



Independent Adviser on Ministers' Interests

Annual Report 2021-2022

May 2022

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Preface

This is my second Annual Report as Independent Adviser on Ministers' Interests. It is issued alongside my third publication of the List of Ministers' Interests, which I am pleased to have restored to their regular cycle. This report is also the first to be published on a new dedicated online presence for the office of the Independent Adviser and supported by dedicated staff, under my supervision. I have also had cause to provide formal advice to the Prime Minister on two occasions, and that advice has been published in a timely manner. At the time of writing, a further investigation is nearing the stages of completion.

In the period under review, the Prime Minister has now implemented a number of changes to the office of Independent Adviser. These include amended Terms of Reference which were published on 27 May 2022.

In a letter of 23 December 2021 to the Prime Minister, I wrote that, 'I would expect by the time of my next Annual Report in April to be able to describe the role of Independent Adviser in terms of considerably greater authority, independence and effect'. This correspondence with the Prime Minister followed the discovery of material relevant to my initial investigation into the refurbishment of the private accommodation at 11 Downing Street that had not originally been disclosed to me. The Annual Report considers the matter in detail.

In the event, I was unable to publish my Annual Report last month as the Government had not yet published its amendments. Instead, I resolved to publish in any event during the month of May, one calendar year on from my original report. Now that the Government has issued its Policy Statement in the past few days, I have reflected on those changes to my Terms of Reference and other aspects of the Prime Minister's undertaking last December. Again, these are covered in detail in the Annual Report.

Granting the Independent Adviser an independent right to initiate inquiries into ministerial conduct has been called for over many years. The changes now offered by the Government are at a low level of ambition. Nevertheless, given the new provision for greater transparency in the event of a Prime Minister intervening to prevent an independently-initiated inquiry from proceeding, I believe that under normal circumstances this would be a workable scheme. The grounds for refusal by a Prime Minister would need to pass a very high standard, such as national security. Even then, an Independent Adviser would now generally be able to publish the reasons for a Prime Minister's refusal.

The circumstances of the period covered by my report, however, have been far from normal. For much of the year, the conduct of the Prime Minister himself has potentially been subject to consideration against the requirements of the Code. Accordingly, and whether unfairly or not, an impression has developed that the Prime Minister may be unwilling to have his own conduct judged against the Code's obligations. The test for the credibility of these new arrangements is whether they are sufficient to command public trust in the independence of the Independent Adviser. This must be accompanied by a willingness of those subject to the Code, including the Prime Minister, to justify their conduct – in the light of the provisions of the Code – to Parliament and to the public. For example, this may be an explanation of how

they believe that their behaviour is consistent with the Code, or an acknowledgement and explanation of why they have fallen short of its standards.

It may be especially difficult to inspire that trust in the Ministerial Code if any Prime Minister, whose code it is, declines to refer to it. In the case of the Fixed Penalty Notice recently issued to and paid by the Prime Minister, a legitimate question has arisen as to whether those facts alone might have constituted a breach of the overarching duty within the Ministerial Code of complying with the law. It may be that the Prime Minister considers that no such breach of his Ministerial Code has occurred. In that case, I believe a Prime Minister should respond accordingly, setting out his case in public.

This matters to the integrity of the Independent Adviser who, otherwise, might until recently have had to seek a Prime Minister's consent to make inquiries into a Prime Minister's conduct. In the present circumstances, I have attempted to avoid the Independent Adviser offering advice to a Prime Minister about a Prime Minister's obligations under his own Ministerial Code. If a Prime Minister's judgement is that there is nothing to investigate or no case to answer, he would be bound to reject any such advice, thus forcing the resignation of the Independent Adviser.

Such a circular process could only risk placing the Ministerial Code in a place of ridicule. Instead, and since the point when the inquiries by the Cabinet Secretary (later conducted by the Second Permanent Secretary) and the Metropolitan Police were embarked upon, I have repeatedly counselled the Prime Minister's official and political advisers that the Prime Minister should be ready to offer public comment on his obligations under the Ministerial Code, even if he has judged himself not to be in breach. This has been my standing advice, which I was assured had been conveyed to the Prime Minister. Its purpose has simply been to ensure that the Prime Minister should publicly be seen to take responsibility for his own conduct under his own Ministerial Code. That advice has not been heeded and, in relation to the allegations about unlawful gatherings in Downing Street, the Prime Minister has made not a single public reference to the Ministerial Code.

