

A Strong Transparency, Accountability and Ethical Governance Framework for Members of Parliament

GOVERNANCE
THEMATIC
COMMITTEE

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Foreword

In 2019 The Malta Chamber's Council decided, in response to legitimate concerns raised regarding the state of good governance and the observance of the rule of law in Malta, to establish a multidisciplinary working group tasked with researching and formulating policy documents on Good Governance and Best Ethical Standards and Practices. The presentation of such policy documents by the working group is directed to generate objective and non-partisan debate in our polity, which too often is missing. The aim of these documents is to effect a change, incremental as it may be, and strengthen further the well-being of our society.

The first paper presented in January 2020 by this working group was titled 'Ethical Business calls for change: A manifesto for Good Governance by The Malta Chamber of Commerce, Enterprise and Industry. The Malta Chamber presented this policy document to then-incoming Prime Minister, Dr Robert Abela.

This second policy document, now published under the Good Governance Thematic Committee who have contributed to this document, reviews and presents recommendations on one other key issue that is essential to the rule of law in Malta. This is the need for robust transparency, accountability, and an ethical government framework for parliamentarians.

Transparency, accountability, and ethical behaviour are the essential prerequisites of a democracy based on the rule of law. Robust transparency, accountability, and an ethical framework for parliamentarians have two main purposes; preventing corruption and conflicts of interest, perceived or otherwise, and undue influence by political donors and corporate lobbyists; and (b) maintain citizens' trust in politics and the politicians they elect.

Since 1987, different administrations have introduced a series of institutional mechanisms to strengthen parliamentarians' transparent, accountable, and ethical behaviour. The latest evolution in this process is the Standards in Public Life Act, which resulted in a new parliamentary Committee and the Office of Commissioner for Standards in Public Life. As the report shows and concludes, the changes introduced to strengthen parliamentarians' transparency, accountability, and ethical governance framework over the past decades have had both negative and positive impacts. The report concludes that this transparency, accountability, and ethical governance framework must be strengthened further as serious lacunae continue to exist. It identifies six areas where such strengthening concerning parliamentarians should occur;

1. Disclosure of Assets.
2. Second jobs.
3. Lobbying.
4. The Office of the Commissioner for Standards in Public Life.
5. Instilling a Culture of integrity and professionalism amongst persons who select to pursue a political vocation.
6. Confidential counselling to MPs on accountability, transparency and ethical matters.

The past decade particularly has seen considerable and ongoing debate about the behaviour and alleged lack of professionalism and integrity of parliamentarians. There is no doubt that political scandals, alleged or otherwise, damage perceptions of legitimacy in our democracy and undermine citizens' trust in parliamentarians and Malta's political system. This paper argues that Malta has reached such a state of play. This, perhaps, is best demonstrated by the fact that the March 2022 general election experienced a record low turnout, with a large number of invalidated votes and uncollected voting documents. In that election one in every seven voters either failed to collect their voting document, did not make use of it, or went to the polling booth to cast a spoilt vote; accounting for the approximate equivalent of two whole electoral districts.

Nevertheless, such scandals also open up windows of opportunity to reform or tighten the regulation of parliamentary conduct. Indeed, scandals have been critical in promoting parliamentary standards in many countries. In the UK, for example, the "cash for questions" affair, where MPs were found to have taken cash bribes for raising certain questions in Parliament, resulted in the "Nolan Principles".

The likelihood is that Malta will experience many twists and turns, including disappointments, as Malta's good governance framework for parliamentarians matures and roots further. The Malta Chamber seeks to contribute, through this and other papers¹, to the further positive maturing of Malta system of public scrutiny and oversight of Malta's parliamentarians and, hence, to the strengthening of the rule of law and the public's trust in our political system.

Mr David Spiteri Gingell

Chair of the Good Governance Thematic Committee

¹ This is the first paper of the working group on governance related to Malta's political system. A further three papers will be published, one relating to the size of parliament; Malta's Parliamentarians in 2020 and beyond, and in political party financing.

Executive Summary

This report presents the following recommendations:

Members of Parliament and Disclosure of Assets

01. The Standards in Public Life Act (SPLA) [CAP. 570] and the appended Codes are principle-based – as they should be. These should be complemented by well-designed guidelines that provide direction to Members of Parliament and Ministers.
02. The current form for disclosing MPs' assets should be re-designed to allow for the structured, consistent, and coherent submission of asset information.
03. The asset declaration form is to be designed so that the information presented by an MP provides a level of detail that allows for meaningful scrutiny.
04. An MP should attach, with the asset declaration form, the previous year's Income Tax form submitted to the Commissioner of Revenue.
05. The asset declaration categories in the asset declaration form are to be presented in two different Registers – a Register for Assets and a Register of Gifts. Both Registers are to be placed on the Websites of the House of Representatives (House) (www.parlament.mt) and that of the Office of the Commissioner (www.standardscommissioner.com).
06. Public access to the respective Registers for Assets and Gifts should be facilitated in the interest of transparency. This should be achieved by using a prominent navigation tab on the landing page of the websites of the House and the Office of the Commissioner.
07. The asset declarations are to be submitted by an MP within 4 weeks from the start of the year.
08. The Office of the Commissioner will upload the asset declarations in the proposed Registers within 2 weeks of receipt.
09. The Office of the Commissioner is to 'name and shame' MPs who fail to present their asset declarations, and should such MPs fail to present such declarations before the end of Quarter 1 of the year, a significant monetary sanction, based on the principle applied for the sanctioning concerning their presence in the House, should be automatically triggered. In the event of the continued failure of the presentation of such a declaration, the sanction applied is to increase in a compound manner by 1% at the end of each month.
10. By the end of June, the Office of the Commissioner is to issue a public report setting out their analysis of the declarations submitted in the previous year, a review of action taken by the Office and the outcome of such review, and include potential recommendations to the Parliamentary Committee on Standards in Public Life (PCSPL) on sanctions to be applied should there be a need

for such action. These actions could include requesting investigations by competent authorities such as the Commissioner for Revenue, the Malta Police Force, etc.

11. At the end of every month, the Office of the Commissioner is to present a state of play on the action taken regarding the recommendations referred to in Para 10 above.
12. The decision to exclude family members from the declaration of assets should be reversed. The family members of a Minister should declare their assets in a Register of Interests. This is a recommendation presented by the Commissioner in the draft Code, which this report agrees with. This report also supports the recommendation in the draft Code made by the Commissioner on the definition of what constitutes family members: “comprise unless stipulated otherwise a spouse and/or partner (civil or cohabiting), child, parent, sibling, and their respective spouse and/or partner.” Including family members in the declaration of interests is not a principle limited to Malta. This is a universal trend. In 2019, the Group of States against Corruption (GRECO) of the Council of Europe recommended to all parties reviewed “to consider widening the scope of declarations of interests to include information on spouses and dependent family members”.
13. The report recognises that the Registration of Interests by family members raises concerns about the level of privacy afforded to those who, after all, have not sought public office and do not see why their family members’ private affairs should be made public. It is recommended that whilst the Register of Interests completed by a Minister is placed in the public domain, that their family members should be kept private. Access to the Register of Interests relating to family members should be restricted only to the Office of the Commissioner. Information in this register should only be placed in the public domain by the Office of the Commissioner if access to such information is required during an investigation carried out by the Commissioner, and only after the Commissioner concludes that a breach of the Code has occurred, and a sanction is to be affected under Article 28 of the SPLA.

Members of Parliament and Second Jobs

This paper presents several recommendations in this regard.

14. The requirement established under Article 5(2)(a) of the Code of Ethics should be amended to include the following:
 - (a) Within 24 hours from the issuance of an Agenda for a plenary parliamentary sitting, an MP should, if an Agenda item may result in a real or perceived conflict of interest arising from Articles 9(1)(a) and (d) of the Code declare such interest.
 - (ii) In the event of a debate on an item which arises in the House which is not part of the Order of the Day, an MP should, on a point of Order, immediately declare his or her real or perceived conflict of interest arising from Articles 9(1)(a) and (d) of the Code and declare such interest.

15. If an MP fails to declare their real or perceived conflict of interest as proposed in (a) above, and that real or perceived conflict of interest is proven as a result of an investigation by the Commissioner, that MP should be subject to the immediate highest level of sanction allowed under the SPLA. The sanctioned MP should have the right to an appeal.

16. To strengthen transparency and integrity, the Commissioner should issue guidelines that categorically preclude second jobs that an MP of the House may hold. In articulating such a guideline, the Commissioner should consider precluding MPs from holding positions, consultancy engagements, and other types of direct or indirect association – where they are:
 - Employed in a position within a Ministerial or Parliamentary Secretariat.
 - Employed in a position of trust as an Advisor or Consultant with a Minister or Parliamentary Secretary or their secretariats; or with a government department, agency or government entity.
 - Appointed as a Chairperson, Director or member of a Board of a Government authority, agency, parastatal corporation, public enterprise in which the Government is the majority shareholder, Commissions, and any other form of the government entity.
 - Engaged on a contract for services directly or in their capacity as a partner, shareholder, or owner of a consulting, legal, etc. firm to provide consulting, legal and other forms of services to a Minister or Parliamentary Secretary or their secretariats; or a government department, agency or government entity.
 - Providing services, exercising functions as a consultant, issuing opinions, or providing legal counsel in proceedings, in any jurisdiction, for or against the state or other public entity.
 - Providing services, exercising functions as a consultant, issuing opinions, or providing legal counsel in the drawing up of submissions by commercial entities in response to public tender requests for the award of public contracts or concessions or in representing commercial entities in appeals presented to the Public Contracts Review Board.
 - Providing services or maintaining employment relations with institutions, enterprises or companies that hold a public service concession or are parties to public-private partnerships with the Government.
 - Holding of a senior international office or function, where it prevents the exercise of the parliamentary mandate or is an employee of an international organisation or foreign state.

17. To strengthen transparency and integrity, the Commissioner should issue guidelines that categorically identify second jobs that an MP may carry out because they do not constitute a real or perceived conflict of interest. In articulating such a guideline, the Commissioner should consider permitting MPs to:

- (i) Hold a position of a visiting or part-time lecturing post in a higher or further educational institution.
- (ii) Authoring and receiving royalties from book writing specifying that this excludes paid journalistic work or content writing in the media.
- (iii) Holding a part-time position in a scientific body.
- (iv) Participating in selection panels in academic and scientific examinations within the scope of the exercise of the functions referred to (i) and (iii) above.

Members of Parliament and Lobbying

- 18. The recommendation by the Commissioner to regulate the lobbying framework through an ad hoc Act is adopted.
- 19. The recommendations by OECD to strengthen the Commissioner's proposed definitions for lobbying and lobbyists are adopted.
- 20. Each MP should have Lobby Register in which the MP is to register any person or firm which meets with them for lobbying purposes.
- 21. The Lobby Register should be online and easily accessible from the House's and the Commissioner's websites.
- 22. Each MP should, within 24 hours from when a lobby meeting is held, update the Lobby Register setting out:
 - Political and / or a public official present at the meeting with the MP.
 - The name of the lobby group and the details of the lobbyist(s) who requested the meeting and who was present at the meeting.
- 23. Minutes of meetings with lobbyists should be uploaded on the Lobby Register within 5 working days from when the meeting is held.

Strengthening the Office of the Commissioner for Standards in Public Life

24. The SPLA refers to the term ‘misconduct’ only once². Neither the Act nor the Code of Ethics for MPs and Ministers in the respective schedules to the Act defines this term. The OECD document titled ‘Managing Conflict of Interest in the Public Sector: A Toolkit’ defined the “generic term ‘misconduct’ ... [to] include the ideas of “breach of trust” and “dishonesty”: this definition may therefore be used to provide a link to existing law and policy dealing with corruption and conflict of interest”. The OECD toolkit goes on to say:

“misconduct” means:

- a) For a person, regardless of whether the person is a public official, conduct, or a conspiracy or attempt to engage in conduct, of or by the person that adversely affects, or could adversely affect, directly or indirectly, the honest and impartial performance of functions or exercise of powers of:
 - i) a public office or body, or
 - ii) any person holding a public office.
- b) For a person who holds or held a public office – an act by the person, or an offer or attempt by the person to engage in an act that involves:
 - i) the performance of the person’s functions or the exercise of the person’s powers in a way that is knowingly unlawful, or is not honest, or is not impartial, or
 - ii) a breach of the trust placed in the person as the holder of a public office, or
 - iii) a conflict of interest, whether the conflict has been declared in accordance with the requirements of the person’s public Office or not, or
 - iv) a misuse of information or material acquired in or in connection with the performance of the person’s functions as the holder of a public office, whether the misuse is for the person’s benefit or the benefit of someone else, or
 - v) a disciplinary breach for which the penalty provided by law is termination of the person’s appointment or service.”

