INSTITUTE FOR GOVERNMENT

MPs' second jobs

How to draw the line

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Introduction

After a torrid fortnight in Westminster a remarkable degree of consensus seems to have emerged between the political parties about the need – in principle – to strengthen the rules on MPs' second jobs, even if there is less agreement on the problem this is intended to solve.

The Labour Party's opposition day motion on 17 November proposed that the House of Commons adopt the Committee on Standards in Public Life's (CSPL) 2018 recommendation* that MPs should be banned from paid work as a parliamentary adviser, strategist or consultant. Unusually forced to engage with an opposition day motion because it related to the running of the House and so would have direct effect, the government proposed an amendment to Labour's proposed words. This recommended that the Commons also adopt a second CSPL recommendation that would place "reasonable limits" on the time that MPs could spend on outside interests, but loosened the timetable for implementing these changes.

The government's majority meant this amendment was agreed to, although without cross-party support that would normally be desirable on a question about how the Commons should run itself. Notably, neither the Labour motion nor the Conservative amendment went as far as Labour has now said it would go if it was actually in government – banning all second jobs aside from a limited set of public service roles.

* Committe on Standards in Public Life, *MPs' Outside Interests*, 2018, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/721697/CSPL_MPs__outside_interests_-_full_report.PDF

The next step is for the cross-party Standards Committee – made up of MPs and lay members – to complete its inquiry into the MPs' code of conduct, which is likely now to include recommendations about tighter regulation of second jobs. Its chair, Labour MP Chris Bryant, has said the committee is likely to publish its report before Christmas, following which the government will need to provide time for the Commons to debate and vote on the new rules.

But although the House has agreed in principle to regulate second jobs more tightly, when it comes to the actual impact of any new rules – on the activities that MPs are permitted to undertake and consequently on public trust in elected members – the detail will be crucial. Important questions remain about how the Commons will choose to define the limits of the second jobs that MPs *are* allowed to undertake, and the answers will determine whether these reforms have a substantial and wide-ranging impact on MPs' extra-curricular activities, or a marginal effect on a handful of contracts.

What is essential is that any new rules provide a workable scheme under which MPs can be certain about the permissibility of paid employment, and that the Commons standards system has a clear basis on which to judge potential breaches. It is also vital that new rules are comprehensible to the public, if they are to help improve the reputation of MPs.

This paper sets out the five questions that MPs now need to answer about proposed changes to the rules governing their outside interests.

1. Is it possible to define the "range of duties" that should constitute an MP's primary role?

In his letter to the Commons Speaker, the prime minister argued that new rules should "ensure that MPs who are neglecting their duties to their constituents and prioritising outside interests would be investigated and appropriately punished." If MPs are to be held to account – as Boris Johnson suggests – for fulfilling their full range of duties then that would suggest there would need to be agreement on what those duties are.

This is controversial. Given that MPs are paid from the public purse, there is a strong argument that their efforts should be seen to deliver value for money and not be entirely discretionary. But to date most members have argued that it is not appropriate for anyone else to come up with a single job description for them: it is up to each individual MP to decide how to fulfil their role and for constituents to decide – at the ballot box – whether they agree with their decisions.

This was the argument that Geoffrey Cox made when challenged about the hundreds of hours he had spent on private legal work rather than on parliamentary or constituency duties, stating that, "it is up to the electors of [his constituency of] Torridge and West Devon whether or not they vote for someone who is a senior and distinguished professional in his field and who still practises that profession."*

* Statement from Sir Geoffrey Cox, GeoffreryCox.co.uk, 10 November 2021, www.geoffreycox.co.uk/news/statement-sir-geoffrey-cox

In practice an MP's constituents only get the chance to express their views by voting every few years, and the voting preferences of most are likely to be influenced more by party political considerations than by the working practices of individual candidates. But nonetheless, determining whether an MP had neglected particular duties in the way Johnson has proposed would require someone other than an MP's own constituents to make a judgment in a way some would deem inappropriate.

There have been past attempts to define the range of roles that an MP should perform. In 2006, the Modernisation of the House of Commons Select Committee noted that there was no "neat" job description for an MP, but identified members' commonly recognised tasks as:

- "supporting their party in votes in Parliament (furnishing and maintaining the Government and Opposition);
- representing and furthering the interests of their constituency;
- representing individual constituents and taking up their problems and grievances;
- scrutinising and holding the Government to account and monitoring, stimulating and challenging the Executive;
- initiating, reviewing and amending legislation; and
- contributing to the development of policy whether in the Chamber, Committees or party structures and promoting public understanding of party policies."[*]

Most people would agree this is a reasonable list, but different MPs and indeed constituents will still have different views on how MPs should prioritise these various tasks. Even the same MP would presumably approach their role differently if they were elected to a new constituency – the interests of the Cities of London and Westminster are very different to those of Na h-Eileanan an Iar, in Scotland's Western Isles, for example, as are considerations about travel time to and from the Palace of Westminster that would shape the way time was spent.

