

18 March 2021

Lord Jonathan Evans KCB DL
Chairman
Committee on Standards in Public Life
Room G07
1 Horse Guards Road
London, SW1A 2HQ

Dear Lord Evans,

Thank you for giving me the opportunity to make a submission to your upcoming report on keeping our standards in public life up to date. Our integrity framework is as important and relevant today as it has ever been and, because the nature of corruption is constantly changing, needs constant attention to ensure it remains as effective as possible. So your work is a well-timed and welcome move which will help us avoid any possibility of entering a 'Post-Nolan age'.

I should add that the role of the Prime Minister's Anti-Corruption Champion requires me to both support and challenge the Government's work in this area, and the proposals in this submission should be taken as part of my 'challenge' function. They aren't statements of Government policy, or of the Prime Minister's personal views; instead, they are a summary of how I believe our existing integrity framework could be updated to address new and developing threats in future.

For brevity, I have proposed some fairly specific improvements and recommendations in broad topic areas. I am of course happy to fill in any further details which might help the Committee's work if needed.

Traps & Errors

The current debate around integrity in public life is characterised by some important and incorrect preconceptions which we must avoid:

1. Lobbying only matters if it is done by companies with a profit motive. This is too narrow a definition, as there are many other interests which may also seek to influence policy-making or the ways that public services are delivered as well, including but not limited to charities, labour unions, religious bodies and churches, foreign states and others. Some of these interests will be beneficial (because they improve understanding and democratic dialogue between any government and its stakeholders) while others will not (because they are trying to tilt the playing field unfairly, at the expense of taxpayers) and others will be a mixture of both at different times. But all of them will be vying for attention and influence ***so we need an integrity system which doesn't assume some of them are always or uniquely good or bad.***

2. Transparency is the only answer. While transparency is a powerful and helpful answer to many of the potential problems of influence-peddling and could usefully be improved (I have made some proposals for this below) it isn't enough on its own. For example it can't be comprehensive (unless every elected and appointed public official is to have zero personal privacy at all); nor can it address all types of contact between all public officials and the rest of society (for example casework discussions and correspondence between MPs and their constituents should remain private); nor can it neutralise every kind of problem either (for example poorly-researched, one-sided or rent-seeking stakeholder arguments which need to be corrected or balanced out in advice to Ministers). ***So our integrity systems will need other elements to them as well.***

Public Procurement

This covers everything from waste collection services bought by local Councils, to big capital projects like building new roads commissioned by central Government, and everyday office supplies purchased by arms-length Government agencies. It is a third of all public spending at almost £300 billion¹ (including academies) in a normal, non-pandemic year, so doing it well is essential for the standards of fairness and integrity in our public services, as well as for ensuring that taxpayers get good value for money and that the competitiveness of our economy is maintained.

But it has always been a politically-charged area, even before the pandemic, because it embodies a fundamental left-right political difference between those who believe in 'insourcing' (ie an increased proportion of publicly-funded goods and services provided directly through publicly owned organisations) and those who don't. This economic and political debate creates a backdrop that makes accusations of dishonesty, corruption or poor standards more likely (whether they are accusations of cronyism and distrust of the profit motive by the left against the right, or charges of clientelism and union capture by the right against the left) which can erode levels of trust and confidence in the system whether they are accurate or not. The fast-track procurement required during the pandemic has raised the political temperature in this area still further. I have enclosed a letter I sent to Government Ministers in November 2020 which provides more background², but this backdrop makes a universally-robust, politically-independent procurement regime not only vital, but also much harder to achieve.

At the moment the Official Journal of the European Union (OJEU) rules create important standards for open auctions of government contracts, which aim to achieve precisely these outcomes. They are successful up to a point, but the way we apply them in practice is widely criticised for being too slow and time-consuming, as well as too difficult for small firms to navigate: the 25 largest firms increased their share of contract value from 13% to 18% between 2013 and 2017³. This means weaker competition and worse value for taxpayers, as well as feeding commercial suspicion of a 'stitch-up' (on top of the party-political accusations mentioned above) where the system is weighted in favour of incumbent insiders against small and medium-sized challengers too. These problems erode trust and confidence in the system still further.