This definition, or an amended version thereof, should be introduced in the SPLA.

² Standards in Public Life Act (Article 18 (4) titled ‘Proceedings

25. The SPLA refers to a country where an MP carries out misconduct in Article 5.8 and Article 9.2 of the Second Schedule titled 'Code of Ethics for Ministers and Parliamentary Secretaries. The drafting of these Sub-Articles leads one to conclude that the 'misconduct' can only be investigated if it is carried out in Malta. It is proposed that a 'definition of country' is introduced in the Act, which makes it unequivocally clear that conduct may be misconduct regardless of "whether the law relevant to the conduct is a law of the [country] or of another jurisdiction.

26. Article 14 of the SPLA titled 'Time limit for allegation' states that "nothing in this Act shall permit the Commissioner to investigate an act which occurred before the date on which this Act comes into force". This means that a case of misconduct which occurred prior to the enactment of the law cannot be investigated by the Commissioner if it came to light now. The powers of the Commissioner to investigate a case of misconduct is further restricted by Sub-article (2) of Article 14 which states that a "complaint under this Act shall not be entertained unless it is made not later than thirty working days from the day on which the complainant had knowledge of the fact giving rise to the complaint or than one year from when the fact giving rise to the complaint happened, whichever date is the earliest." In essence, Article 14 imposes a very restricted window of cases of misconduct that the Commissioner may investigate. This is not correct. These constraints on the Commissioner should be removed. The SPLA should therefore be amended to empower the Commissioner to investigate any case of misconduct irrespective of when such misconduct occurred. Furthermore, the Commissioner should be empowered to call former MPs or former Ministers to provide evidence during such investigations.

27. The OECD, in its report submitted earlier this summer, to the Office of the Commissioner, states:

"... the Ministry for Justice could consider appointing as the chairperson of the Committee for Standards a former judge known for their integrity and independence. Currently, the Standards Act assigns the role of chairperson to the Speaker of the House of Representatives. In modern Westminster-style democracies, the Speaker of the House is expected to be politically impartial and avoid taking a political stance or favouring particular interests over others (Institute for Government, 2019). ... Moreover, the law allows for the election of a Speaker that belongs to a specific political party, which could hinder the objective of separating the decisions of the Committee for Standards from any interest of a particular political party and could threaten the Committee for Standards' independence."

This paper is of the considered opinion that there is merit in positively acting on this recommendation to ensure that the decisions of the Committee are and are seen to be above partisan positioning.

28. This principle on which the selection of the incumbent of the Office of the Commissioner – that is, the appointment of an experienced person who is nationally respected and is known to be above partisan politics – should be respected in the selection of a new Commissioner. This principle should be entrenched in the SPLA.

29. The questioning of witnesses during an investigation by the Commissioner should not be held *in camera* as established by Article 18(1) of the SPLA [CAP. 570]. The questioning of witnesses should have the same level of public scrutiny as with the other House committees, such as the Public Accounts Committee. Exemptions from such disclosure should only be based on national security, damage to the economy, disclosure of Cabinet or any Cabinet Committee proceedings, and should there be a risk that such disclosure will prejudice the investigation or detection of an offence. In such instances, as in the Courts of Law, the witness may request that the disclosure be held *in camera*.
30. Whilst responsibility for deciding whether the report, conclusions and recommendations present is to be adopted should continue to reside with the PCSPL, the Commissioner's report should also be tabled at the House, and hence in the public domain, at the same time, it is presented to the PCSPL.
31. All investigative reports carried out by the Commissioner must be placed in the public domain. There should be no exceptions in this regard.
32. In the recommendations presented by the Commissioner in their investigative reports, they are also to propose, should they conclude that a breach in the Code of Ethics or any statutory or ethical duty has occurred, the sanction to be applied.
33. The SPLA [CAP. 570] does not provide for an appeal mechanism. Sub-article 5 of Article 22 of the SPLA titled 'procedure after investigation' empowers the Commission to grant the person investigated a time limit to remedy a breach. This, however, is based on the presumption that the person investigated is conclusively guilty should an investigation so conclude. An MP that the Commissioner finds guilty of a breach of the Code of Ethics or any statutory or ethical duty and whose recommendation is accepted by the PCSPL should have the right of appeal to an independent board constituted of ex magistrates or judges. The conclusions of an independent board of appeal should be subject to a final vote by the PCSPL without a prior debate to secure democratic sign-off while minimising the prospect of political considerations coming into play at the final moment.

Instilling a Culture of Integrity and Professionalism amongst persons who select to pursue a Political Vocation

34. Persons who decide to run for election or become MPs should be trained in ethics and ethical behaviour.
35. The House should introduce structured ethical training mandatory for all MPs on election to the House. Such ethical training should be subject to a mandatory annual ethical refresher course.
36. Political parties should receive state financing so that candidates interested in pursuing a political vocation to become an MP for the party they represent are provided ethical training and refresher courses.
37. Political parties should receive state financing to introduce a robust due diligence framework so that persons who present themselves as candidates for election are thoroughly vetted.

Confidential Counselling to MPs on Accountability, Transparency and Ethical Matters

38. This paper agrees with the recommendation presented by GRECO in its Fourth Evaluation report that one of the resources that are to be provided by the Parliamentary Service is a dedicated source of confidential counselling to provide MPs with advice on ethical questions, conflicts of interest about their legislative duties, as well as financial declaration obligations.

Chapter 1: Introduction

Transparency, accountability and ethical behaviour are the essential prerequisites of a democracy based on the rule of law. Strong and robust transparency, accountability and an ethical framework for Members of Parliament (MP) and Ministers³ have two main purposes; (a) prevent corruption and conflicts of interest, perceived or otherwise, and undue influence by political donors and corporate lobbyists; and (b) maintain citizens' trust in politics and the politicians they elect.⁴

Ethical standards reflect the values the public expects to embody, setting the boundaries for the legitimate use of power in public life. A democratic mandate alone is insufficient to guarantee the confidence and consent of the governed. Adherence to the ethical principles helps ensure that MPs make controversial and difficult policy decisions in the public interest and that most citizens accept them. Confidence in democratic governance depends on citizens being reassured that the political process is legitimate, especially where they disagree with policy outcomes.⁵

High ethical standards facilitate proportionate and appropriate accountability. When MPs embrace high ethical standards, the public can see how decisions are made and who or what influences the decision-making process. Better accountability makes for a more responsive and resilient democratic system.⁶ Voters are often likely to hold MPs accountable for failing to live up to ethical standards, even when they have not explicitly broken the law.⁷

The ethical standards that MPs follow are normally set in a code of conduct – which can be aspirational, rules-based or a hybrid of both. Therefore, a code of conduct can provide a standard against which to assess behaviour and provide guidance in cases where an MP has done something that is not necessarily illegal but may be considered unethical.⁸ Thus, the regulation of ethical standards plays a critical role in ensuring that the conduct of MPs is not merely in line with a country's Constitution or laws but also meets public *expectations* about how they should behave. Yet, for a code of conduct to be effective as an integral component that is embedded into a wider integrity system with strong checks and balanced accountability mechanisms requires several elements if it is to be successful in meeting such objectives – including structures to monitor, review, and guide compliance as well as mechanisms to enforce rules and apply disciplinary measures.⁹ The Global Organisation of Parliamentarians Against Corruption (GOPAC), in collaboration with the Westminster

³ The term 'Member of Parliament' (MP) includes Minister (and the term Minister' includes Parliamentary Secretary). They are specifically applied only when it is important to distinguish between MP generally and an MP who holds the office of the Prime Minister, Cabinet Minister, Parliamentary Secretary, or the Leader of the Opposition.

⁴ Mills, L., Parliament transparency and accountability, Knowledge, evidence and learning for development, 2017, <https://assets.publishing.service.gov.uk/media/59785450ed915d312c000005/081-Parliamentary-transparency-and-accountability.pdf>

⁵ Pg 18, Upholding standards in public life: Final report of the Standards Matter 2 review, the Committee on Standards in Public Life, United Kingdom, 2021, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1029944/Upholding_Standards_in_Public_Life_-_Web_Accessible.pdf

⁶ Ibid

⁷ Pg 13, Background Study: on Professional and Ethical Standards for Parliamentarians, OSCE Office for Democratic Institutions and Human Rights (ODIHR), Poland, 2012

⁸ Pg 2, Bak, M., Overview of executive codes of conduct and ministerial codes, Transparency International, 2021, https://knowledgehub.transparency.org/assets/uploads/helpdesk/Overview-of-enforcement-mechanisms-for-ministerial-codes-of-conduct_2021.pdf

⁹ Ibid.

Foundation for Democracy (WFD), emphasises that developing the rules of such an ethical conduct regime with an appropriate enforcement mechanism for MPs has become necessary to¹⁰:

- Allow MPs to demonstrate high standards of ethics consistent with their important public interest roles, particularly in holding the executive branch of Government accountable.
- Deter and sanction specific cases of unethical behaviour by MPs in the broader context of preventing and fighting corruption.
- Enhance the public's level of trust in the democratic political system in general and in parliaments and their members in particular, which is greatly influenced by perceived and real corruption.
- Implement the provisions of Article 8 of the United Nations Convention Against Corruption (UNCAC), which provides the development of codes of Conduct for MPs.

¹⁰ Pg 5, Power G, Handbook on parliamentary ethics and conduct: a guide for parliamentarians, Global Organization of Parliamentarians Against Corruption and Westminster Foundation for Democracy, 2007

Chapter 2: The Evolution of a Transparency, Accountability and Ethical Governance Framework for Maltese Members of Parliament

In 1993, the then Government issued a White Paper titled 'The Change Continues'. The objective of this White Paper was a comprehensive reform directed towards strengthening the scrutiny of the Government and thus securing increased transparency and accountability. Amongst the recommendations proposed was the articulation of a framework of ethics so that the values of the parliamentary and governing institutions are strengthened.¹¹ Several Committees were established to draw up Codes of Ethics for ministers, parliamentary secretaries, MPs; public officers; and persons appointed to the boards of public sector entities.¹² In May 1995, the House of Representatives (House) (Privileges and Powers) Ordinance was amended to include a Code of Ethics for MPs.¹³

A key limitation was that the Code was primarily a statement of aspirational values for professional behaviour and integrity among MPs. No mechanisms were introduced to instigate action and sanction if an MP breaches the Code. In the UK, the Committee for Standards in Public Life (CPL), set up in October 1994, was empowered by its terms of reference to "examine current concerns about the standards of conduct of all holders of public office, including arrangements relating to financial and commercial activities, and make recommendations as to any changes in present arrangements which might be required to ensure the highest standards of propriety in public life."¹⁴

In 2012, the then government issued a white paper titled 'Il-Parlament Malti: Iktar Awtonomija, Iktar responsabilita'. The White Paper stated that MPs:

"... should not be fearful of scrutiny. They approve a standard by which their behaviour shall be gauged, and the creation of a mechanism, as shall be proposed, which will supervise their actions, is proof that Parliament takes heed of the expectations and wishes of the people. It is also the right thing to do. If Parliament has enacted a Code of Ethics, its rules have to be properly applied, and now that years have elapsed from the Code's promulgation, it is fit and proper that the enforcement of its provisions is strengthened through the creation of a proper mechanism

¹¹ The White Paper had also proposed the setting up of the new institution of the Office of the Ombudsman; the introduction of local councils directed to strengthen the principle of subsidiarity by moving power and the provision of local services away from central government; securing the independence of the Office of the National Audit Office; the setting up of Parliamentary Committees including the Public Accounts Committee to strengthen the oversight of the legislature over the executive. These proposals in the White Paper were directed toward institutionalising a culture of transparency, accountability, and an ethical culture based integrity and professionalism within Malta's governing and parliamentary system, particularly given that the government institutions were significantly weakened between 1971 and 1987, as well as to empower citizens decision making through the principle of subsidiarity achieved by the setting up of a new institution of government – local councils.

¹² The lead author of this paper was the Executive Secretary to the Committee assigned responsibility to draft the Code of Ethics for public officers. This Committee was chaired by the then Minister Michael Falzon (MP representing the Nationalist Party in government).