The Independent Adviser is neither the author nor the guardian of the Ministerial Code. Those roles properly belong to the Prime Minister. Nevertheless, it is reasonable for the Independent Adviser, consistent with his own obligations to uphold the Seven Principles of Public Life, to promote the integrity of the Ministerial Code and ensure that its provisions are applied fairly and transparently. I have set out my advice accordingly.



The Rt Hon Lord Geidt
Independent Adviser on Ministers' Interests

1. Ministers' Interests

1. Under the Ministerial Code (7.2), *“it is the personal responsibility of each Minister to decide whether and what action is needed to avoid a conflict or the perception of a conflict, taking account of advice received from their Permanent Secretary and the Independent Adviser on Ministers’ interests”*.
2. Thus under my Terms of Reference, one of the core responsibilities of the Independent Adviser is to provide advice to Ministers on the handling of their private interests. Notably such advice may include actions that I or the relevant Permanent Secretary may recommend the Minister should take in order to uphold the standards set out in the Ministerial Code. The crucial standard, expressed at the beginning of the relevant Chapter of the Code, is the general principle that *“Ministers must ensure that no conflict arises, or could reasonably be perceived to arise, between their public duties and their private interests, financial or otherwise”*.
3. The Code itself, in Chapter 7, prescribes the process by which all Ministers should, following appointment, declare their interests and receive advice. By following this process carefully and taking due account of any advice received, Ministers can faithfully discharge their obligations under the Ministerial Code. As set out above and in the Code, it is ultimately the Minister's personal responsibility to decide what action is needed to ensure that no actual or perceived conflict arises between their public duties and their private interests.
4. Under the process set out in the Code, all Ministers, upon their appointment to office, are required to declare in writing to their Permanent Secretary all interests which might be thought to give rise to a conflict. In doing so, I encourage Ministers to be comprehensive and, even in instances where a particular interest may not appear relevant to the office held, to err on the side of disclosure so that the fullest advice can be offered in return.
5. In particular, Ministers are asked to give information relating to:
 - their financial interests, including both assets and liabilities
 - any blind trusts or blind management arrangements they have set up
 - their tax affairs
 - directorships and shareholdings
 - investment properties
 - any public appointments
 - any links with charities as a patron, trustee or member
 - any other relevant interests
 - interests of their spouse, partner or close family members

6. The declaration is reviewed by the Permanent Secretary, who brings to bear an in-depth understanding of the Minister's portfolio and responsibilities, as well as the associated activity of the Department. The Permanent Secretary provides advice on any action that they advise should be taken (including immediately, without waiting for the remainder of the process) and then the declaration, with that advice, is shared with my secretariat. I review each declaration and, at that stage, particular issues may also be drawn to my attention. I may at that stage ask for further information or analysis. In some instances I may meet the Minister in question to discuss a particular aspect of their declaration or an intended course of action. Ultimately, my advice is shared back with the Minister in line with paragraph 7.2 of the Ministerial Code.
7. In line with the Code, which requires that a declaration is made '*on appointment to each new office*', Ministers are asked to complete a new declaration whenever they move roles or if there is a substantial change to their portfolio. Ministers are also expected to inform their department of any substantive change in their circumstances during the intervening period.
8. The Ministerial Code requires that a statement covering relevant interests be published twice yearly. This takes the form of a List of Ministers' Interests. As set out in the preamble to the document each time it is published, the List does not include every interest that a Minister has declared; it is not a register. Rather, it provides information about those interests, including of close family, which are, or may be perceived to be, directly relevant to a Minister's ministerial responsibilities. It also provides details of charities where a Minister is a trustee or patron. An element of my role as Independent Adviser is to advise on what is necessary to publish within the List.

Ministers' Interests during 2021/22

9. The List published today marks the third List of Ministers' Interests which I have overseen. The List published in May 2021 was the first under my tenure as Independent Adviser on Ministers' Interests, and followed an unfortunate interregnum in the regular publishing cycle that followed the resignation of my predecessor in November 2020.
10. As I wrote in my first Annual Report last May, in order to move quickly to re-establish the regular publication cycle, I prioritised the review of all declarations made by Ministers who had been appointed to their roles shortly before or since Sir Alex Allan's resignation, and those of all Ministers in the Cabinet, as well as any other material changes in the circumstances of other Ministers which were brought to my attention.