The Government's new procurement green paper⁴ contains important proposals which could solve all these problems by reforming, updating and improving the OJEU rules and maintaining its standards with a new, more digital, faster, automatically-transparent process that is both easier for

¹ Government Procurement: the scale and nature of contracting in the UK. Institute for Government, Dec 2018 [IfG procurement WEB 4.pdf \(instituteforgovernment.org.uk\)](#)

² Enclosed; Prime Minister's Anti-Corruption Champion letter to Lord Agnew & Julia Lopez MP 19th Nov 2020

³ Government Procurement: IfG, Dec 2018 [IfG procurement WEB 4.pdf \(instituteforgovernment.org.uk\)](#)

⁴ [Green Paper: Transforming public procurement - GOV.UK \(www.gov.uk\)](#)

entrepreneurial firms to compete through, and also more resilient against corruption and fraud as well. While the Committee on Standards in Public Life (CSPL) may not wish to enter a politically-contentious debate about the desirability and extent of insourcing or outsourcing overall, it clearly has a legitimate interest in ensuring that – wherever and whenever public procurement takes place, whether it is done by central, devolved or local Government or through arms-length bodies – it is done using a regime which has enough inbuilt integrity, transparency and resilience to command public trust and confidence that the Nolan Principles are being followed, no matter what demands and strains are placed upon it. ***Implementing the changes proposed in the Green Paper as fast as possible is essential.***

Ministerial & Civil Service Codes

These codes – informed by the Nolan principles – ensure public servants understand the expectations and requirements placed on them, and are essential for solving some of the problems which transparency can't handle on its own (as I've already outlined above) such as revealing the shortcomings in poorly-researched or one-sided arguments, or ensuring that otherwise-legitimate meetings between public officials and external stakeholders don't stray into topics or subjects which wouldn't be acceptable. The codes also include multi-level clearance processes and legal and commercial expert oversight within Departments as well as Cabinet collective agreement. These are all valuable and effective protections which should be maintained, but they could also be improved in several ways:

- For UK central government, these rules are relatively well-developed, although there are still concerns about whether the investigation and enforcement regime for potential breaches of the Ministerial Code is independent enough to command public trust in difficult circumstances. ***The Prime Minister's Advisor on Ministerial Standards should have independent discretion to investigate alleged breaches of the Ministerial code and to report their conclusions to the Prime Minister⁵, with copies to the Cabinet Secretary and the relevant Select Committee too⁶.*** This will also insulate the Prime Minister of the day against allegations of intervening in decisions about whether an investigation should take place or not. ***The report should outline whether a breach had taken place, and its severity, but not what actions the Prime Minister might take as a result⁷.***

The power to launch independent investigations could potentially increase the risk of vexatious or unfounded allegations of breaches of the Ministerial code, usually by political opponents of whichever Party is in Government at the time, and particularly in the run-up to elections. Those allegations need to be dealt with swiftly and efficiently, to avoid undermining public trust in the integrity of Government or reducing the efficiency and effectiveness of Government decision-making too. Fortunately, the Parliamentary Commissioner for Standards (who already has the same power of independent investigation, and who gets several hundred complaints each month) has a well-established and successful approach which provides a useful

⁵ There are similar recommendations in Public Administration Select Committee (PASC) reports 2006: "The Ministerial Code: the case for independent investigation" & also 2008: "Investigating the conduct of ministers" & also 2012: "The Prime Minister's adviser on Ministers' interests: independent or not?" & also Committee On Standards In Public Life 2006 (both the Annual Report & Report on John Prescott)

⁶ Already, both the Scottish and Welsh devolved equivalents explicitly state their reports will be published.

⁷ PASC 2006 report *ibid*. This point about scope was agreed by the Government in its response.

template for dealing with this issue⁸. ***The Advisor should publish summary statistics showing how many complaints they have received, and how many were proceeded with or not, in a similar way to the approach used by the Parliamentary Commissioner for Standards. The Advisor should also have discretion over whether to confirm publicly if an investigation is underway or not, and to report publicly about any vexatious allegations made by specific Parliamentarians if needed.***