¹³ The Speaker of the HoR stated when introducing the Code of Ethics for MPs that: "This Code of Ethics establishes standards of correct behaviour that the House members propose to observe as elected representatives serving their country in its highest democratic institution. The innovation for our parliamentarians does not lie in the standards themselves since every member has always been expected to conduct himself according to the dignity of the institution he serves. What is new is that these rules of conduct have now been codified, thus providing a further tool for public scrutiny and enhancing accountability."; <https://www.parlament.mt/en/menues/about-parliament/code-of-ethics/members-of-parliament/>

¹⁴ Pg 3., Lord Nolan, 'Standards in Public Life: First report of the Committee on Standards in Public Life', Volume 1 – Report, Presented by the Parliament by the Prime Minister by the Command of the Her Majesty, May 1995, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/336919/1stInquiryReport.pdf

for such purpose, which shall include the supervision of an MP's behaviour and of the financial declarations he is bound to make under the Code.”¹⁵

The White Paper added that “perhaps the time is ripe to establish the Office of a Parliamentary Commissioner for Standards. This Parliamentary Officer, appointed with the support of two-thirds of the elected members of Parliament, shall have the right to examine any complaint by any member of the public relating to the behaviour of a member of the House, including abuse of parliamentary privilege”.¹⁶ Furthermore, the White Paper recommended that the Constitution of such an office would be empowered to:¹⁷

- “(a) ensure that the Register of Financial Interests and Assets of Members as required by the Code of Ethics be monitored and that Members declare and submit that which is required of them by said Code;
- (b) offer advice on a confidential basis to individual Members, to the House Business Committee and the Committee on Privileges on the interpretation of the Code of Ethics on Members behaviour;
- (c) monitor the operation of the Code of Ethics and, where necessary, suggest changes to it to the House Business Committee;
- (d) prepare guidelines and offer training to members on proper behaviour and ethics;
- (e) receive and investigate complaints on alleged breach of the Code of Ethics by Members and report his/her conclusions to the Committee on Privileges;
- (f) submit an Annual Report on the Workings of their Office to the House.”

The recommendations presented in this White Paper were not implemented by the time a general election was called in March 2013. Notably, a cornerstone of the Opposition's electoral campaign was the need for a reform that would hold MPs more accountable to the public. Pledge 12 of Chapter 18, titled ‘Demokrazija u Trasparenza ’ of the Opposition's 2013 electoral manifesto, stated

“Indaħħlu Kummissarju Parlamentari għall-Istandards, maħtur mill-Kamra tar-Rapprezentati, li b'mod indipendenti jissorvelja l-imġiba tal-Membri tal-Kabinett, jara li x-xogħol u l-interessi finanzjarji kollha tagħhom ikunu dikjarati, jinvestiga kif jidirhlu xieraq, jirraporta lill-Ispeaker u jippublika r-rapporti tiegħu.”¹⁸

The turbulent Gonzi administration of 2008-2013 saw it subject to significant ongoing allegations by the Opposition and the media of corruption by government Ministers, MPs, and persons holding public

¹⁵ Pg 38, Il-parlament Malti: Iktar Awtonomija, Iktar responsabilita, 2012, <https://cdn-others.timesofmalta.com/27e9e60482798d13f8cb8c1b1f45f1d43252441290.pdf>

¹⁶ Pg 39, Ibid.

¹⁷ Pg 40, Ibid.

¹⁸ Pg 160, Malta Tagħna Lkoll, Manifest Elettorali 2013, Labour Party

Office.¹⁹ Placing accountability and good governance as one of its core electoral planks, the Opposition won the 2013 general election by a landslide. In practically the first Cabinet meeting of the new administration in 2013, the Cabinet “commissioned a review of the ministerial code of ethics to make it “more relevant to today’s realities”.^{20 21} In June 2015, the Principal Permanent Secretary (PPS) said, “Cabinet members are following a revised ministerial code of ethics which is in place even though it has not yet been published”.²²

In October 2018, the Government enacted the Standards in Public Life Act [CAP. 570] (SPLA) to provide for the appointment of a Commissioner for Standards in Public Life (Commissioner) and a Parliamentary Standing Committee for Standards in Public Life (PSCSPL) with power to investigate breaches of statutory or ethical duties of categories of persons in public life and for matters ancillary or related thereto.²³

¹⁹ A major corruption scandal, termed the ‘oil gate’ scandal, exposed by the Malta Today weeks from the general election that “raised questions about the government’s competence, accountability and the integrity of many, both in and outside government, who have been very close to it over the last decade ... [demonstrating] institutional corruption, cronyism, patronage and money-laundering”; Scicluna, M., Time for a change to Labour, The Malta Independent, 3rd March 2013, https://www.independent.com.mt/articles/2013-03-03/opinions/time-for-a-change-to-labour-1024294927/?_c=_c

²⁰ Peregini, C., Muscat orders review of code of ethics, 15th March 2014, Times of Malta, <https://timesofmalta.com/articles/view/Muscat-orders-review-of-code-of-ethics.461571>

²¹ The new Prime Minister (PM), Dr Joseph Muscat, in June 2013 “opined that the Code of ethics needed up-dating ...I think this Code is too voluminous, and it makes it impossible for people to follow it to the letter. I think it should be slimmer, with principles that leave no doubt as to what its red lines are.”; Vella, M., ‘Slimmer code of ethics for ministers, says Muscat, Malta Today, 1st June 2013, https://www.maltatoday.com.mt/news/national/27222/slimmer-code-of-ethics-for-ministers-says-muscat-20130531#.YfalRfgo_t4

²² Dalli, K., Ministerial code of ethics in place but not published, Times of Malta, 2nd June 2015, <https://timesofmalta.com/articles/view/ministerial-code-of-ethics-in-place-but-not-published.570766>

²³ Pg 1, Standards in Public Life Act, CAP 570. Article 13(1) of the Act provides the Commissioner with the powers²³:

- “(a) to examine, and if necessary verify, such declarations relating to income or assets or other interest or benefits of whatever nature of persons to whom this Act applies who are under a duty to file such declarations ... to make recommendations in the form of guidelines which the Commissioner considers appropriate and proportionate also with regard to any person who fails to make any declaration as aforesaid or who makes an incorrect declaration in a manner which materially distorts the purpose of the declaration;
- (b) to investigate on his initiative or on the written allegation of any person, any matter alleged to be in breach of any statutory or any ethical duty of any person to whom this Act applies ...;
- (c) to give recommendations, when requested by a person to whom this Act applies, on whether an action or conduct intended by him falls to be prohibited by the applicable Code of Ethics or by any other particular statutory or ethical duty...;
- (d) to scrutinise the register with all details of absentee members of Parliament held by the Speaker of the House;
- (e) to ensure that every month, the administrative penalty due by every member of Parliament as provided in Standing Order 159 is calculated ...;
- (f) to identify those activities which are to be considered as lobbying activities, to issue guidelines for those activities and to make such recommendations as he deems appropriate in respect of the regulation of such activities;
- (g) to make recommendations for the improvement of any Code of Ethics applicable to persons who are subject to this Act ... to make recommendations on the acceptance of gifts, the misuse of public resources, the misuse of confidential information, and on limitations on employment or other activities after a person ceases to hold Office as a Minister, a Parliamentary Secretary or a member of the House of Representatives; (ii) to ensure that any recommendations made give due account to the need for any measures, guidelines or rules intended to ensure high standards in public life according to this Act are easily accessible and comprehensible to the general public.

Chapter 3: Strengthening the Transparency, Accountability and Ethical Governance Framework for Maltese Members of Parliament

The Government, in Office since March 2013, from early in its administration has been rocked by allegations of conflict of interests and corruption (resulting in resignations and numerous magisterial inquiries); allegations relating to cosying up with business, evident lobbying by big business; attending bi-lateral overseas visits without the presence of public officials; and more. The media and civil society have often accused the Government of riding roughshod on transparency, accountability, and ethical requirements they should be upholding.

The key question, therefore, is what effect, if any, have the changes carried out in the past years to the Code of Ethics and the setting up of the Office of the Commissioner had on strengthening the transparency, accountability, and ethical framework for MPs? **As this report shows, the changes introduced to the MPs' transparency, accountability and ethical governance framework over the past decades have had both negative and positive impacts. The report nevertheless concludes that this transparency, accountability and ethical governance framework must be strengthened further as serious lacunae continue to exist.**

In July 2020, under the powers provided to him by Article 13 of the SPLA, the Commissioner issued recommendations for revising the Muscat Code of Ethics for MPs and MPs-COs. The Commissioner states that the:

“... revised codes of ethics for MPs and ministers presented in this document are intended to replace the current codes, which are found in the first and second schedules of the Standards in Public Life Act. The revised codes are intended to strengthen the ethical standards with which MPs and ministers are expected to comply and reinforce the framework of accountability within which Malta's governing institutions operate.

The revised codes also address recommendations by the Group of States Against Corruption (GRECO), a body within the Council of Europe ...”²⁴.

The recommendations presented by the Commissioner go a long way to addressing lacunae in the transparency, accountability and ethical governance framework identified in this report. The lacunae identified and recommendations of how these should be addressed, including those presented by the Commissioner in his proposed draft Code, are discussed hereunder.

The draft Code of Ethics was presented to the PCSPL on 17th August 2020 (Meeting Number 10²⁵). The discussion on the draft Code continued in the PCSPL's meeting on 14th September 2020 (Meeting Number 11²⁶). At the meeting, the Government and Opposition MP members on the PCSPL agreed that the draft code would be presented to their respective parliamentary groups. The PCSPL next discussed the draft Code in a meeting held on 1st March 2021. At this meeting, the position presented

²⁴ Pg 4, Revising the Codes of Ethics for Members of the House of Representatives and for Ministers and Parliamentary Secretaries A recommendation under article 13 of the Standards in Public Life Act, Office of the Commissioner for Standards in Public Life, Malta, 29th July 2020

²⁵ Laqgħa Nru 10, Kumitat Permanenti għall-Istandards fil-Ħajja Pubblika, Kamra tad-Deputati, 17th August, 2020.

²⁶ Laqgħa Nru 11, Kumitat Permanenti għall-Istandards fil-Ħajja Pubblika, Kamra tad-Deputati, 14th September 2020.

by MP Opposition representatives was that the Parliamentary Committee should establish a deadline for the conclusion of the discussion and a way forward. This proposal was rebuffed by the MPs representing the Government on the PCSPL, stating that a decision on the draft Code:

“mhijiex deċiżjoni li se jieħu dan il-kumitat. Din hija deċiżjoni li jrid jieħu l-Parlament sfiħ għaliex issir permezz ta’ emenda fil-liġi li titla’ quddiem il-Parlament. Allura, se mai, għandu jkun hemm diskussjoni bejn iż-żewġ naħat fuq iż- żewġ kwestjonijiet, li t-tnejn huma importanti, biex imbagħad nipprezentaw abbozz fil-Parlament.”²⁷

The Speaker concluded the discussion by stating that “Aħna ddiskutejnieh u forsi naqblu li jkun hemm diskussjoni iktar profonda. Wara li wieħed jiltaqa’, nistgħu niftiehm u ...”.²⁸ There has been, however, no further discussion on the Code at the PCSPL let alone the presentation by the Government of a Bill to the House to amend the Code. Apart from the occasional editorial or article in newspapers pondering the fate of the draft Code, the silence on the draft, by both Government and the Opposition, is deafening. Therefore, one cannot help but conclude that the Government, acquiesced by the silence of the Opposition, has allowed the draft Code to die a natural death.

This is an unhappy state of play. The draft Code is designed to address lessons learnt from allegations of corruption, conflict of interests, etc. The matters of accountability, transparency, ethics, and the absence thereof have significantly damaged the trust and confidence in politicians and the political system. This, perhaps, is best demonstrated by the fact that the March 2022 general election experienced a record low turnout, invalidation of votes, and uncollected vote documents – where-in practically one in every seven voters did not collect the voting document or else did not make use of it, or went to the polling booth to cast a spoilt vote; accounting for approximately to two whole electoral districts.²⁹ A failure to strengthen the Code of Ethics to secure enhanced accountability, transparency, and ethics can only increase dissatisfaction with the polity in the political class and Malta’s political system.

²⁷ Laqgħa Nru 15, Kumitat Permanenti għall-Istandards fil-Ħajja Pubblika, Kamra tad-Deputati, 1st March 2021.

²⁸ Ibid.