11. In September 2021, the Prime Minister carried out a number of changes to the composition of the Government, leading to a number of new appointments. The second List of the year was duly published in November 2021, reflecting those new appointments. I had by that stage also been able to review the declarations of all other Ministers.
12. Ahead of the publication of the latest List of Ministers' Interests, Ministers have been asked to review and confirm that they remain up to date, highlighting where any changes have occurred. Where necessary, I have provided further advice in response to any such changes.
13. The List published today is a result of the aforementioned process. I have found that the majority of the instances in which I have been required to provide advice have related to:
- The extent to which certain outside roles are compatible with holding ministerial office. I have taken the view that where an appointment can conceivably be construed as a second job, it should not be held, given the long-standing principle that it is inappropriate for Ministers to hold second jobs.
 - Whether it was appropriate for Ministers to hold shares in particular companies where there might be thought to be a connection to their portfolio. In some cases this has been resolved by Ministers placing their holdings under a blind management arrangement or trust; in others by them disposing of their shareholding. Blind trusts / blind management arrangements are longstanding mechanisms for protecting ministers in the handling of their interests. They ensure Ministers are not involved in decisions on the management, acquisition or disposal of items in the arrangement and do not have live knowledge of the contents of such arrangements.
 - Where interests and jobs are held by spouses, friends and family members which have any kind of bearing on the Minister's role, how these can be effectively accounted for and properly managed. Where the interests of a Minister's close family might be of relevance, it is also important to consider the privacy of those family members - who in most cases do not hold office themselves - as well as the need to avoid compromising the ability of those closely connected with Ministers to continue in gainful employment.
 - Constituency interests: particularly relating to pre-existing constituency work from before the Minister was appointed to a relevant role, and how to ensure that Ministers are not engaged with decisions which could have a bearing on constituency interests through their Ministerial roles.
14. My secretariat has also undertaken checks against the published Register of Members' Interests, in order to ensure consistency in declarations and in the

List. I have on occasion also seen fit to offer a reminder of the need to guard against the risk that a political donation - received and registered as a Member of Parliament - could give rise to a perceived or actual conflict of interest, were there to be a degree of overlap between the source of the donation and Ministers' public duties on behalf of the Government.

15. The List of Ministers' Interests published today is therefore a reflection of the current interests of Ministers which are relevant to their portfolios. I am content that any actual, potential and perceived conflicts have been resolved to my satisfaction.
16. As I wrote in my first Annual Report, it was my firm intention on beginning this role that the twice-yearly publication should be resumed and maintained, as envisaged in the Code. It is important that the publication remains regular and up to date, not least to help uphold public confidence in the arrangements. I am therefore pleased that the expectation of the Ministerial Code in this regard has been met. It of course remains the case that the requirement on declaration remains in 'live' time as the interest arises.
17. In September 2021 I addressed Permanent Secretaries to underscore the important role that they play at every stage of the process: helping to make sure newly appointed Ministers are reminded of the obligations in making timely and thorough declarations, providing advice to Ministers about how to arrange their affairs to avoid any conflict, and then ensuring that any arrangements that are agreed within the Department - for example the recusal of a Minister from certain areas of decision-making - are maintained effectively and conscientiously. The new Terms of Reference (more commentary below) also set out a clearer expectation on the timeliness for provision of declarations, having been reviewed by the Permanent Secretary, to me. This has been necessary to underscore to some departments the priority that this process should rightly take.

2. Advice provided under the Ministerial Code

18. The second core function of the Independent Adviser is to provide advice to the Prime Minister on adherence to the Ministerial Code. Under the arrangements which prevailed during the last year, my Terms of Reference stated that:

Under the terms of the Ministerial Code (1.4): "If there is an allegation about a breach of the Code, and the Prime Minister, having consulted the Cabinet Secretary, feels that it warrants further investigation, he may ask the Cabinet Office to investigate the facts of the case and/or refer the matter to the independent adviser on Ministers' interests."

Where, in the assessment of the Independent Adviser, he believes an allegation about a breach of the Code might warrant further investigation, he will raise the issue confidentially with the Prime Minister.

The decision on whether a Minister remains in office after an investigation sits with the Prime Minister, as "the ultimate judge of the standards of behaviour expected of a Minister and the appropriate consequences of a breach of those standards" (1.6). The Prime Minister may ask the Independent Adviser for recommendations about the appropriate sanction where the Prime Minister judges there to have been a breach of those standards. These recommendations will remain confidential.¹

19. I have dealt with the question of changes to these Terms of Reference and the role of the Independent Adviser in Section 3.