- For local Government, CSPL published a series of recommendations on best practice for the Local Government equivalents of the Civil Service, Ministerial and Parliamentary codes in a 2019 report, with a follow-up in 2020⁹ which assessed that there had been progress in many areas. But not all local authorities have yet responded, and nor has central Government, so there are still potential loopholes to be plugged. ***Central Government should respond to this report as soon as possible once time allows after the coronavirus pandemic, and I would urge CSPL to undertake a comprehensive audit of progress to identify and highlight any remaining gaps in local Council implementation promptly after that.***
- The Nolan Principles should also apply (broadly) to both arm's length public bodies as well as to public officials commissioning public services from companies and third sector organisations. The Committee produced a 2014 report¹⁰ on this topic which identified the need for a satisfactory equivalent of the Civil Service Code covering this area at the time, and called for "frameworks required to support such standards. It is evident from our research that currently there are no consistent structures or arrangements in place to actively promote the right ethical culture and behaviours". Now, 7 years later, I would ***urge the Committee to launch a followup review of progress to identify and highlight any remaining gaps in implementing these proposals which still remain to be plugged.***

Lobbying

The most important guarantees of integrity around lobbying are the Nolan Principles themselves, and the Ministerial and Civil Service Codes (discussed above) which give them practical effect. But transparency is important too, so voters and civil society groups can check that integrity is being delivered in practice. We have well-established mechanisms which are already in place to achieve this:

- Freedom of Information Act (FOIA)
- Public reports of Ministerial and Permanent Secretary civil servant meetings
- The Register of Consultant Lobbyists.
- The Register of Members' Interests
- Electoral Commission's reports on political party donors.

Taken together, these five mechanisms have the potential to paint a comprehensive picture of potential external influences on Ministers and their officials. But they need to be updated and extended to deliver their full potential. ***The changes which are needed are:***

⁸ <https://www.parliament.uk/mps-lords-and-offices/standards-and-financial-interests/parliamentary-commissioner-for-standards/complaints-and-investigations/complaints-statistics/>

⁹ [Local government ethical standards – follow up to best practice recommendations - Committee on Standards in Public Life \(blog.gov.uk\)](#)

¹⁰ [Ethical standards for providers of public services \(publishing.service.gov.uk\)](#)

- ***The quality, detail, interoperability and public searchability of the data available through these mechanisms and registers should be improved through shared data and digital accessibility standards***, so (for example) it would become much quicker and easier to cross-reference the people attending meetings with Ministers or officials and party donors, with enough detail about the topics they discussed to know if there was a potential conflict of interest or not.
- The public reports of Ministerial and Permanent Secretary meetings are too narrow. There are ***other, senior and potentially-influential figures (such as political special advisors, or other senior officials below the rank of permanent secretary) who should be included as well***.
- ***These mechanisms should apply equally and evenly to all areas of public life, including central, devolved and local Government as well as arms-length public bodies too***. Some of them already do, but not all, so ***we need an audit to ensure there are no unintended loopholes***.
- ***Widening the scope of the Register of Consultant Lobbyists to include in-house lobbyists won't help***. Under the current system, if a Minister correctly discloses they have met someone working for Rolls Royce, or Oxfam, or the National Union of Mineworkers or the Church of England, together with the subjects that were discussed under the improved data standards I've outlined above, it will already be clear whose interests they were representing and how.
- ***The scope of the Register of Consultant Lobbyists should be broadened to include people and organisations lobbying on behalf of foreign states***. Properly-accredited diplomats and foreign government officials needn't be included on the register, for the same reasons as in-house lobbyists in the point above.

Electoral Integrity

This is a politically-charged area, where the democratic stakes are high. There are several principle areas of concern:

- Our voter registration systems suffer from twin problems of accuracy and completeness. The political left worries that moves to ensure voter rolls are accurate (for example by removing people who have moved away) raises risks of voter suppression, while the political right fears that moves to make registration easier will increase the numbers of phantom voters. But it is a mistake to view accuracy and completeness as a choice between mutually-exclusive alternatives; for our democracy to command public trust and confidence, the system must deliver both accuracy and completeness successfully and simultaneously, rather than one at the expense of the other
- Our system for casting votes, whether it is in person or by post, has few checks that the person casting the vote is the person on the electoral roll; or (for postal votes) that they were cast in secret and without interference; or to prevent 'double-voting' by people who are legitimately registered in more than one place.
- Our rules about transparency of campaigning (for example requiring all campaign leaflets to include details of who produced them) are old and were designed for an analogue world when they must cope with modern, online campaigning as well.
- Quite apart from whether the rules are properly-designed, enforcement of them is limited. Police, prosecutors and courts are understandably concerned about unpicking the democratic results of elections once they have already been declared; unbiased or credibly-independent witnesses are hard to find; and because public officials are (rightly) expected to support their newly-elected local, devolved or national Government, they are unlikely to have either the resources or the