²⁹ Two electoral districts did not vote, Editorial, The Malta Independent, 30th March 2022, <https://www.independent.com.mt/articles/2022-03-30/newspaper-leader/TMID-Editorial-Two-electoral-districts-did-not-vote-6736241866>

3.1 Members of Parliament and Disclosure of Assets

An Asset Disclosure System (ADS) is a tool to combat corruption that has found its way onto the political agenda of several inter-governmental platforms. It features in the UNCAC from 2003 (Article 8 (5)), to which 140 countries are signatories, which makes these countries obliged to include provisions on asset disclosure in their national laws. The G20 agreed on a set of High-Level Principles on asset disclosure by public officials at the 2012 summit in Los Cabos, Mexico (G20, 2012). The Open Government Partnership (OGP) uses the availability of an asset disclosure regime as an eligibility criterion for joining it.³⁰

The role of an ADS in preventing and fighting corruption is threefold. First, the declarations generate baseline information against which later disclosure can be compared to identify which wealth is not attributable to legitimate income and raise the flag for potential illicit enrichment. Second, ADS has an investigative function as detecting false and misleading declarations can be easier to prove than proving that bribery and other corruption have occurred. Third, the ADS can also restore public confidence in a Government and its administration by demonstrating that most public officials live within their means and, relatedly, protect officials' reputations from undue allegations of corruption. As with other transparency initiatives, public availability of officials' asset declarations can reinforce scrutiny by adding an endless number of eyes, including media and civil society organisations, that can double-check the information and signal any discrepancy between disclosed information and what can be directly observed. Increasing the number of eyes watching can be an additional deterrent to wrongdoing as it increases the likelihood of those MPs who abuse being caught.³¹

According to the World Bank, an ADS must comprise four complementary elements to be fully functional. These are:³²

01. The scope is understood as a definition of the items that must be disclosed, which public officials and those directly related to them must disclose, and how often they must perform this duty.
02. A monitoring regime enables authorities to screen compliance with submitting disclosure statements and verify their content.
03. A framework that allows for enforcing predefined sanctions in noncompliance with the filing regulations.
04. The public availability of the disclosed information. This allows civil society and the public to join monitoring efforts and increases the credibility of the threat that public officials' abuse of Office will be detected.

The SPLA [CAP. 570] and the appended Code of Ethics for MPs **meet, to a large extent, the four complementary elements** mandated by the **World Bank** for an **ADS system to be fully functional**.

³⁰ Pg 6, Mills, L., Parliament transparency and accountability, Knowledge, evidence and learning for development, 2017, <https://assets.publishing.service.gov.uk/media/59785450ed915d312c000005/081-Parliamentary-transparency-and-accountability.pdf>.

³¹ Pg 7, Ibid.

³² Pg 441, Vargas, A, G., and Schlutz, D., Opening Public Officials' Coiffers: A Quantitative Analysis of the Impact of Financial Disclosure Regulation, on National Corruption Levels, Eur J Crim Res (2016) 22: 439-475.

Nevertheless, **the ADS in Malta fails to function in a manner that allows full disclosure of Ministers' and family members' assets that secures public accountability and transparency. This report concludes that this failure is the result of several key issues.**

First, there are no guidelines to the Codes that set out the rules, instructions and standards that MPs are to follow.

Second, without such guidelines, the **asset disclosure reports submitted by MPs, including Ministers, are inconsistent**, presenting a dearth of information.³³

Third, the **form on which MPs disclose their assets** is sub-standard.

Fourth, the accessibility framework to MPs' asset disclosure reports is limited. Journalists only, once confirming to the Office of Speaker that they are members of the Istitut tal-Ġurnalisti Malti, are allowed access. **This inhibits transparency. The asset disclosure reports should be placed on the HoR's website (<https://parlament.mt/>) – thus, being accessible to all.**

Fifth, the current **Code of Ethics waters down and weakens** the transparency, accountability and ethical governance framework for Ministers compared to the pre-2015 version. The Code now **limits the definition of conflicts of interests where a 'personal interest' may influence** the independent performance of the duties and responsibilities of a Minister **by removing from the definition any potential benefit or advantage to a Minister's spouse, partner or direct family members.**³⁴

It is pertinent to add that the Fourth Evaluation Report GRECO addressed the following recommendations to Malta regarding MP:³⁵

“(a) that a thorough review of the current provisions of the Code of Ethics of Members of the House of Representatives and the Standing Orders related to integrity, ethics, financial/activity declarations and conflicts of interest be undertaken with a view to adopting improvements that will provide more subject matter coverage, consistency and clarity, as well as guidance (paragraph 31);

³³ The following are examples of criticism by the media concerning how MPs circumvent the current Asset Disclosure System:

- Shift in July 2019 reported that Ministers and Parliamentary Secretaries (Parl. Secs) did not table their asset declarations for 2016, the year of the Panama Papers revelations; The games MPs play to hide their assets, The Shift, 18th July 2019, <https://theshiftnews.com/2019/07/18/the-games-mps-play-to-hide-their-assets/>.
- Malta Independent in July 2013 reported that the asset disclosures presented by “the MPs are rather haphazard, some even handwritten. There seemed to be no fixed formula, and it just seemed to be based on guesswork as to what type of format was needed”; MPs declare their assets, The Malta Independent, 18th July 2013; <https://www.pressreader.com/malta/malta-independent/20130718/281487863954832>.
- Times of Malta in June 2021 reported that “Prime Minister Robert Abela is the only cabinet member who has failed to openly state what was his income last year in his annual asset filings. ... However, contrary to the rest of his Cabinet, Abela instead said in his declaration that his income was “as per his tax returns” for last year. No figure was mentioned and the tax returns were not attached to Abela's asset declaration.”; “Borg, J., Robert Abela fails to list income in asset filings, Times of Malta, 18th June 2021, <https://timesofmalta.com/articles/view/pm-fails-to-list-income-in-asset-filings.880211>.

³⁴ The Code took the form of a schedule to the House of Representatives (Privileges and Powers) Ordinance (chapter 113 of the laws of Malta). The same Code was reproduced with a minor amendment as the first schedule of the Standards in Public Life Act. The latter Act was enacted in 2017 and brought into force in 2018. The two codes are *almost* identical.

³⁵ Corruption prevention in respect of members of parliament, judges and prosecutors: Evaluation Report – Malta, Group of States against Corruption, Adoption 12th December 2014.

(b) that measures be taken to ensure there is appropriate supervision and enforcement of (i) the rules on the declaration of assets, financial interests and outside activities, and (ii) the standards of ethics and conflicts of interest provisions applicable to members of Parliament. This clearly presupposes that a range of effective, proportionate and dissuasive sanctions be available (paragraph 46); and (c) establishing a dedicated source of confidential counselling to provide parliamentarians with advice on ethical questions, conflicts of interest in relation to their legislative duties, as well as financial declaration obligations; and providing regular awareness-raising activities for members of Parliament covering issues such as ethics, conflicts of interest, acceptance of gifts, honoraria, hospitality and other advantages, outside employment and activities, declarations of financial/activity interests, as well as other activities related to the prevention of corruption and the promotion of the integrity within Parliament.”

This report recommends the following as measures directed to strengthen the ADS.

01. The SPLA [CAP. 570] and the appended Codes are principle-based – as they should be. These should be complemented by well-designed guidelines that provide direction to Members of Parliament and Ministers).³⁶
02. The current form for disclosing MP's assets should be re-designed to allow for the structured, consistent, and coherent submission of asset information. A newly re-design ADS should seek to capture the information:
 - (a) Real estate.
 - (b) Movable assets (motor vehicles, boats, yachts, etc.).
 - (c) Income earned in the year under review is categorised as (i) salary; (ii) fringe benefits; (iii) rental; (iv) dividends; (iv) income from consultancy, directorships, etc.; (v) other – which has to be defined.
 - (d) Directorships, including acting as a Secretary to a Board, were appointed in one's personal capacity or as a representative of a legal consulting firm with whom the MP is employed or shareholder thereof.
 - (e) Assets such as precious metals, jewellery, art and religious items, art collections and coins, items of the national or worldwide cultural heritage etc., are worth over a designated threshold.

³⁶ The draft Code of Ethics (Pg45, Ibid) presented by the Office of the Commissioner recognises this – where-in:

“Each Code is accompanied by a set of guidelines which elaborates on specific aspects. Each Code itself contains enabling provisions empowering the Commissioner for Standards to issue such guidelines. This approach is considered preferable to including all the necessary provisions in the codes themselves for two reasons:

- It avoids encumbering the codes with excessive detail;
- The guidelines are flexible documents that can be changed as necessary in the light of experience or changing circumstances.”

- (f) Financial assets to be sub-categories in (i) bank accounts and deposits and placement of such savings in the year under review; (ii) investment savings and placement of investments in the year under review; (iii) debts and debts entered in the year under review; (iv) assets and income from inheritance; (v) other to be defined.
 - (g) Gifts received during the year under review set out the party who presented the gift and a notarised estimation of the gift should this exceed a designated threshold.
 - (h) An explanation of significant asset shifts in the year under review where such shifts are not captured in the asset categories discussed above.
03. The asset declaration form is to be designed so that the information presented by an MP provides a level of detail that allows for meaningful scrutiny.
 04. An MP should attach with the asset declaration form the previous year's Income Tax submitted to the Commissioner of Revenue.
 05. The asset declaration categories in the asset declaration form are to be presented into two different Registers – a Register for Assets and a Register of Gifts. Both Registers are to be placed online on the Websites of the House of Representatives (House) (www.parlament.mt) and that of the Office of the Commissioner (www.standardscommissioner.com).
 06. Access to the respective Registers for Assets and Gifts should be transparent to the public. This should be achieved by using a prominent navigation tab on the landing page of the websites of the House and the Office of the Commissioner.
 07. The asset declarations are to be submitted by an MP within 4 weeks from the start of the year.
 08. The Office of the Commissioner will upload the asset declarations in the proposed Registers within 2 weeks of receipt.
 09. The Office of the Commissioner is to 'name and shame' MPs who fail to present their asset declarations, and should such MPs fail to present such declarations before the end of Quarter 1 of the year, a significant monetary sanction, based on the principle applied for the sanctioning concerning their presence in the House, should be automatically triggered. In the event of the continued failure of the presentation of such a declaration, the sanction applied is to increase in a compound manner by 1% at the end of each month.
 10. By the end of June, the Office of the Commissioner is to issue a public report setting out their analysis of the declarations submitted in the previous year, review action taken by the Office and the outcome of such review, and potential recommendations to the Parliamentary Committee on Standards in Public Life (PCSPL) on sanctions to be applied should there be a need for such action. These actions could include requesting investigations by competent authorities such as the Commissioner for Revenue, the Malta Police Force, etc.

11. At the end of every month, the Office of the Commissioner is to present a state of play on the action taken regarding the recommendations referred to in Para 10 above.
12. The decision to exclude family members from the declaration of assets should be reversed. The family members of a Minister should declare their assets in a Register of Interests. This is a recommendation presented by the Commissioner in the draft Code, which this report agrees with. This report also supports the recommendation in the draft Code made by the Commissioner on the definition of what constitutes family members: “comprise unless stipulated otherwise a spouse and/or partner (civil or cohabitating), child, parent, sibling, and their respective spouse and/or partner.” Including family members in the declaration of interests is not a principle limited to Malta. This is a universal trend. In 2019, the Group of States against Corruption (GRECO) of the Council of Europe recommended to all parties reviewed “to consider widening the scope of declarations of interests to include information on spouses and dependent family members”.³⁷
13. The report recognises that the Registration of Interests by family members raises concerns about the level of privacy afforded to those who, after all, have not sought public Office and do not see why their family members’ private affairs should be made public. It is recommended that whilst the Register of Interests completed of a Minister is placed in the public domain, that of their family members should be kept private. Access to the Register of Interests relating to family members should be restricted only to the Office of the Commissioner. Information in this register should only be placed in the public domain by the Office of the Commissioner if access to such information is required during an investigation carried out by the Commissioner, and only after the Commissioner concludes that a breach of the Code has occurred and a sanction is to be affected under Article 28 of the SPLA.³⁸

It should be noted that the guidelines presented by the Commissioner in the draft Code, as stated previously, present several recommendations of how the ADS should be strengthened.³⁹ In certain instances, the above recommendations go further than those proposed in the draft Code.

³⁷ Pg 86, Demmke, C., et al, The effectiveness of conflict of interest policies in the EU Member States, Study requested by the JURI committee, Policy Department for Citizens’ Rights and Constitutional Affairs, Directorate-General for Internal Polices, European Parliament, 2020

³⁸ Pg 14, Standards in Public Life Act, CAP 570.