20. Before commenting on my own work during the year, I should note a particular development that took place in relation to a previous Ministerial Code investigation. My first Annual Report included the findings of my predecessor, Sir Alex Allan, in relation to an investigation that took place during 2020 into allegations about the conduct of the Home Secretary.² As has been well documented, in November 2020 the Prime Minister, as the arbiter of the Code, having considered Sir Alex's advice and weighing up all the factors, determined that the Ministerial Code was not breached.³

¹ Cabinet Office (April 2021), *Terms of Reference for the Independent Adviser on Ministers' Interests*, <https://www.gov.uk/government/publications/terms-of-reference-for-the-independent-adviser-on-ministers-interests>

² Cabinet Office (May 2021), *Annual Report of the Independent Adviser on Ministers' Interests: May 2021*, <https://www.gov.uk/government/publications/annual-report-of-the-independent-adviser-on-ministers-interests-may-2021>

³ Cabinet Office (November 2020), *Ministerial Code investigation*, <https://www.gov.uk/government/news/ministerial-code-investigation>

21. During the course of 2021, the FDA union sought a judicial review of the Prime Minister's decision, arguing that the Prime Minister had misinterpreted paragraph 1.2 of the Ministerial Code and thereby misdirected himself in reaching his decision. The Government defended this claim, arguing that decisions of the Prime Minister in relation to the Ministerial Code are non-justiciable - that is, not able to be judicially reviewed by the courts - and that, in any event, the Prime Minister had not misinterpreted the Code.

22. The High Court agreed with the Government that the Prime Minister had not misinterpreted the relevant part of the Code, ruling that:

*"The question for this court is whether the Prime Minister proceeded on the basis that conduct would not fall within the description of bullying within paragraph 1.2 of the Ministerial Code if the person concerned was unaware of, or did not intend, the harm or offence caused. Reading the statement as a whole, and in context, we do not consider that the Prime Minister misdirected himself in that way."*⁴

23. On whether or not such decisions were justiciable the High Court judgment was as follows:

"We turn then to the particular reasons why it is said that the interpretation of those words is not justiciable. We accept that the Ministerial Code has no statutory basis but that of itself is not conclusive. We accept that the interpretation of parts, perhaps most, of the provisions of the Ministerial Code would not be justiciable because they involve political matters (such as references to collective Cabinet responsibility) or ministerial relations with Parliament. Such matters are intended to be subject to the judgement of the Prime Minister not the courts. But it does not follow that all parts of the Ministerial Code should be treated as non-justiciable. Such an approach would be inconsistent with the need to focus not on the source but on the particular subject-matter." ... "We recognise that in certain instances, a dispute about the interpretation of something in the Ministerial Code may be so closely connected with a decision to dismiss or retain a minister that it may not be possible to separate out the issue of interpretation from the position of the minister. In those circumstances, the dispute may not be justiciable. But that is not this case. This case concerns the question of whether the Prime Minister has mis-interpreted the Ministerial Code by interpreting the words in paragraph 1.2 as not including conduct which is offensive where the

⁴ High Court of Justice, Queen's Bench Division, Divisional Court (December 2021), *Approved Judgment: R (FDA) v Prime Minister*, <https://www.judiciary.uk/wp-content/uploads/2021/12/FDA-v-Prime-Minister-judgment-061221.pdf>

*perpetrator was unaware of, or did not intend to cause, upset or offence. We are satisfied that that particular issue is justiciable."*⁵

24. The Court found that most of the Code - for example those parts of the Code which dealt with inherently political questions - are matters solely for the Prime Minister and not the courts. I note the Government's position - restated in its recently published policy statement⁶ - that the Code and its application should be a matter solely for the Executive. I have nonetheless reflected on the implications of this judgment for the work of the Independent Adviser. It has always been the case that, irrespective of the ability of such decisions to be reviewed by the courts, the work of the Independent Adviser should in any event adopt fair and reasonable processes which are proportionate to the circumstances at hand, and that these should keep in mind relevant principles of public law. That being so, I do not think that the judgment should hold particular consequences for the work of the Independent Adviser.

Allegations about breaches of the Code

25. During the course of the year a number of allegations have been made publicly about potential breaches of the Code. I have also received correspondence from Members of Parliament and others in connection with such allegations. I have sought to treat such correspondence carefully on its merits, whilst at the same time seeking to avoid being drawn into what may appear to be more political exchanges.