independence to investigate irregularities after an election has taken place. As a result there are very few investigations, so there is little evidence (although plenty of suspicions) about whether the problems are big or small. But the lack of controls and checks in the basic system design, and the corresponding scale of opportunity for people willing exploit the loopholes, is clear.

Regardless of the level of investigations or successful prosecutions, and given the difficulty of solving tainted elections after the result has been declared, prevention is clearly better than cure. So we should design systems with enough checks and controls to have integrity built in. Ministers are already addressing some of these issues (for example by trialling voter ID at polling stations, or requiring imprints on online campaign materials) but there are several further changes which would help:

- We should ***require newly-arrived voters to declare the address at which they were previously registered to vote, and whether they are still registered there too***, so local voter registration officials can ***co-ordinate with their opposite numbers to add or remove residents promptly and simultaneously from electoral rolls, and also check whether illegal double-voting has taken place*** too.
- Casting a postal vote should have as much designed-in integrity as voting in person. Possible options include ***requiring an independent witness to declare that a postal vote was cast in secret, by the right person, and without interference, or switching postal votes to voting early 'in person' instead.***
- ***The Electoral Commission should send independent inspectors throughout the electoral and voter registration cycles to check and report publicly on the quality of local voter registration, campaign regulation, polling day integrity and energy of enforcement.*** They should use a risk-based approach, so everywhere is covered at some point but more focus is given to high-risk local hotspots (they have published lists of these in the past).
- Other regulators' strategies, budgets and performance can be publicly scrutinised in Parliament through the Select Committee system, but the Electoral Commission's performance is not. It reports to the Speaker's Committee on the Electoral Commission, which can only scrutinise its finances but not its strategy or performance. ***This level of democratic scrutiny should be upgraded so the Commission is publicly accountable for all these issues from now on.***

Insider Threat

Broadly, insider threat is the risk that corrupt or corrupted public employees or contractors misuse their position, so they don't follow the Nolan Principles and public services are delivered in a way that is either substandard, dishonest or poor value for money as a result. So the Committee on Standards in Public Life clearly has a legitimate interest in ensuring public officials behave with integrity in spite of these risks. The threat has several important facets:

- It is mutating. Increasing use of social media and homeworking create new opportunities for organised criminals, terrorists or foreign states to identify otherwise-honest public workers, and then find opportunities to pressurise and corrupt them.
- Statistics and evidence to show whether corrupt officials are rare or common is poor (low levels of prosecutions could be proof of high standards or, conversely, of poor audits and low-energy investigations allowing problems to persist unchecked). But there is enough evidence of

associated problems (for example drugs and other contraband being successfully smuggled into British prisons, or press payments to officials for information during criminal investigations) to indicate that there are at least pockets which should be causing concern.

- It is frequently under-estimated or over-looked, partly because highly-visible forms of official corruption (like members of the public being asked for bribes) are mercifully rare, and partly because it is grittier than other examples of corrupt behaviour (like the glossily-wealthy world of international money-laundering, for example).
- It applies across all areas of public life, including central, devolved and local Government as well as arms-length public bodies too, although most focus (for example in the Anti-Corruption Strategy itself) is – understandably – on the highest-risk areas of borders, police, prisons and defence.
- Its' effects are serious and severe. Even when corrupt public officialdom is rare, the scale of damage it can cause to the quality, value for money and integrity of our public services can be huge, with equivalent costs to public trust and confidence in the honesty and legitimacy of the system wherever it is found.