³⁹ The Commissioner proposed that MPs shall record in a register to be styled the “Register of Interests” any financial or other interests in accordance with the guidelines issued by the Commissioner for the purpose. The register shall be kept by the Commissioner and shall be open for inspection by the public subject to such restrictions as the Commissioner may prescribe. Provision of the Code of Ethics. Members shall record in a register to be styled the “Register of Interests” any financial or other interests in accordance with the guidelines issued by the Commissioner for the purpose. The register shall be kept by the Commissioner and shall be open for inspection by the public subject to such restrictions as the Commissioner may prescribe. Members shall record in the Register of Interests, by 31st March of every calendar year, information as at 31st December of the previous year with respect to the following: (a) their work or profession, and if they are employed, the identity of their employer; (b) their own immovable property, that of their spouse and/or partner, and that of their and their spouses and/or partner’s minor children; (c) shares in companies/business interests including participation in joint ventures, partnerships, trusts (as a trustee, settlor or beneficiary) or similar structures. A joint venture could be for example a property development with another person/s, company etc.; (d) quoted investments, government stocks, treasury bills, deposit certificates and bank balances; (e) bank or other debts; (f) directorships or other official positions in commercial companies, associations, boards, co-operatives or other groups, even if voluntary associations. New members shall be required within 28 (twenty-eight) days of taking their Oath of Allegiance to register all their current financial interests with the Commissioner. After that, Members shall be required to register within 28 (twenty-eight) days any change in the registrable interests. The Commissioner may direct members to submit additional information for the purpose of verification and evaluation of the information registered by them. This additional information shall be kept confidential except in the context of investigations of the registration of interests of the members

3.2 MPs and Second Jobs

Members of the British House of Commons, the European Parliament, the German Bundestag, and MPs in many other countries worldwide are legally permitted to carry out paid and unpaid sideline jobs in addition to their political mandate.⁴⁰⁴¹ Various arguments are presented to justify why MPs should hold a second job. One is that outside income acts as a ‘survival insurance’ for an MP’s post-parliamentary life. The uncertainty of political life may make it advisable to retain professional contacts outside Parliament and/or set up a rainy-day fund.⁴² Another alternative explanation is that moonlighting, by reducing an MPs’ dependence on re-election to preserve their income, allows them to take an independent stance, even if this implies voting against their party’s and/or their constituents’ interests.⁴³ Others say it allows them to keep links to the realities of their electorate. For example, participation in unremunerated activities by sitting on boards can be beneficial for maintaining close links with society.⁴⁴ The relationship between ‘moonlighting’ politicians and their employers has attracted some scholarly attention. Questions raised and discussed on the issue of MPs and second jobs include:

- (a) What constitutes a legitimate second job?
- (b) To what extent can holding a second job result in a real or perceived conflict of interest?
- (c) What is the extent of the (ab)use of political influence derived from holding a second job without a robust system of checks and balances?⁴⁵
- (d) To what extent and how can one prove whether any observed effects on legislative design and voting decisions are truly caused by activities stemming from an MP’s second job?⁴⁶
- (e) Given that politicians’ time and energy devoted to outside employment is no longer available for their MP job, how is an MP holding a second job affecting their parliamentary duties?⁴⁷
- (f) To what extent does the breadth of experience brought by MPs pursuing other jobs alongside their parliament roles ‘enrich’ Parliament, given that the job of an MP is to maintain an awareness

⁴⁰ Pg 1, Mause, K and Geys, B., Moonlighting Politicians: A Survey and Research Agenda, Discussion Paper, SP II 2011–101, April 2011, Social Science Research Center Berlin (WZB), Wissenschaftszentrum Berlin für Sozialforschung gGmbH

⁴¹ For example, according to the register of interests of the German Bundestag⁴¹, some MPs have sideline jobs as lawyers or self-employed entrepreneurs, while others hold extra-parliamentary positions in private businesses (e.g., member of supervisory board or board of directors), employers’ associations or trade unions. Still, others report outside earnings deriving from, for instance, journalism, public lectures or television and radio appearances.⁴¹ In the European Parliament, 60% of the members have declared outside activities, including regular employment, board memberships, or other political mandates. The 751 MEPs declared 1,366 activities, a 13% increase from the beginning of the mandate. 31% of MEPs now have paid side jobs.⁴¹ In the UK, 148 MPs spent some time on a second job from January 2020 to August 2021. Of this number, 114 were Conservatives, whose activities makeup 87% of the income from those second jobs. Most of that income is from roles in the private sector; accountancy, investment banking, energy, pharmaceuticals and independent legal work.⁴¹

⁴² Pg 6, Pg 1, Mause, K and Geys, B., Moonlighting Politicians: A Survey and Research Agenda, Discussion Paper, SP II 2011–101, April 2011, Social Science Research Center Berlin (WZB), Wissenschaftszentrum Berlin für Sozialforschung gGmbH

⁴³ Ibid

⁴⁴ Pg 3, Ibid

⁴⁵ Pg 10, Ibid

⁴⁶ Pg 11, Ibid

⁴⁷ Ibid, citing Norris 1996; Maddox 2004; von Arnim 2006; Becker et al. 2009; Gagliarducci et al. 2010

of what is going on in society and to bring that awareness to Parliament – this connection with real life being one of the key justifications for the constituency model?⁴⁸

The issue of whether an MP's role in Parliament, that is, retention of the status quo, or a hybrid model as found in other jurisdictions, such as Portugal, where an MP is provided with the option to choose between assuming his or her parliamentary role on a full or part-time basis, or having full-time MPs, **is discussed in a subsequent paper that The Malta Chamber will issue on MPs' role in 2022 and beyond.**⁴⁹

The salient issues addressed in this paper are: (a) what type of second jobs an MP should hold in the current parliamentary model of business, if at all; and (b) what safe guards should be in place to ensure that an MP who holds a second job does not place himself in a real or perceived conflict of interest, or that they are lobbying on behalf of a person or entity which whom they hold a paid second job.

Article 5(1) of the current Code of Ethics (in a provision that is transported from the original Code of Ethics.⁵⁰) mandates that “every member” of the House will:

“... annually at the time established by the Speaker indicate in a register which will be purposely kept by the Speaker, which register shall be open to inspection by the public” with sub-sections (a) of the Article stating that a “[MP] his work or profession, and if he is employed the identity of his employer ... (d) directorships or other official positions in commercial companies, associations, boards, co-operatives or other groups, even if voluntary associations.”⁵¹

Issues relating to MPs' potential conflict of interests due to providing legal or consulting services have arisen. Two such high-profile and controversial incidents are those relating to (a) Dr De Marco, shadow minister and an Opposition MP, who did not declare that his firm provided legal services to db Group when the Opposition accused the Government of leasing land to the db Group at uneconomic rates⁵²; and (b) Dr Muscat who, following his resignation as PM, as a back bencher MP, entered into a consulting contract with Accutor AG⁵³, which lawyer Wasay Bhatti and the firm allegedly

⁴⁸ Pg 5, White, H., MPs' Second Jobs, the Institute for Government, IfG INSIGHT, November 2021

⁴⁹ This paper is titled 'A Modern Framework for Members of Parliament for 2022 and Beyond'. This paper is scheduled to be issued towards the end of 2022.

⁵⁰ Article 5(a) and (d), Amendment to the House of Representatives (Privileges and Powers) Ordinance [CAP. 113] by Legal Notice XI.1995.6.

⁵¹ Pg 16, First Schedule, Act of Standards in Public Life [CAP. 570], Code of Ethics of Members of the House of Representatives

⁵² Dr Mario De Marco was a Minister and member of Cabinet during the Gozo 2008-2013 administration, and shadow minister and MP following the 2013 election. The absence of an open and transparent declaration of the contract for legal services⁵² which the legal firm Guido de Marco & Associates, of which Dr De Marco is the lead partner, held with the db Group and entered into in both 2013 and 2015 led to accusations of perceived as well as real of conflicts of interest. Dr De Marco is quoted as expressing regret that his dual role as a politician and lawyer had 'upset or angered' people⁵², adding that the Leader of the Opposition, Dr Simon Busuttil, was aware of his legal brief with the db Group.⁵² The issue in this case is not whether the Leader of the Opposition “up to Friday of two weeks ago ... had no problem with my firm being the db Group's legal advisor”⁵², which is a matter that pertains to internal party affairs, but whether the House of Parliament, the media, and the general public has the right to know of MPs potential or real conflict of interest.

⁵³ Within days of his resignation as Prime Minister, Dr Muscat accompanied Steward Healthcare International's president Armin Ernst to meet with Abela and Deputy Prime Minister and Health Minister Chris Fearne. At the time, the new Prime Minister, Dr Robert Abela, stated that “it is not true that Joseph Muscat represented Steward because otherwise, I would not have accepted to be present for that meeting... I don't feel comfortable with someone who was prime minister and now a backbencher being present for a meeting of this kind... in fact, he wasn't... his involvement was simply as a way of introducing me.”⁵³ It has now come to light that weeks after Dr Muscat resigned as Prime Minister, he entered into a consulting contract with Accutor AG, for which he received a 'consultancy fee' of €60,000.⁵³ It is reported that Accutor AG, which lawyer Wasay Bhatti and the firm allegedly rang, had received €3.6 million from Steward Healthcare during the period when it took over the 30-year concession of three Maltese state hospitals from Vitals Global Healthcare (VGH).⁵³ More recently, the media alleged that the contract that Dr Muscat entered into with Accutor AG was 'open ended' and for a far higher value than the €60,000 paid,

ran, had received €3.6 million from Steward Healthcare (SH) concerning the 30-year concession of three Maltese state hospitals from Vitals Global Healthcare (VGH).

Neither MP declared a conflict or potential conflict of interest. Whilst it is not for this paper to judge whether the action by either MP constituted a *real* conflict of interest, it does unequivocally conclude that their respective actions constituted a *perceived* conflict of interest. Both MPs should have declared their respective roles whilst occupying the role of MPs the moment debates on either issue were made by the House or the Public Accounts Committee (PAC) and declared a potential conflict of interest. Yet this did not happen. In both instances, the issue came to the fore following media scrutiny.

To strengthen the safeguards against the real or potential conflict of interests, the new Code of Ethics introduce a new provision, Article 5(2), which mandates that an MP:

“5(2) (a) Who has a professional interest, including work interest consultancy, the management or any form of connection, pecuniary or otherwise, with persons, groups or companies, that have a direct interest in legislation before the House, shall declare his interest in the House, at the first opportunity, before a vote is taken on the Second Reading of a Bill; ...”⁵⁴

However, this new provision in the Code does not preclude a re-occurrence of the two high-profile incidents mentioned above. In both cases, as drafted, neither MP is obliged to declare his conflict of interests as, in either case, there was no Bill that required a vote on its Second Reading.

A new provision in the Code of Ethics, Para (c) of the said Article, includes the condition that MPs should “accept no honorarium for a speech, writing or publication, or other similar activity from any person, organisation or companies in excess of the usual and customary value for such services ...”⁵⁵

This paper presents several recommendations in this regard.

- (a) The requirement established under Article 5(2)(a) of the Code of Ethics should be amended to include the following:
 - (i) Within 24 hours from the issuance of an Agenda for a plenary parliamentary sitting, an MP should, if an Agenda item may result in a real or perceived conflict of interest arising from Articles 9(1)(a) and (d) of the Code declare such interest.
 - (ii) In the event of a debate on an item which arises in the House which is not part of the Order of the Day, an MP should, on a point of Order, immediately declare his or her real or

with both parties having the option to terminate the contract. When Dr Muscat entered into a contract with Accutor AG, he was a back bencher MP.

⁵⁴ Pg 16, Article 5, First Schedule, Standards in Public Life Act [CAP. 570].

⁵⁵ Ibid.

perceived conflict of interest arising from Articles 9(1)(a) and (d) of the Code and declare such interest.

- (b) If an MP fails to declare their real or perceived conflict of interest as proposed in (a) above and that real or perceived conflict of interest is proven as a result of an investigation by the Commissioner, that MP should be subject to the immediate highest level of sanction allowed under the SPLA. The sanctioned MP should have the right to an appeal.
- (d) To strengthen transparency and integrity, the Commissioner should issue guidelines that categorically identify second jobs that an MP may carry out because they do not constitute a real or perceived conflict of interest. In articulating such a guideline, the Commissioner should consider permitting MPs to:
 - (i) Hold a position of a visiting or part-time lecturing post in a higher or further educational institution.
 - (ii) Authoring and receiving royalties from book writing clearly specifying that this excludes paid journalistic work or content writing in the media.
 - (iii) Holding a part-time position in a scientific body.
 - (iv) Participating in selection panels in academic and scientific examinations within the scope of the exercise of the functions referred to (i) and (iii) above.