26. The Ministerial Code is clear (at paragraph 1.6) that *"Ministers are personally responsible for deciding how to act and conduct themselves in the light of the Code and for justifying their actions and conduct to Parliament and the public"*. This is an important part of the Code, which responds directly to the fundamental constitutional principle of the democratic accountability of Ministers. The Code provides for a serious allegation to be investigated independently. However, in a large number of cases the appropriate initial response when a concern is raised about conduct under the Code, is for a Minister - or the Government on behalf of the Minister - to respond to such concerns with an account of their actions and conduct, and very often that provides sufficient explanation to allow an issue to be resolved.

27. As an example of this process working in practice, in November 2021 certain concerns were raised, both publicly and with me directly, about the perceived

⁵ High Court of Justice, *Approved Judgment: R (FDA) v Prime Minister*.

⁶ Cabinet Office (May 2022), *Statement of government policy: standards in public life*, <https://www.gov.uk/government/publications/revisions-to-the-ministerial-code-and-the-role-of-the-independent-adviser-on-ministers-interests/statement-of-government-policy-standards-in-public-life>

actions of the Secretary of State for Transport in relation to the 'General Aviation' sector. In response to these allegations, the Minister for Aviation provided a full account which set out publicly the Government's policy in relation to the sector and addressed the concerns that had been raised. I was provided with this account and judged in light of that account being provided that the provisions of the Ministerial Code that had been cited were not engaged.

28. Under the prevailing Terms of Reference, where I believe that an allegation about a breach of the Code might warrant further investigation, I am able to raise the issue confidentially with the Prime Minister. Because such discussions are confidential, I am not in a position to provide commentary on them. I would, however, point to the Prime Minister's evidence to the Liaison Committee in November 2021⁷ in which he provided an example of this process working in practice. In that evidence the Prime Minister gave an explanation of the circumstances which gave rise to the Business Secretary writing to the Parliamentary Commissioner for Standards to apologise for certain comments that he had made in a broadcast interview. As the Prime Minister has noted, this was an example of a case that I discussed with him and which was resolved to his and my satisfaction without the need for further action.

29. There have been no occasions during the last year in which my advice on the initiation of an investigation has been rejected by the Prime Minister.

Matters on which I have provided advice to the Prime Minister

30. Under the Terms of Reference which prevailed during the last year, where a matter has been referred to me to provide advice, I may require that, at the conclusion of that work, my advice to the Prime Minister is published in a timely manner.

31. During the last year there have been two occasions on which I have provided such advice to the Prime Minister, and in each case my advice has been published in line with the Terms of Reference.

Advice in relation to the Prime Minister

32. In December 2021, I exchanged letters with the Prime Minister following the publication earlier that month of the Electoral Commission's investigation into the recording and reporting by the Conservative Party of certain transactions relating to the refurbishment of the residence at 11 Downing Street. In particular, the fresh disclosure through that report of messages between the Prime Minister and

⁷ House of Commons (November 2021), *Liaison Committee: Oral Evidence from the Prime Minister*, HC 835, <https://committees.parliament.uk/oralevidence/3007/default/>

Lord Brownlow of Shurlock Row, which had not previously been disclosed to me, caused me to test my earlier conclusions.

33. My subsequent advice to the Prime Minister was contained in the annex to my letter of 17 December 2021. I concluded that the newly disclosed information did not alter my fundamental assessment that no conflict (or reasonably perceived conflict) arose as a result of the interests created by the payment, although I noted that, had I been in possession of that information, a number of my original conclusions may have required further examination or qualification. I also expressed my concerns about the circumstances which had given rise to this failure to disclose information, which I considered highly material to my enquiries.
34. The Prime Minister responded to that letter on 21 December 2021, offering his apologies and setting out his thoughts on the specific points that had been raised in my letter. I welcomed the Prime Minister's expressed intention to fortify the role of the Independent Adviser and agreed to embark on discussions with a view to bringing such changes into effect. I address the outcome of this work in Section 3 of this annual report.
35. The correspondence was published, in line with the Terms of Reference, on 6 January 2022.⁸

Advice in relation to the Chancellor of the Exchequer

36. On 10 April 2022, following a request from the Chancellor of the Exchequer, the Prime Minister asked me to review the Chancellor's previous declarations of interests, and to provide advice on the Chancellor's adherence to the Ministerial Code. I provided that advice to the Prime Minister on 26 April 2022, and it was published the next day.⁹ As recorded in my advice, I concluded that the requirements of the Ministerial Code had been adhered to by the Chancellor.