Regardless of the level of investigations or successful prosecutions, all public officials (as well as public service users too) should be protected from insider threat by resilient organisations where integrity is built in. At the moment, I and the Joint Anti-Corruption Unit (JACU; the cross-Government unit based in the Home Office, responsible for driving and co-ordinating our anti-corruption agenda) have been encouraging public services to use the best framework we have found for driving change in this area so far; the Personnel Security Maturity Model developed by the Centre for Protection of National Infrastructure (CPNI) ¹¹. It covers all the major remedies for insider threat, from pre-employment screening through monitoring, assessment and investigation to governance and culture change, and requires organisations to assess their readiness on a six-level scale (from innocent to excellent) and then take actions to fix any gaps or shortcomings. We have made progress but, given that insider threats apply across all areas of public life, including central, devolved and local Government as well as arms-length public bodies too, there is a great deal more to do in this frequently-overlooked area. I would ***urge the Committee to launch a review to identify and highlight any gaps in implementing the CPNI Model (or an equally-strong equivalent) which still remain to be plugged.***

Other Threats

There are a few other areas which are potentially relevant to the Committee's enquiry, but which I haven't included in this submission. The most important are Parliamentary Standards (ie the behaviour and integrity of MPs, rather than Ministers and other public officials which I have covered above) and the 'revolving door risk' of former Ministers moving into jobs in industries that were previous part of their portfolio, which is managed by the Advisory Committee on Business Appointments (ACOPA). For Parliamentary Standards there is already a review underway by the House of Commons Committee on Standards which I don't want to prejudge or cut across, and for revolving door risk ACOPA has just introduced a more vigorous and muscular approach to enforcing its conclusions which needs to be given time to bed in to show whether it is a sufficiently strong antidote

¹¹ [Personnel Security maturity model | Public Website \(cpni.gov.uk\)](https://www.cpni.gov.uk)

to previous concerns in this area. As a result I have omitted both issues from this submission, but would be happy to return to them if it would help the Committee's work at a later date.

Best wishes,

A handwritten signature in black ink that reads "John Penrose". The signature is written in a cursive style and is underlined with a single horizontal line.

JOHN PENROSE MP
Prime Minister's Anti-Corruption Champion



HM Government

John Penrose MP
Prime Minister's Anti-Corruption Champion
House of Commons
London, SW1A 0AA

Lord Agnew
Minister of State for Efficiency and Transformation
London
SW1A 2AA

Julia Lopez MP
Parliamentary Secretary
Cabinet Office
London
SW1A 2AA

19th November 2020

Dear Theodore and Julia

I'm writing in advance of the Procurement Green Paper, and in parallel with the National Audit Office (NAO) report on Government procurement during the covid-19 pandemic, as well as the Cabinet Office review of six procurement contracts which Julia mentioned in her recent answer to a Written Parliamentary Question, to make sure that we all agree on the scale of both the opportunity as well as the challenge which we are facing in this area.

Transparency¹²

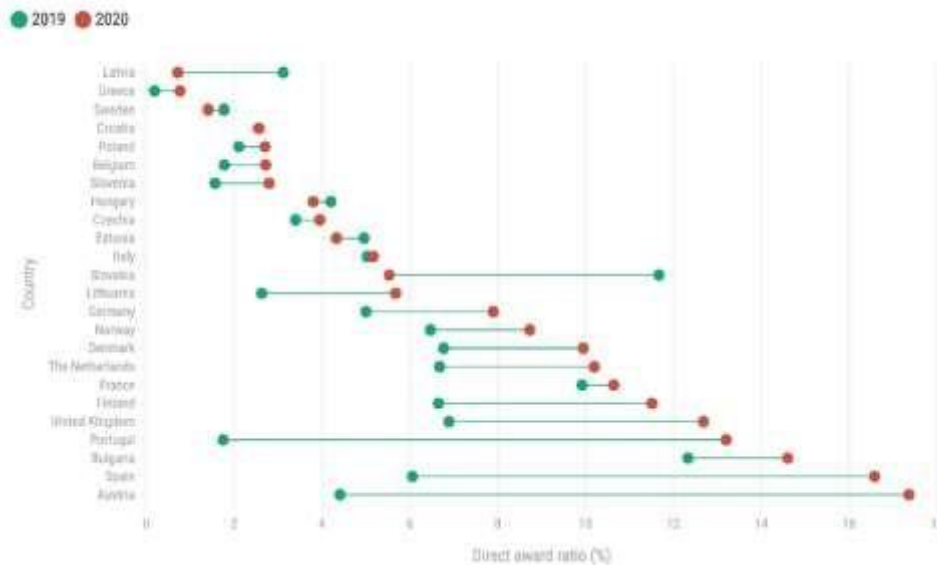
The NAO report found 75% of contracts were not published on Contracts Finder within the required timeframe, and a recently-published Spend Network report shows a 22% reduction in contract award publications between 2019 and 2020. I'm sure you don't need persuading that transparency is a win-win exercise, showing the public that the system is open and fair while also encouraging more companies to bid for contracts if they can see that the process isn't a closed shop. Conversely, failure to hit our own publishing deadlines is easy to measure, simple to understand, creates the impression of there being something to hide even when there isn't, and is a powerful political erosive as a result. Could you let me know your plans for ensuring we hit these targets consistently from now on?