It is certainly very difficult – and some say inappropriate – for an outside individual to determine how an individual MP should divide their time between their various parliamentary and constituency roles. Practically, it would be impossible for the parliamentary commissioner for standards (PCS) to take a view on whether that MP was spending enough time on constituency casework as opposed to scrutinising legislation in parliament, for example.

However it should be possible to distinguish between time spent on parliamentary and constituency duties *as a whole* and time spent on outside activities that have no obvious connection with, or benefit to, an MP's constituents. MPs choosing to spend time on outside activities should give more weight to the impression their decisions give about the priority they give to their parliamentary role, not simply form a judgment on what it is possible to get away with. This is where the concept of "reasonable limits" on outside activity comes in.

* As summarised in: Independent Parliamentary Standards Authority, *Reviewing MPs' Pay & Pensions: A Consultation*, 2012, Reviewing_MPs____pay___pensions_consultation_October_2012.pdf (ctfassets.net)

2. How can "reasonable limits" on outside jobs be defined?

The prime minister has backed the idea that there should be "reasonable limits" placed on the amount of time MPs spend on outside interests. In doing so he has put greater emphasis on the problem of MPs "neglecting" their constituents than on the problem of inappropriate external influence on parliament – which seems to be the Labour Party's main concern.

The two most obvious ways to limit members' outside interests would be to restrict the amount of money an MP can earn or the amount of time they can spend on non-parliamentary work.*

Much of the recent media reporting about MPs' second jobs has focused on the amount of money certain MPs have made, beyond their basic salary of £81,932. Some MPs have argued that they need to undertake second jobs to maintain their lifestyle or meet childcare costs, raising separate questions about the level of MPs' pay. But more pressing are concerns over the inappropriate influence that might be exerted over parliamentary proceedings by MPs taking employment elsewhere.

The rules about 'paid advocacy', which Owen Paterson broke, prevent MPs from accepting payment to advance the interests of particular individuals or organisations, but even where an MP does not actively engage in lobbying, there remains a risk of a perception of undue influence on their parliamentary activity where they are in receipt of additional payments or benefits. This might occur, for example, if an MP voted against the regulation of a certain industry after having received payments from that same industry, even if they followed the letter of the rules by declaring that interest.

In its 2018 report, the CSPL examined the possibility of setting financial limits on the outside activities of MPs. It rejected this option on the basis that:

> A financial limit on outside earnings could have the impact of limiting some outside interests, such as writing books or occasional newspaper articles, which do not bring undue influence to bear on the political system, nor distract MPs from their primary role, and are acceptable to the public.

Setting aside the counter argument that some newspaper articles – such as, on occasion, those previously written by Johnson for the *Daily Telegraph* – might exert influence on the political process, a wish to allow such activity would not be an insurmountable barrier to a pay cap. In the Senedd, the prohibition on an MS taking paid work as a parliamentary strategist is caveated with the proviso that:

> …this does not prevent a Member from being remunerated for activity which may arise because of, or in relation to, membership of the Senedd, such as journalism or broadcasting, involving political comment or involvement in representative or presentational work, such as participation in delegations, conferences or other events.

* However it is done, MPs will have to take a specific view on the implications of new rules for dual office holders (councillors, mayors, MSPs and so on).

A similar provision exists in the Scottish parliament and such a caveat could be applied to a financial cap on outside earnings in Westminster.

Although a financial limit on salaried income would be relatively easy to police, an objection to the idea is that the amount of money an MP is able to earn is not a good proxy for the impact of outside work on their parliamentary role. Some former party leaders, such as Theresa May, may be able to command tens of thousands of pounds for a single private speaking event, while the MPs who took on voluntary roles in the community during the Covid crisis may have earned nothing at all, despite having devoted more time to them.

This is presumably one reason why the prime minister's focus has been less on financial limits on second jobs and more on the time MPs spend on outside interests.* In his letter, Johnson expressed the concern that the time spent on second jobs might lead MPs to neglect their primary role of representing their constituents.

A limit on the time MPs spend on second jobs would be more difficult to police than an income cap. It would be impossible for the PCS to monitor the daily activities of all 650 members, so the onus would be on MPs to register any contracts they entered into, including the hours of work for which they were being paid. Compliance with the rules would have to be audited through random or risk-based sampling, or simply through investigations in response to complaints.

The CSPL's 2018 report rejected the idea of a time limit on outside activities for a different reason, arguing that, "A limit on the time MPs are allowed to spend on outside interests could likewise prevent MPs from doing valuable work which brings experience to Parliament, as well as impeding those (such as doctors and nurses) who seek to maintain a professional registration." The argument about professional registration is commonly put forward but again it is not insurmountable. The House of Commons could agree a dispensation from wider restrictions for time spent on maintaining professional registration, for example.