Since the 2008-2013 legislature, a worrying trend has emerged where different governments have appointed MPs, paid by public funds, to non-constitutional public offices and in positions in the administrative arm of government and ministerial secretariats. **This issue is discussed in depth in the forthcoming The Malta Chamber report on MPs' role in 2022 and beyond, as this practice is intrinsically tied to the issue of the compensation and conditions of MPs.**

This practice, however, is not correct. It is “inconsistent”⁵⁶ with the Constitution of Malta. Malta’s Government and parliamentary scrutiny system are based on the Westminster-Whitehall model. A cornerstone of the Westminster-Whitehall model is the doctrine of ministerial responsibility.⁵⁷ The House has a responsibility to hold the Government to account. Ministers are accountable to the House for exercising authority assigned to the Government under the Constitution and statutory law. Although the Westminster system developed incrementally, shaped by the principles of “separation of powers”⁵⁸ between the executive and legislative (and judicial) bodies and evolving democratic

⁵⁶ Micallef, K., ‘MPs in executive roles ‘goes against good governance – law professor: Keving Aquilina says the law may allow it, but it is inconsistent with the Constitution’, Times of Malta, 28th January 2022, <https://timesofmalta.com/articles/view/mps-in-executive-roles-goes-against-good-governance-law-professor.749869>

⁵⁷ Pg 4, Review of the responsibilities and accountabilities of ministers and senior officials: Meeting the expectations of Canadians, Report to Parliament, Treasury Board of Canada Secretariat, 2005

⁵⁸ Montesquieu's political governing philosophy presented in *The Spirit of the Laws*, which argued for the importance of separating the various functions of government as a safeguard against tyranny

values rather than in abstract or static concepts, it has deep integrity, and the roles of different players complement each other in a fine balance.⁵⁹

The Westminster-Whitehall model is defined by its distinctive accountability features: the twin tenets of parliamentary sovereignty and responsible Government. Under this constitutional system, the House can make any law it wishes within the Constitution's limits. The executive is responsible to the legislature - that is, the Government of the day remains in power only so long as it commands the confidence of the elected House.⁶⁰ Therefore, the executive is accountable to the legislature for exercising its authority, and together they are accountable to the electorate. Because in this system, the executive members sit in the legislature and require its confidence. Their accountability is anything but a remote theoretical construct - it is a living, daily reality in the House.⁶¹

Although the House does not exercise executive authority, it is the principal guarantor of the Government's accountability, scrutinising its policies and actions and holding it to account.⁶² **This report unequivocally declares that the appointment of backbencher MPs to executive, ministerial secretariats, or consultancy positions in government machinery erodes the fundamental principles of good governance in Malta's system of Government.**⁶³ The Commissioner also reached this conclusion in the earlier report titled 'Potential conflict of interest backbench members on both sides of the House of Representatives, who hold positions or provide contractual services to the public sector'. The Commissioner states:

" ... There are a number of reasons why appointing backbenchers to positions within the public sector ... is fundamentally wrong. Firstly, it eats into the principle of separation of powers, that is fundamental principle of democracy and rule of law. Under the Westminster model, upon which our Constitution is founded, Parliament acts as a check on the executive ... By this practice [that is appointing MPs to government executive positions], MPs lose their independence and Parliament is emasculated."⁶⁴

To strengthen transparency and integrity, this report recommends the following:

- (a) MPs should be precluded from holding positions, consultancy engagements, and other types of direct or indirect association with the political and administrative arms of Government – where they are:
 - (i) Employed in a position within a Ministerial or Parliamentary Secretariat.

⁵⁹ Pg 4, Review of the responsibilities and accountabilities of ministers and senior officials: Meeting the expectations of Canadians, Report to Parliament, Treasury Board of Canada Secretariat, 2005

⁶⁰ <https://www.jesuisbaher.com/post/what-makes-liberal-democracy-flourish-an-analysis-of-the-commonwealth-democracy-of-canada>

⁶¹ Pg 4, Review of the responsibilities and accountabilities of ministers and senior officials: Meeting the expectations of Canadians, Report to Parliament, Treasury Board of Canada Secretariat, 2005

⁶² Ibid

⁶³ It is pertinent to add that this is not a position shared by all. Professor Ian Refalo, Refalo Advoates in a letter to the Mr Mario Cutajar, Principal Permanent Secretary titled 'Advice on a report by the Commissioner for Public Standards on a Complaint of 'Potential conflict of interest backbench members on both sides of the House of Representatives, who hold positions or provide contractual services to the public sector', 30th July 2019

⁶⁴ Pg 6, para 26, Potential conflict of interest backbench members on both sides of the House of Representatives, who hold positions or provide contractual services to the public sector, Case No. K/002, Commissioner for Standards in Public Life, July 2019

- (ii) Employed in a position of trust as an Advisor or Consultant with a Minister or Parliamentary Secretary or their secretariats; or with a government department, agency or government entity.
- (iii) Appointed as a Chairperson, Director or member of a Board of a Government authority, agency, parastatal corporation, public enterprise in which the Government is the majority shareholder, Commissions, and any other form of the government entity.
- (iv) Engaged on a contract for services directly or in their capacity as a partner, shareholder, or owner of a consulting, legal, etc. firm to provide consulting, legal and other forms of services to a Minister or Parliamentary Secretary or their secretariats; or a government department, agency or government entity.
- (v) Providing services, exercising functions as a consultant, issuing opinions or providing legal counsel in proceedings, in any jurisdiction, for or against the state or other public entity.
- (vi) Providing services, exercising functions as a consultant, issuing opinions or providing legal counsel in drawing up submissions by commercial entities in response to public tender requests for the award of public contracts or concessions or in representing commercial entities in appeals presented to the Public Contracts Review Board.
- (vii) Providing services or maintaining employment relations with institutions, enterprises or companies that hold a public service concession or are parties to public-private partnerships with the Government.
- (viii) Holding of a senior international office or function, where it prevents the exercise of the parliamentary mandate or is an employee of an international organisation or foreign state.

3.3 MPs and Lobbying

Lobbying can be carried out by professional consultant lobbyists, in-house private sector representatives, public affairs consultancies, representatives from NGOs, corporations, industry/professional associations, trade unions, think tanks, law firms, faith-based organisations and academics. It can also be undertaken by those who do not consider themselves lobbyists but are effectively acting on behalf of an issue or organisation – such as the company’s chief executive who might meet a Cabinet Minister.⁶⁵

Lobbying is essential to **an open and consultative policy-making process** that empowers citizens to participate in the democratic process when conducted appropriately and transparently. However, the **lobbying process** is also widely **perceived** to be **vulnerable to abuse and lobbying scandals**; and abuses of the democratic process have frequently occurred.⁶⁶ Corruption occurs more blatantly when

⁶⁵ Ibid.

⁶⁶ Ibid.

a public official or politician benefits personally from supporting a lobbying position or when they become lobbyists themselves, in breach of the trust bestowed through their role.^{67 68}

Is lobbying in Malta carried out appropriately and transparently? The answer is **no**. **Malta has no governing framework and guidelines other than those previously discussed governing lobbying. Indeed, unstructured, and potentially unethical, lobbying is carried out blatantly.**

Two examples demonstrate this. First, within days of resigning as PM, Dr Joseph Muscat attended a meeting between the new PM, Dr Abela, and SH.⁶⁹ Dr Muscat had no legitimate purpose as a backbencher MP, despite having just recently resigned as Prime Minister, to be present at this meeting. Dr Muscat's presence at this meeting can only be explained if he acted as a lobbyist on behalf of SH, which the new PM denied or as a consultant engaged by SH. Second, construction magnate Mr Joseph Portelli had no hesitation in a media interview detailing his close relationship with the Government, stating that he frequently meets with politicians to propose large-scale projects.⁷⁰

In 2020 the Commissioner issued a consultation paper titled 'Towards the Regulation of Lobbying in Malta'. In this paper, the Commissioner proposes a regulatory framework for lobbying in Malta. The

⁶⁷ A lack of transparency and accountability in the decision-making process can create corruption risk in lobbying – or at least the perception of wrongdoing. Lobbying scandals erode public confidence in the governance of the country. Key transparency and accountability gaps and acute risks arising from weak or non-existent lobbying systems include:⁶⁷

- Lobbying that may take place in secret.
- Individuals and organisations may have greater access to MPs and MP-COs because of their contacts, significant donors to a political party, or simply because they may have more resources.

Lobbying may be accompanied by entertainment or other inducements, or there is a lack of clarity about who is financing particular activities.

⁶⁸ The UK, which has an advanced and mature lobby governance framework, has suffered lobbying misconduct. These include the appointment of private sector secondments regularly to public sector roles which oversee their private sector interests (2014), the exchange of money for access to politicians and party policy committees (2014), and the Government accused of providing preferential access to policy-making to certain groups (2014), former Ministers have taken jobs, while still serving in Parliament, with companies seeking public sector contracts (2014). More recently, the UK government was rocked by a lobbying scandal. The Parliamentary standards commissioner found an MP who served as Secretary of State between 2012 and 2014 to have breached lobbying rules in an "egregious case of paid advocacy". The MP was Owen Paterson. Paterson faced a 30-day suspension from the House of Commons following the ruling of the parliamentary standards commissioner. The Commissioner found that Paterson used his parliamentary office to hold meetings with medical diagnostics company Randox and meat processor Lynn's Country Foods on 25 occasions between October 2016 and February 2020 and that on behalf of the companies, he approached and met officials at the Food Standards Agency and ministers at the Department for International Development a number of times. During this period he was paid consultancy fees for both companies totalling £100,000 a year.⁶⁸ This scandal also raised a debate on whether MPs should get paid for consultancy work, which can in essence constitute masked lobbying. Prime Minister Boris Johnson sought to block the suspension of prominent Brexiteer Paterson, by whipping MPs to vote for a plan to create a Tory-led committee to rewrite parliamentary standards rule. The Labour Opposition followed this with a presentation of a motion in the House to ban MPs from holding second jobs as paid lobbyists, consultancies or directorships. This motion was defeated. Following the announcement of the Labour Opposition motion, the Prime Minister tabled an amendment which described the consultancy ban as "the basis of a viable approach which could command the confidence of parliamentarians and the public" and supports the work of the Standards Committee to update the MPs' code of conduct.

⁶⁹ Camilleri, N., Muscat's presence at OPM-Steward Healthcare meeting raises eyebrows, 26th January 2020, <https://www.independent.com.mt/articles/2020-01-26/local-news/Muscat-s-presence-at-OPM-Steward-Healthcare-meeting-raises-eyebrows-6736218873>

⁷⁰ Zammit, L. M., I don't know how much money I have, it is not important to me, Interview with Joseph Portelli, Times of Malta, 19th September 2021, <https://timesofmalta.com/articles/view/joseph-portelli-interview-money-jerma-construction-mercury-hamrun.901625>; Relevant extracts: **What sort of relationship do you have with politicians?** I meet with them frequently ... ; **Do you need them to favour you in some way?** Before I plan large-scale projects I meet with politicians to propose my projects to them and understand what they want for the country. If my proposals do not match their vision for Malta, then I put my plans aside and do something else. It makes no financial sense for me to invest heavily in plans for large-scale projects which the government does not want ... ; **But why do you go to politicians for this?** To speed up the process. I go to them to argue for my rights. They don't always agree, and when they don't, I say 'thank you' and walk away. I used to feel upset when I was younger, but not anymore ... ; **So whichever one of them is in government helps you...** Yes. I need them to help me. If they don't want to, then it's fine. The day a government tells me my projects aren't needed for the country anymore, I will back out, cash my money and do something else with my life. It will be a loss for me, yes, but it will also be... well... I won't say it will be a loss for Malta ... ; **I heard you're going to build a stadium in Ħamrun (Portelli is the club president)** ... JP: I can't wait; **Is it true?** Of course. I have been arguing with politicians over it; **Why with politicians?** JP: Because I don't want to wait another five years to begin, I would like to begin tomorrow, if it were possible.