¹² In the spirit of transparency I should probably declare my wife's unpaid role heading NHS Test and Trace, even though she is not the organisation's Accounting Officer

Direct contract awards

Common wisdom assumes a trade-off between speedy procurement versus open, competitive tendering, but the same Spend Network report found that this is not necessarily so, and that other countries are maintaining openness and competition better than we are. The graph (below) shows that countries like Sweden, Slovakia and Latvia have managed to reduce their proportion of direct awards during 2020 compared to 2019, despite the need for swift procurement during the pandemic, while the UK has seen one of the biggest increases.

Shift in Direct Award proportions 2019 v 2020



Source: Spend Network

The good news is that Spend Network's analysis also shows our proportion of direct awards by value is still small, but I'm sure you will agree that the trend is in the wrong direction.

Reputation Risks

The NAO report's finding that referrals from government officials and ministers of prospective PPE suppliers to a 'high-priority lane' were more likely to secure contracts; and that there were gaps in audit trails and documentation for deciding which contracts qualified for direct awards, and how any conflicts of interest would be managed; has led to avoidable allegations of cronyism even though the report is clear that there was no actual evidence of inappropriate ministerial involvement in procurement decisions. The NAO report's findings have fuelled allegations of corruption from political opponents and, even though they are unfounded and unevidenced, they could easily erode public and business trust in our institutions. It is clearly sensible for us to act pre-emptively if it both reduces risks and also creates better value for taxpayers at the same time.

A Fresh Start, Quickly

The time has come for a fresh start. A well-designed, transparently-competitive and digitised procurement process has several inherent advantages:

- Economically, it delivers better value for taxpayers' money through stronger competition that is more open to smaller firms, insurgents and new technologies; and also cuts the risk of corruption and fraud by designing out exploitable weaknesses.
- Practically, it is faster, nimbler and less bureaucratic, which increases our chances of buying the right things in time, particularly during emergencies like the pandemic.
- Politically, it reduces the scope for charges of 'chumocracy' to have any power.

As you are of course aware, our departure from the European Union provides a once in a generation opportunity for bold and radical reform of the public procurement framework to become best in class. But most of the countries in the Spend Network graph above are also bound by the same OJEU procurement rules and have still done better than us, so we shouldn't blame OJEU for our performance, or assume things will automatically improve once we are free of its constraints. Nor should we assume we have enough time to wait for the upcoming procurement green paper to become law before we make improvements. We will need to start immediately.

Fortunately there are already high-quality frameworks which outline what a world-leading, transparently competitive and digitised procurement process should look like. My personal favourite is the OECD's 'MAP' framework, which will almost certainly be used by many NGOs and other countries to assess the quality of whatever new approach we choose, but you may prefer something else. The important thing is to move faster and to begin immediately, because the political, practical and economic benefits of doing this better – and the downsides of doing it poorly – are so huge.

Please let me know if there is anything which I or the Joint Anti-Corruption Unit can do to help move this important agenda forward.

Yours ever

A handwritten signature in cursive script that reads "John Penrose". The signature is written in black ink and is positioned above a thin, horizontal, slightly wavy line that serves as a separator.

JOHN PENROSE MP

Prime Minister's Anti-Corruption Champion

cc: Rt Hon Michael Gove MP, Chancellor of the Duchy of Lancaster

Ben Gascoigne, Political Secretary to the Prime Minister