Ongoing work

37. On 23 January 2022, following claims made publicly by a former Minister, Nusrat Ghani MP, about events related to her departure from Government in February

⁸ Cabinet Office (December 2021), *Advice from the Independent Adviser on Ministers' Interests, December 2021*, <https://www.gov.uk/government/publications/advice-from-the-independent-adviser-on-ministers-interests-december-2021>

⁹ Cabinet Office (April 2022), *Advice from the Independent Adviser on Ministers' Interests about the Chancellor of the Exchequer's outside interests*, <https://www.gov.uk/government/publications/advice-from-the-independent-adviser-on-ministers-interests-about-the-chancellor-of-the-exchequers-outside-interests>

2020, I was asked by the Prime Minister to carry out an investigation to seek to establish the facts.

38. The investigation is being conducted in line with my Terms of Reference and paragraph 1.4 of the Ministerial Code. At the conclusion of the investigation I will provide my advice to the Prime Minister and, in line with my Terms of Reference, I would expect that advice then to be published.
39. I will continue to work with care to ensure that the investigation is completed as soon as possible, within the inevitable constraints imposed by the need for thoroughness and due process.

3. Reform of the role of Independent Adviser

40. At the time of my appointment to the office of Independent Adviser on Ministers' Interests in April 2021, I was able to offer some immediate reflections on the post. As a result of these reflections, and taking into account some of the recommendations that had at that point been made separately by the Committee on Standards in Public Life, the Prime Minister and I agreed changes to my Terms of Reference which, while incremental, were nonetheless substantive and important measures to enhance the degree of independence of the post.

41. In summary, the changes to the Terms of Reference were:

- To give the Independent Adviser the explicit authority confidentially to advise the Prime Minister on the initiation of investigations.
- To make it explicit that, where matters had been referred to the Independent Adviser, the Independent Adviser may require that his advice to the Prime Minister be published in a timely manner.
- To reflect that there should be a range of potential outcomes if a breach of the Code is determined to have occurred, and that the Independent Adviser should have a role in making confidential recommendations to the Prime Minister about the appropriate sanction in such circumstances.

42. A full account of the changes to the Terms of Reference was provided in a letter from the Prime Minister to the Chair of the Committee on Standards in Public Life, Lord Evans of Weardale.¹⁰ The letter also confirmed, in response to recommendations from the Committee, that appointment to the office of Independent Adviser should be for a non-renewable five-year term, and that the Independent Adviser would be supported by civil servants who, bound by the Civil Service Code, act under the Adviser's direction and report to him.

43. Shortly after my appointment, I gave evidence to the Public Administration and Constitutional Affairs Committee. In that evidence I underlined the importance of maintaining public confidence in the arrangements which seek to uphold standards in Government, drawing the direct link between that public confidence and the perceived independence of the role.

44. I explained to the Committee my view that the new Terms of Reference, which represented the first revision in over a decade, should be put to work before seeing if they needed to be developed further. I also made a similar point in my

¹⁰ Committee on Standards in Public Life (April 2021), *Correspondence between the Prime Minister and Lord Evans on the Independent Adviser on Ministers' Interests*, <https://www.gov.uk/government/publications/correspondence-between-the-prime-minister-and-lord-evans-on-the-independent-adviser-on-ministers-interests>

first Annual Report, in which I acknowledged the many calls for the Independent Adviser to have his or her own powers to initiate investigations. Such a power was and is articulated by many as being an essential component of a truly independent adviser. As I said then, I recognised the arguments for such an approach, but wished to work within the new Terms of Reference and to reflect on their operation before drawing any conclusions about the necessity of further changes.

45. A year having now elapsed, I feel able to draw certain conclusions about the sufficiency of those changes. Together with my wider reflections on the role, those conclusions have informed my discussions with the Government. They are reflected, at least in part, by the recent announcement by the Government of further changes to the role of Independent Adviser.

46. Before addressing the Government's recent proposals, I should note my belief that a number of the changes made in April 2021 have worked well.