Commissioner recommends that such regulation be governed by ad hoc legislation entitled 'Regulation of Lobbying Act'.⁷¹ In the recommendations presented by the Commissioner concerning the afore referenced draft Code of Ethics, issued some months (July 2020) after his proposals on the lobbying regulatory framework, the Commissioner underlined that as the first step, several recommendations presented in the consultation paper should be introduced in a new code of ethics, given that their introduction can be achieved:⁷²

“more quickly than the law to regulate lobbying that is proposed in the Commissioner’s consultation paper, so key aspects of the proposals to regulate lobbying can be brought into effect sooner in this manner ... The Commissioner’s proposals on lobbying are still to be finalised since the submissions received in response to his discussion paper are being analysed. The relevant provisions in the guidelines applying to ministers, as set out in this document, may therefore change accordingly in future.”

The draft consultation paper presented that the proposed legal framework should provide for:⁷³

- (a) Definition of lobbying purposes of the proposed Act.
- (b) Registration as a lobbyist.
- (c) Provision of a code of conduct for lobbyists.
- (d) Imposition of restrictions on involvement in lobbying for certain former public officials.
- (e) Transparency register.
- (f) Sanctions for noncompliance with the proposed Act.

This report contends that the success of a regulatory framework for lobbying is the definition to be adopted – for the definition determines who, when and what is subject to the rules and regulation of lobbying.⁷⁴ The OECD review of the lobbying framework presented to the Commissioner earlier in 2022 underlines that definitions of 'lobbying' and 'lobbyists' should be robust, comprehensive and sufficiently explicit to avoid misinterpretation and prevent loopholes.⁷⁵

The definition adopted by the Commissioner in the consultation paper are

⁷¹ Pg 22, Towards the regulation of lobbying in Malta: A consultation paper, Commissioner for Standards in Public Life, Valletta, 28th February 2020, <https://cdn-others.timesofmalta.com/276c32f6ea58aca1216f581a1afb28bac7ba7c54.pdf>

⁷² Revising the Codes of Ethics for Members of the House of Representatives and for Ministers and Parliamentary Secretaries A recommendation under article 13 of the Standards in Public Life Act, Office of the Commissioner for Standards in Public Life, Malta, 29th July 2020.

⁷³ Towards the regulation of lobbying in Malta: A consultation paper, Commissioner for Standards in Public Life, Valletta, 28th February 2020, <https://cdn-others.timesofmalta.com/276c32f6ea58aca1216f581a1afb28bac7ba7c54.pdf>.

⁷⁴ An OECD report states that “for a term so well known and so frequently invoked, one would expect a consensus behind what the term ‘lobbying’ means ... there is no such consensus ... [and that] a “clear definition can be elusive”; Pg 23, Lobbyists, Governments and Public Trust, Volume 2: Promoting Integrity through Self-regulation, OECD Publishing, 2012; https://read.oecd-ilibrary.org/governance/lobbyists-governments-and-public-trust-volume-2_9789264084940-en#page4.

⁷⁵. Pp 13-14, Review of the Lobbying Framework in Malta: Recommendations for improving transparency and integrity in lobbying”, OECD, Paris, 2022; [https://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=GOV/PGC/INT\(2022\)10/FINAL&docLanguage=en](https://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=GOV/PGC/INT(2022)10/FINAL&docLanguage=en)

- (a) Lobbying is **any relevant communication on a relevant matter to a designated public official**.⁷⁶
The terms relevant communications, relevant matter, and designated public official (italics in the original document’ are extensively defined in Section 4.5 of the paper.
- (b) A lobbyist is any person who makes relevant communication on a relevant matter to a designated public official.⁷⁷

The OECD report states that:

“The current proposals set out by the Commissioner clearly and comprehensively define the terms lobbying and lobbyist ... These definitions are well adapted to the specific context in Malta. Broad in scope and covering a wide range of actors, the definitions make it possible to implement regulation on lobbying within a context where lobbying as a professional activity is not well-known, decision-makers in Government are easily accessible, and constituency politics are a key attribute of political life. The current definition of lobbyist, as defined by the Commissioner, is well-suited to the context in Malta. It enables coverage of a broad range of actors, including those that have not traditionally been viewed as “lobbyists” (e.g. think tanks, research institutions, foundations, non-governmental organisations, etc.).”⁷⁸

The report, however, adds that the “proposed definitions regarding “lobbying” are broad in scope, several potential loopholes remain that could, if exploited, weaken the overarching legislation”.⁷⁹ It identifies several areas of the definitions proposed by the Commissioner that can be strengthened – including:

- (a) The inclusion in the definition of relevant communication indirect forms of lobbying, going beyond direct written or oral communications.
- (b) To ensure that the definitions remain fit-for-purpose, the list of designated officials could build, to the maximum extent possible, on the lists laid out in the Public Administration Act Schedules.

This report recommends the following:

01. The recommendation by the Commissioner to regulate the lobbying framework through an ad hoc Act is adopted.
02. The recommendations by OECD to strengthen the Commissioner’s proposed definitions for lobbying and lobbyists are adopted.
03. Each MP and Minister should have a Lobby Register in which he or she is to register any person or firm which meets with him or her for lobbying purposes.

⁷⁶ Pg 24, Towards the regulation of lobbying in Malta: A consultation paper, Commissioner for Standards in Public Life, Valletta, 28th February 2020, <https://cdn-others.timesofmalta.com/276c32f6ea58aca1216f581a1afb28bac7ba7c54.pdf>

⁷⁷ Pg 26, Ibid.

⁷⁸ Pp 13-14, Review of the Lobbying Framework in Malta: Recommendations for improving transparency and integrity in lobbying”, OECD, Paris, 2022; [https://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=GOV/PGC/INT\(2022\)10/FINAL&docLanguage=en](https://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=GOV/PGC/INT(2022)10/FINAL&docLanguage=en)

⁷⁹ Ibid.

04. The Lobby Register should be online and easily accessible from the House's and the Commissioner's websites.
05. Each MP should, within 24 hours from when a lobby meeting is held, update the Lobby Register setting out:
 - Political and / or a public official present at the meeting with the MP.
 - The name of the lobby group and the details of the lobbyist(s) who requested the meeting and who was present at the meeting.
06. Minutes of meetings with lobbyists should be uploaded on the Lobby Register within 5 working days from when the meeting is held.

3.4 Strengthening the Office of the Commissioner for Standards in Public Life

Malta now has four years of experience in the functioning of the Office of the Commissioner. On the positive side of this experience is that the **appointed Commissioner is not a member of Government or a person closely associated with the party in Government** but a respected lawyer who was an MP and **held the Office of parliamentary secretary when the Opposition was in Government**.⁸⁰ This is a significant constructive action given a state of play where the political winner normally ‘takes all’. **As consultation discussions are underway between the Government and the Opposition on appointing a successor to the outgoing incumbent, it is emphasised that this principle is retained.**

At the time of this paper's writing, the Office of the Commissioner issued 41 reports – either investigated on the Commissioner's initiative or in response to complaints submitted to him.⁸¹ Undoubtedly, **the level of scrutiny, public awareness, and the increased importance of accountability, transparency, and ethics relating to MPs on the national, public and media agendas has increased significantly due to the Commissioner's work.**

Malta, since Independence, has seen few resignations by sitting Ministers or MPs for real and alleged breaches of the Code. **The investigations carried out by the Commissioner have seen the resignation of a Minister and the resignation of a Parliamentary Secretary pending the outcome of the investigation and a sanction following its publication.** Additionally, the increased level of investigative journalism led to the resignation of a Shadow Minister when it was reported that he failed to meet his civic and legal responsibilities concerning paying VAT related to his business.

On the negative side is that the **legislative structure governing the relationship of the Commissioner with the PCSPL** has been such that the latter **acts as a ‘break’ on investigations** carried out. The **accusation** has often been made that the **Speaker**, in his role of holding a **casting vote** when members of both the Government and the Opposition on the Committee fail to agree, **tends to favour the Government**.⁸² Also, in certain instances where the **Committee found that a breach** of the Code of **Ethics occurred** and that a **sanction was warranted**, the **accusation** has been made that the **sanction issued by the Speaker** on behalf of the Committee was **merely a token censure** (a letter of censure⁸³ as against a one-month suspension proposed by the Opposition side on the Committee).⁸⁴

The **Government's position** regarding action taken on its MPs and Ministers **seems equivocal**. Whilst Ms Rosianne Cutajar resigned from the Office of Parliamentary Secretary for Equality pending the outcome of the ethics investigation and was substituted as parliamentary representative of Malta's delegation to the Council of Europe's parliamentary assembly; she was **appointed within two months**

⁸⁰ The person appointed by government, following consultation with the Opposition, to occupy the position of Commissioner for the first time is a person who is closely associated with the Opposition – a former MP (1995-2003) and who held the office of Parliamentary Secretary in the Ministry for Economic Services between 1999-2003 under the Fenech Adami Nationalist administration.

⁸¹ <https://standardscommissioner.com/case-reports/>

⁸² Calleja, S/. They call him a czar, but he has little power, Malta Independent Today, 9th January 2022, <https://www.independent.com.mt/articles/2022-01-09/local-news/They-call-him-a-czar-but-he-has-little-power-6736239620>

⁸³ Farrugia, C., Rosianne Cutajar's stern reprimand: a letter informing her of decision, Times of Malta, 20th November 2021, <https://timesofmalta.com/articles/view/rosianne-cutajars-stern-reprimand-a-letter-informing-her-of-decision.916176>

⁸⁴ Azzopardi, K., Standards committee reprimands Rosianne Cutajar over ethics breach, Malta Today, 16th November 2021, https://www.maltatoday.com.mt/news/national/113313/rosianne_cutajar_to_appear_before_standards_committee1#.YsQ_W4RBzt4

of the Speaker’s censure for a breach of the Code, as President of the Parliamentary Health Committee (though she was not appointed to a Ministerial or Parliamentary Secretary position following the March 2022 election).

The likelihood is that there will be many twists and turns, including disappointments, as this new system of public scrutiny of Malta’s MPs matures and takes root. That blunders or oversights occur as MPs in the House, or the PCSPL seek to protect colleagues under investigation for real or perceived conflict of interest or subjected to a sanction is not surprising. It is true that political scandals - particularly those regarding ethics - damage perceptions of legitimacy in a democracy. Nevertheless, they also open up windows of opportunity to reform or tighten the regulation of parliamentary conduct.⁸⁵ Indeed, scandals have been critical in promoting parliamentary standards in many countries.⁸⁶

Be that as it may, this paper argues that based on the short life of the Office of the Commissioner and the PCSPL, several actions should be taken to strengthen this new parliamentary institution. The document titled ‘Review of the Standards in Public Life Act of Malta: Recommendations for strengthening the integrity framework for elected and appointed officials’ was carried out by the OECD on behalf of the Office of the Commissioner and co-funded by the European Union via the Technical Support Instrument, terms such a process as the “closing of loopholes” in the SPLA.⁸⁷

This paper recommends the following:

01. The SPLA refers to the term ‘misconduct’ only once⁸⁸. Neither the Act nor the Code of Ethics for MPs and Ministers in the respective schedules to the Act defines this term. The OECD document titled ‘Managing Conflict of Interest in the Public Sector: A Toolkit’ defined the “generic term ‘misconduct’ ... [to] include the ideas of “breach of trust” and “dishonesty”: this definition may therefore be used to provide a link to existing law and policy dealing with corruption and conflict of interest”. The OECD toolkit goes on to say:⁸⁹

“misconduct” means:

- a) For a person, regardless of whether the person is a public official, conduct, or a conspiracy or attempt to engage in conduct, of or by the person that adversely

⁸⁵ Stapenhurst, F., and Pelizzo, R., ‘Legislative Ethics and Codes of Conduct’, *WBI Working Papers*, (Washington DC: World Bank Institute, 2004), p. 4.

⁸⁶ In the United States, the Watergate scandal in 1974 helped pave the way for the Ethics in Government Act of 1978, setting out requirements for financial disclosure by employees and officials in the legislature, executive and judiciary. Sustained accusations that the Major Government in the UK was mired in corruption saw the setting up of the CSPL. The “cash for questions” affair – where MPs were found to have taken cash bribes for raising certain questions in Parliament – prompted the Prime Minister to ask the CSPL to investigate standards in public life in Britain. The resulting “Nolan Principles” informed the work of the House of Commons Committee on Standards and Privileges as it drafted the first Code of conduct for deputies in the UK (Pg 13, Background Study: on Professional and Ethical Standards for Parliamentarians, OSCE Office for Democratic Institutions and Human Rights (ODIHR), Poland, 2012). More recently, Prime Minister Johnson, who sought to ignore the punishment and rewrite the rulebook to protect the MP sanctioned by the Parliamentary Commissioner for Standards, discussed earlier, u-turned the Government’s initial stance following a huge backlash government, and in the ensuing by-election to replace the MP who subsequently resigned, lost what was considered to be an ultra-safe constituency (Ibid).