The argument about the breadth of experience – or in the questionably chosen words of one cabinet minister last week, the "richness" – brought to parliament by MPs pursuing other jobs alongside their parliamentary roles is also debateable. The job of an MP is to maintain an awareness of what is going on in society and to bring that awareness to parliament – this connection with real life is one of the key justifications for the constituency model. It is incredibly inefficient for an MP to have to actually hold down a whole second job in order to bring this experience to bear.

This model of "enriching" the Commons also creates the risk that the experiences of lawyers and journalists – who, for example, are disproportionately represented among MPs in comparison to the general population – are weighted more heavily in the deliberations of the House than those of train drivers or care workers, who are under-represented.

* Internal party politics might be another: Johnson will be aware that a disproportionate number of Conservative MPs are among the highest earners from outside interests.

A better way to ensure the deliberations of the Commons are enriched would be to focus efforts on finding ways of ensuring that a more diverse set of MPs – with broader life experience – are elected to parliament in the first place.

Having rejected financial or time limits on MPs outside activities, the CSPL proposed a principle-based system, arguing that the PCS should adjudicate on whether the paid or unpaid outside roles an MP undertook were preventing him or her from fully undertaking the range of duties expected of them as an MP. But as discussed above, this is a very subjective question and would require the PCS to settle on what would inevitably be a contested definition of the role of an MP as a baseline for her judgments.

Arguably other bodies, such as the Advisory Committee on Business Appointments (ACOBA) already have to make similarly subjective judgments when deciding whether to give former ministers permission to take on new roles, but, because its role is only advisory, disagreements over their conclusions have never come to a head. The PCS's position would be different. The events of November 2021 showed how easy it is for the determinations of the PCS to become politicised when one party's MPs disagree with the findings. A principle-based approach would surely risk encouraging such incidents.

On balance, some form of limit on the time MPs spend on outside interests – potentially with a carve-out for MPs needing to work longer hours to maintain professional qualifications – seems the best route to ensuring MPs maintain a focus on their primary role, as voted for by the Commons this week. The most workable way of defining this would be a maximum number of hours to be spent each week on outside interests as the alternative – of a proportion of the working week – would risk encouraging MPs who already work extremely long hours to work to excess. It would particularly unfair to less experienced MPs or those in marginal seats who may already feel they need to work longer hours to fulfil their core role.

3. Will a ban on MPs providing paid advice as a political or parliamentary strategist, adviser or consultant really work?

Both the Conservative and the Labour parties have endorsed the CSPL's recommendation that MPs should be prohibited from accepting payment or any other benefit for providing services as a political or parliamentary strategist, adviser or consultant. Although this seems straightforward, the definition of such roles will be important to prevent MPs readily sidestepping the ban by performing the same function under cover of an alternative job title or directorship.

One partial mitigation for such a risk would be to require MPs to submit to the PCS copies of any employment or consultancy contract they entered into, setting out the duties expected of them in the role. This was a requirement until 2015, when the rule that MPs had to deposit agreements with the office of the PCS was dropped. Reinstating this rule would encourage MPs to take advice on the permissibility of new roles and deter them from taking on inappropriate roles, but also deter companies from entering into agreements that would involve activities that might fall outside the rules.

Alternatively the rules might seek to specify that MPs are permitted to be paid for advice on policy issues if they can prove that this does not stray into questions of how to achieve particular policy goals in parliament. In almost all cases such a claim would be implausible – advice on policy issues that does not take into account political considerations would be of minimal value and it would rarely be the case that an MP was the best candidate for providing politically neutral policy expertise compared to an external expert. In practice, MPs would be best advised to follow the approach taken by their colleagues in the Scottish and Welsh parliaments and avoid consultancy roles altogether.

Both the Scottish parliament and the Senedd have had a version of the prohibition on political and parliamentary consultancy in place for some years. In Scotland, rules on lobbying and paid advocacy have been in place since 2000 and state that MSPs "should not accept any paid work to provide services as a Parliamentary strategist, adviser or consultant, for example, advising on Parliamentary affairs or on how to influence the Parliament and its members." In Wales, nearly identical guidance on the rules of the code of conduct on paid advocacy was issued in 2013, stating that MSs "should not accept any paid work to provide services as a parliamentary strategic, adviser or consultant, for example advising on Senedd affairs or on how to influence the Senedd and its Members."

