliament	Treasury solicitor	Government
Lord chancellor	Government	Whips office	Parliament
		Clerks	Parliament

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### 1.3 Tertiary guardians

<b>Guardian</b>	<b>Governed by</b>
Advisory Committee on Business Appointments	Government
Boundary Commission for England	Government
Boundary Commission for Northern Ireland	Government
Boundary Commission for Scotland	Government
Boundary Commission for Wales	Government
Civil Service Commission	Government
Commissioner for public appointments	Government
Committee on Standards in Public Life	Government
Electoral Commission	Parliament
Equality and Human Rights Commission	Government
House of Lords Appointments Commission	Government
Independent adviser on ministerial interests	Government
Information Commissioner's Office	Government
Investigatory Powers Commissioner's Office	Government
Independent Parliamentary Standards Authority	Parliament
Judicial Appointments Commission	Government
National Audit Office	Parliament
Office of the Registrar of Consultant Lobbyists	Parliament
Public Administration and Constitutional Affairs Committee	Parliament
Parliamentary commissioner for standards	Parliament
UK Statistics Authority	Government
Parliamentary and Health Service Ombudsman	Parliament



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### **Acknowledgements**

We are incredibly grateful to all those who have provided helpful comments, corrections and contributions to earlier drafts of this report. We would like to thank our advisory panel members for their useful feedback; Mike Kenny and Hannah White for steering the review and this paper, and our Institute for Government colleagues Emma Norris, Jill Rutter, Cath Haddon, Alice Lilly and Grant Dalton, who have shared their constitutional expertise. Any errors or omissions are our own.

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November 2022

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