- i. The additional clarity about my ability to require that the advice I provide be published in a timely manner has, I believe, been valuable. I have encountered no resistance to timely publication within Government and have, so far, had no call to use this power to require it. It has, nonetheless, sent an important signal about the independence of the role and I have been grateful to have such a provision written into the Terms of Reference.
- ii. I have welcomed the recognition that minor breaches of the Ministerial Code could be dealt with fairly and proportionately by action short of requiring a Minister's resignation or dismissal. I believe this recognition - together with the specific role for the Independent Adviser in providing confidential advice to the Prime Minister on potential sanctions - has helped to strengthen the Ministerial Code. As I noted in my first annual report, the Code itself leaves room for interpretation, it is a mixture of broad principles, guidance and procedures. These range from narrow operational matters to very important aspects of integrity. I think it is important - for the effective running of Government, as well as for trust and confidence in the Code itself - that there be a proportionate approach to dealing with breaches.
- iii. I have also found that the mechanism under which I may provide confidential advice to the Prime Minister about the initiation of an investigation has - within its own limits - worked reasonably effectively. As I have noted in Section 2, there have been no occasions during the year in which my advice on the initiation of an investigation has been rejected by the Prime Minister. Moreover, I have welcomed the additional degree of close working between Prime Minister and Independent Adviser which has been created by the revised terms of reference.

47. In November 2021, the Committee on Standards in Public Life published its report *Upholding Standards in Public Life*, which represented the culmination of its broad-based *Standards Matter 2* Review.¹¹ The Committee made a number of recommendations to the Prime Minister, including about the Ministerial Code, and the role of the Independent Adviser. Among the recommendations were that the Ministerial Code and the role of Independent Adviser should be placed on a statutory footing; that the Independent Adviser should be able to initiate investigations into breaches of the Ministerial Code, and should have the authority to determine whether a breach had occurred; that the Independent Adviser should be consulted on any revision of the Ministerial Code; and that the Code itself should be reconstituted solely as a code of conduct on ethical standards that should also detail the range of sanctions that a Prime Minister may decide to issue in the event that a breach of the Code occurred.
48. Recommendations are made by the Committee on Standards in Public Life to the Prime Minister, and it is not my role as Independent Adviser to offer a response to, or commentary on, the Committee's recommendations. That response is properly for the Prime Minister and the Government to make. The Committee's recommendations having been made in November, however, they inevitably provided part of the backdrop against which discussions between myself and the Prime Minister have taken place in recent months.
49. Those discussions followed my exchange of letters with the Prime Minister shortly before Christmas.¹² I have referred to the circumstances which led to this exchange in Section 2 of this report. In my letter of 17 December I expressed my concern that the progress made since my appointment to restore public confidence, by re-establishing the regular reporting cycle, and implementing the revised Terms of Reference, should be put at risk by a failure to meet the standards of disclosure expected in that specific case, and with that a failure to show due care for the role of the Independent Adviser.
50. In response, the Prime Minister proposed two specific steps to strengthen the office of Independent Adviser, namely directing the Cabinet Office to provide more dedicated support from officials as part of the Independent Adviser's secretariat; and second, a commitment to put in places measures - whether by way of Instruction to Ministers, Ministerial Code or clearer legal instrument - that would give effect to the Prime Minister's commitment that the Independent Adviser should be afforded the highest standards of support and attention,

¹¹ Committee on Standards in Public Life (November 2021), *Upholding Standards in Public Life - Published Report*, <https://www.gov.uk/government/publications/upholding-standards-in-public-life-published-report>

¹² Cabinet Office, *Advice from the Independent Adviser on Ministers' Interests*, December 2021

including access to all information considered necessary and prompt, full answers to any questions that the Independent Adviser may pose.

51. The Prime Minister also referenced the fact that he was carefully considering the recommendations of CSPL and others in relation to the remit of the Independent Adviser and Ministerial Code and suggested that discussions take place early in 2022.

52. I welcomed these measures, and wrote on 23 December that, taking these efforts together, I would expect in this annual report "*to be able to describe the role of Independent Adviser in terms of considerably greater authority, independence and effect, consistent with the ambitions for the office that you have set out.*"

53. Over the last five months, that work has duly taken place. The Government, on 27 May, published a policy statement, as well as revisions to the Ministerial Code and the Terms of Reference for the office of Independent Adviser¹³. A revised and clearer Terms of Reference, accompanied by references in the Ministerial Code, represents a greater formalisation of the office of Independent Adviser, albeit neither are a legal instrument and therefore do not create any formal powers or duties. I offer my response to the substance of the Government's changes below.

Additional support for the office of Independent Adviser

54. One of the specific steps set out by the Prime Minister to strengthen the office of Independent Adviser was to direct the Cabinet Office to provide more dedicated support from officials. Previously, the officials who supported the work of Independent Adviser carried out that work alongside other responsibilities within the Cabinet Office. I therefore welcome that the office of Independent Adviser will now be supported by a dedicated secretariat function, led by a senior civil servant and comprising three other members of staff.