The success of these provisions is demonstrated by the fact that in neither Scotland nor Wales have any complaints been received about potential breaches, let alone upheld. Those involved in the administration of the two systems argue that the rules are clearly understood by members and are working well, having established a presumption against any consultancy or advisory role – whether focused on policy or parliamentary process. This means that MSPs and MSs tend to confine their outside activities to professional roles (doctors, nurses and lawyers for example) and personal business interests (farmers and small business owners), steering clear of roles that approach the boundary of the rules.

Obviously the context for the introduction of the ban in Westminster will be different – the opportunities available to MPs may be different to those open to members of the devolved legislatures, and introducing a ban on activity that was previously permitted is different to establishing expectations in the formative years of a new legislature. But these devolved precedents give grounds for optimism about how a similar provision could work in Westminster.

4. Are other measures needed to reduce the influence of outside interests on the UK's political system?

One of the issues raised by Paterson affair has been the range of outside activities in which MPs engage that are within the rules but could be perceived as creating a conflict of interest. The most obvious examples highlighted in the media have been of MPs accepting hospitality and other benefits from organisations and industry bodies. Under the current rules this is acceptable as long as an MP declares the benefit in the register of members interests (a transparency tool which leaves much to be desired in terms of ease of navigation) and highlights it when participating in any relevant parliamentary activity – when speaking in a debate or tabling a parliamentary question for example.

However, recent events have highlighted the disparity between the strength of rules about conflicts of interest in Westminster and in Scotland and Wales. In the Senedd, the code of conduct requires that an MS "should decline all but the most insignificant or incidental hospitality, benefit or gift" if they are aware that it comes from a professional lobbyist or their employer.* This would cover benefits offered by in-house or external lobby firms. In the Scottish parliament the same rule applies and MSPs "should not accept any offer that might reasonably be thought to influence the member's judgement in carrying out Parliamentary duties."**

The rules in Westminster should be brought into line with those in the devolved legislatures, to avoid any perception of undue influence on MPs' professional actions from outside interests.

5. Is the current system for investigating – and appealing – breaches of the code of conduct working?

The current discussion about MPs' second jobs arose in the first instance after former Conservative minister Owen Paterson was found by the Committee on Standards to have engaged in paid advocacy on behalf of two private companies. This finding was eventually endorsed by the House of Commons, but not before the government had initiated a debate about the robustness of the Commons standards system as a whole. In particular, the government raised concerns about the adequacy of the appeals process available to MPs found to have breached the code of conduct. This has undermined the credibility of the current system among some MPs and the public.

It is important that the House has the opportunity to endorse or amend the existing Commons standards system in order to re-establish its credibility and ensure it can perform its important disciplinary role. The question of appeals is one of the subjects expected to be addressed by the Committee on Standards in its report on the standards system now due before the end of 2021, which should provide such an opportunity.

* Senedd Cymru, Code of Conduct and Associated Rules and Guidance for Members of the Senedd, 2021, https://senedd.wales/how-we-work/code-of-conduct-and-associated-rules-and-guidance-for-members-of-the-senedd/

** The Scottish Parliament, Code of Conduct for MSPs – Section 5: Lobbying and access to MSPs, 2021, www.parliament.scot/msps/code-of-conduct/section-5-lobbying-and-access-to-msps

One option under discussion is the idea of asking legally qualified peers sitting in the Lords to hear MPs' appeals. This would increase the legal expertise within the process, but would risk complicating relations between the two Houses and – more importantly – do nothing to assuage public concern about parliamentarians sitting in judgment on each other.

An alternative answer, which would increase the independence of the process for determining sanctions and hearing appeals, already exists in the form of the Independent Expert Panel (IEP), established in 2020 as part of the Independent Complaints and Grievance Scheme (ICGS) to deal with complaints of bullying and harassment. No MPs sit on the IEP, which is made up of independent qualified legal and HR figures who sit in differently composed panels of three to decide what punishment to impose on MPs found guilty of bullying or harassment, and to hear any subsequent appeal – by the complainant or by the accused.

Adopting a parallel model for the MPs' code of conduct would ensure that cases were decided by individuals with appropriate expertise, unaffected by partisan or personal considerations. As under the ICGS, a final vote for MPs on the panel's conclusion, without a prior debate, would provide democratic sign off while minimising the prospect of political considerations coming into play at the final moment.

Conclusion

The decision of the House of Commons to place limits on the outside interests pursued by MPs has established a clear public expectation that change is on the way. It is essential that this expectation is now met – with urgency – to avoid compounding the damage to the reputation of the House of Commons caused by the Owen Paterson scandal.

But delivering on public expectations will require strong leadership that has – until very recently – been lacking from the prime minister on ethical standards. This will need to include the provision of parliamentary time to agree a way forward, which itself must be underpinned by genuine cross-party support. Establishing the rules that underpin the legitimacy of our democracy should not be a partisan issue.

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November 2021

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Our main funder is the Gatsby Charitable Foundation, one of the Sainsbury Family Charitable Trusts.