55. I believe these changes, while moderate in scope, are important for the independence of the office. They create a greater delineation between, on the one hand, the work of the Independent Adviser within Government and, on the other, the work of the Government itself. The civil servants who work as part of the secretariat do so under my direction, not the direction of Ministers - in line with footnote 2 of the Civil Service Code, and are of course bound by the Civil Service Code itself.

¹³ Cabinet Office, *Statement of government policy: standards in public life*

56. The delineation and formalisation of the office of the Independent Adviser is also enhanced by the creation of its own online presence, which will allow documents and publications relating to the Independent Adviser to be collated in one place and more easily visible to the public.

Responsibility on all Ministers

57. The second specific step proposed by the Prime Minister, was to implement his commitment that the Independent Adviser should be afforded the highest standards of support and attention. The Prime Minister has ultimately chosen to deliver that through a change to the Ministerial Code. The updated Code now includes on its face the Prime Minister's expectation that Ministers "*should provide the Independent Adviser with all information reasonably necessary in order to discharge the responsibilities of the office*".

58. While I have generally found that such information is readily forthcoming and that Ministers take seriously their responsibilities to engage thoroughly and attentively with the work of the Independent Adviser, I believe it is nonetheless important to have this expectation unambiguously spelled out and gladly accept its inclusion in the updated Code.

Initiation of investigations

59. In many respects the biggest material change that has arisen from my discussions with the Government during the first half of 2022 has been the change to the arrangements by which investigations may be initiated.

60. As I referenced in paragraph 44, the power of the Independent Adviser to initiate an investigation under the Ministerial Code without having to wait for the matter in question to be referred to them by the Prime Minister has taken on a particular significance in the debate about the standards in public life and of the Ministerial Code in particular.

61. The changes made in April 2021 went some way towards meeting those calls. As noted in paragraph 46(iii) above, there have been no occasions during the year in which my advice on the initiation of an investigation has been rejected by the Prime Minister and indeed the the arrangements were further fortified by the Prime Minister's comments at the Liaison Committee in November that he thought it highly unlikely that he would, in any circumstances, disagree with such advice.¹⁴

¹⁴ House of Commons, *Liaison Committee: Oral Evidence from the Prime Minister, HC 835*

62. Despite these positive developments, it became increasingly clear to me over the course of the year that the prevailing arrangements still remained insufficiently independent to be able to command the confidence of the public. From the perspective of the average member of the public, who must look upon the arrangements from the outside and may see a system which relies too much on self-regulation, I can understand some of that scepticism.
63. Equally, I understand and respect the Government's desire to retain a role for the Prime Minister in such decision-making, consistent with his accountability for these issues as the head of a democratically elected Government.
64. The changes announced by the Government and written into the updated Ministerial Code represent an important step in allowing the Independent Adviser to initiate investigations.
65. Under the new provisions, written into the Ministerial Code and the Terms of Reference:

"Where the Independent Adviser believes that an alleged breach of the Code warrants further investigation and that matter has not already been referred to him, he may initiate an investigation. Before doing so, the Independent Adviser will consult the Prime Minister who will normally give his consent. However, where there are public interest reasons for doing so, the Prime Minister may raise concerns about a proposed investigation such that the Independent Adviser does not proceed. In such an event, the Independent Adviser may still require that the reasons for an investigation not proceeding be made public unless this would undermine the grounds that have led to the investigation not proceeding."

66. Under such provisions, I believe that the Independent Adviser should feel empowered to initiate an investigation. That the Independent Adviser should consult the Prime Minister at the beginning of such a process is appropriate, given the Prime Minister's responsibilities. In the event that the Prime Minister raised concerns about a particular investigation, as Independent Adviser I would be able to respond to those. If they were such that did not proceed with the investigation, the power to be able to require that the reasons for such a decision be made public represents an important safeguard by which the Prime Minister may be held accountable.

Advising on changes to the Ministerial Code

67. The Government has also written into my Terms of Reference, that - as recommended by the Committee on Standards in Public Life - the Independent Adviser should be consulted on changes to the Ministerial Code. The

Government has also stated in the policy statement that such future consultation will include how the Code can be made simpler and clearer. I think this is a helpful addition to the formal work of the Independent Adviser.