⁸⁷ Pg 5, Review of the Standards in Public Life Act of Malta: Recommendations for strengthening the integrity framework for elected and appointed officials, co-funded by the European Union via the Technical Support Instrument, OECD, 2022.

⁸⁸ Standards in Public Life Act (Article 18 (4) titled ‘Proceedings

⁸⁹ Pg 39, Ibid.

affects, or could adversely affect, directly or indirectly, the honest and impartial performance of functions or exercise of powers of:

- i) a public office or body, or
 - ii) any person holding a public office.
- b) For a person who holds or held a public office – an act by the person, or an offer or attempt by the person to engage in an act that involves:
- i) the performance of the person’s functions or the exercise of the person’s powers in a way that is knowingly unlawful, or is not honest, or is not impartial, or
 - ii) a breach of the trust placed in the person as the holder of a public office, or
 - iii) a conflict of interest, whether the conflict has been declared in accordance with the requirements of the person’s public Office or not, or
 - iv) a misuse of information or material acquired in or in connection with the performance of the person’s functions as the holder of a public office, whether the misuse is for the person’s benefit or the benefit of someone else, or
 - v) a disciplinary breach for which the penalty provided by law is termination of the person’s appointment or service.”

This definition, or an amended version thereof, should be introduced in the SPLA.

02. The SPLA refers to a country where an MP carries out misconduct in Article 5.8⁹⁰ and Article 9.2⁹¹ of the Second Schedule titled ‘Code of Ethics for Ministers and Parliamentary Secretaries. The drafting of these Sub-Articles leads one to conclude that the ‘misconduct’ can only be investigated if it is carried out in Malta. It is proposed that the ‘definition of country’ is introduced in the Act, which makes it unequivocally clear that conduct may be misconduct regardless of “whether the law relevant to the conduct is a law of the [country] or of another jurisdiction.”⁹²
03. Article 14 of the SPLA titled ‘Time limit for allegation’ states that “nothing in this Act shall permit the Commissioner to investigate an act which occurred before the date on which this Act comes into force”. This means that a case of misconduct which occurred prior to the enactment of the law cannot be investigated by the Commissioner if it came to light now. The powers of the

⁹⁰ Article 5.8 states: “Justice and respect – in their behaviour and in decisions which they take, Ministers shall show respect to the institutions and shall respect the laws of the country. They shall show a sense of balance and consideration by being sensitive in general to all sectors of society, and in particular to the rights and aspirations of the persons concerned, in order to act with a sense of justice.”

⁹¹ Article 9.2 states: “When Parliament is in session, Ministers shall ensure that the most important declarations and statements regarding policies or decisions are announced in Parliament as the highest institution of the country.”

⁹² Pg 40, Managing Conflict of Interest in the Public Sector: A Toolkit, OECD, 2005.

Commissioner to investigate a case of misconduct is further restricted by Sub-article (2) of Article 14 which states that a “complaint under this Act shall not be entertained unless it is made not later than thirty working days from the day on which the complainant had knowledge of the fact giving rise to the complaint or than one year from when the fact giving rise to the complaint happened, whichever date is the earliest.”⁹³ In essence, Article 14 imposes a very restricted window of cases of misconduct that the Commissioner may investigate. This is not correct. These constraints on the Commissioner should be removed. The SPLA should therefore be amended to empower the Commissioner to investigate any case of misconduct irrespective of when such misconduct occurred. Furthermore, the Commissioner should be empowered to call former MPs or former Ministers⁹⁴ to provide evidence during such investigations.

04. As discussed above, the Speaker, as the Chair of the PCSPL and the holder of the casting vote, has been subject to criticism that too often his decisions favoured the position taken on the Committee by the members of Government. The OECD, in its report recently submitted to the Office of the Commissioner, states:

“... the Ministry for Justice could consider appointing as the chairperson of the Committee for Standards a former judge known for their integrity and independence. Currently, the Standards Act assigns the role of chairperson to the Speaker of the House of Representatives. In modern Westminster-style democracies, the Speaker of the House is expected to be politically impartial and avoid taking a political stance or favouring particular interests over others (Institute for Government, 2019. ... Moreover, the law allows for the election of a Speaker that belongs to a specific political party, which could hinder the objective of separating the decisions of the Committee for Standards from any interest of a particular political party and could threaten the Committee for Standards’ independence.”⁹⁵

This paper concludes that there is merit in positively acting on this recommendation to ensure that the decisions of the Committee are, and are seen to be, above partisan positioning.⁹⁶

05. This principle on which the selection of the incumbent of the Office of the Commissioner – that is, the appointment of an experienced person who is nationally respected and is known to be above partisan politics – should be respected in the selection of a new Commissioner. This principle should be entrenched in the SPLA.

⁹³ Pp 7-8, Standards in Public Life Act, Cap 570

⁹⁴ In an investigation carried out by Standards Commissioner George Hyzler into the granting of a lucrative consultancy to former tourism minister Konrad Mizzi by the Malta Tourism Authority in December 2019 the Speaker ruled that the former PM, Dr Joseph Muscat could not be investigated for an ethical breach as “Parliament’s ethics committee has no remit to continue probing former prime minister Joseph Muscat since he is now a private citizen ... Parliament’s ethics committee was set up at law and its workings could not make reference to parliamentary procedures in the House of Commons ... the law setting up the Standards Commissioner did not refer to former MPs unlike the British law that was amended to empower the commissioner to probe and impose sanctions on ex-MPs ... the ethics committee had no power at law to proceed in any way against a private citizen who was no longer an MP.”; Sansone, K., Parliament’s ethics committee has no jurisdiction over private citizen Joseph Muscat, Speaker rules, Malta Today, 11th January 2021; https://www.maltatoday.com.mt/news/national/106969/parliaments_ethics_committee_has_no_jurisdiction_over_joseph_muscat_speaker_rules#.YuKi1oRBzt4

⁹⁵ Pg 37, Review of the Standards in Public Life Act of Malta: Recommendations for strengthening the integrity framework for elected and appointed officials, OECD, 2022.

⁹⁶ Ibid. This report states that “having a former judge as the chairperson of the standards committee is not a new practice. In other jurisdictions, including Ireland, a former judge can be elected as the chair of the corresponding standards committee.

06. The questioning of witnesses during an investigation by the Commissioner should not be held *in camera* as established by Article 18(1) of the SPLA [CAP. 570]. The questioning of witnesses should have the same level of public scrutiny as with the other House committees, such as the Public Accounts Committee. Exemptions from such disclosure should only be based on national security, damage to the economy, disclosure of Cabinet or any Cabinet Committee proceedings, and should there be a risk that such disclosure will prejudice the investigation or detection of an offence. In such instances, as in the Courts of Law, the witness may request that the disclosure be held *in camera*.
07. Whilst responsibility for deciding whether the report, conclusions and recommendations present are to be adopted should continue to reside with the PCSPL, the Commissioner's report should also be tabled at the House, and hence in the public domain, at the same time, it is presented to the PCSPL.
08. All investigative reports carried out by the Commissioner must be placed in the public domain. There should be no exceptions in this regard.⁹⁷
09. In the recommendations presented by the Commissioner in his investigative reports, they are also to propose, should he conclude that a breach in the Code of Ethics or any statutory or ethical duty has occurred, the sanction to be applied.
10. The SPLA [CAP. 570] does not provide for an appeal mechanism. Sub-article 5 of Article 22 of the SPLA titled 'procedure after investigation' empowers the Commission to grant the person investigated a time limit to remedy a breach. This, however, is based on the presumption that the person investigated is conclusively guilty should an investigation so conclude. An MP that the Commissioner finds guilty of a breach of the Code of Ethics or any statutory or ethical duty and whose recommendation is accepted by the PCSPL should have the right of appeal to an independent board constituted of ex magistrates or judges. The conclusions of an independent board of appeal should be subject to a final vote by the PCSPL without a prior debate to secure democratic sign-off while minimising the prospect of political considerations coming into play at the final moment.⁹⁸

⁹⁷ 'Muscat's visit to Dubai not in breach of ethics, €21,000 flights paid for by 'third party'', The Malta Independent, 17th July 2020; <https://www.independent.com.mt/articles/2020-07-17/local-news/Muscat-s-visit-to-Dubai-not-in-breach-of-ethics-21-000-flights-paid-for-by-third-party-6736225271>.

⁹⁸ <https://www.politicshome.com/thehouse/article/the-commons-standards-system-must-be-reformed-to-ensure-confidence-of-members-and-the-public>

3.5 Instilling a Culture of Integrity and Professionalism amongst persons who select to pursue a Political Vocation

This paper argues that at least one other fundamental step must be introduced to instil a culture of integrity and professionalism amongst persons who select to pursue a political vocation. **Persons who decide to run for election or become MPs should be trained in ethics and ethical behaviour.** While political parties may run voluntary ethical training under their party organisation, MPs elected for the first time or re-elected to the House are not exposed to ethical training and how the House functions. This is not correct.

The House should introduce structured ethical training mandatory for all MPs on election to the House. The training should cover ethical values and principles, what constitutes and guides ethical behaviour, an introduction to the Code of Ethics and examples of what constitutes ethical behaviour and breaches, the functioning of the Office of the Commissioner, the resulting impacts on a MPs personal and family life resulting from an ethical scandal, etc. **Such ethical training should be subject to a mandatory annual ethical refresher course.**

This paper further recommends that **political parties receive state financing to ensure that candidates interested in pursuing a political vocation in becoming MPs for the party they represent should undertake ethical training and refresher courses.** Additionally, political parties should be **state-financed to introduce a robust due diligence framework so that persons who present themselves as candidates** for election are thoroughly vetted. Certain ethical scandals or potential unethical behaviour once elected as an MP or when holding the Office of Minister can be avoided if the personal or professional luggage which they bring with them as candidates are identified and declared should they constitute a potential conflict of interest or the candidature is rejected at the outset if it constitutes a real conflict of interest.

This paper recommends the following:

01. Persons who decide to run for election or become MPs should be trained in ethics and ethical behaviour.
02. The House should introduce structured ethical training mandatory for all MPs on election to the House. Such ethical training should be subject to a mandatory annual ethical refresher course.
03. Political parties should receive state financing so that candidates interested in pursuing a political vocation to become an MP for the party they represent are provided ethical training and refresher courses.
04. Political parties should receive state financing to introduce a robust due diligence framework so that persons who present themselves as candidates for election are thoroughly vetted.

3.6 Confidential Counselling to MPs on Accountability, Transparency and Ethical Matters

This paper agrees with the recommendation presented by GRECO in its Fourth Evaluation report that one of the resources that are to be provided by the Parliamentary Service is **a dedicated source of confidential counselling to provide parliamentarians with advice on ethical questions, conflicts of interest concerning their legislative duties, as well as financial declaration obligations.**⁹⁹

This paper recommends the following:

01. This paper agrees with the recommendation presented by GRECO in its Fourth Evaluation report that one of the resources that are to be provided by the Parliamentary Service is a dedicated source of confidential counselling to provide MPs with advice on ethical questions, conflicts of interest about their legislative duties, as well as financial declaration obligations.

⁹⁹ Pg 18, Corruption prevention in respect of members of parliament, judges and prosecutors: Evaluation Report – Malta, Group of States against Corruption, Adoption 12th December 2014.

Glossary

ADS	Asset Disclosure System
Commissioner	Commissioner for Standards in Public Life
CSPL	House of Commons (UK) Committee for Standards in Public Life
GOPAC	Global Organisation of Parliamentarians Against Corruption
GRECO	Group of States Against Corruption
HoR	House of Representatives
LoO	Leader of the Opposition
PL	Partit Laburista
Minister	Applied generally for the Office of Prime Minister, Minister, and Parliamentary Secretary.
MP	Member of Parliament (unless otherwise stated) interchangeably in the document for MPs and those who hold the Office of Minister or Parliamentary Secretary.
OGP	Open Government Partnership
PAC	Public Accounts Committee
Parl. Sec.	Parliamentary Secretary
PN	Partit Nazzjonalista
PCSPL	Parliamentary Standing Committee for Standards in Public Life
PM	Prime Minister
PPS	Principal Permanent Secretary
SH	Steward Healthcare
Speaker	Speaker of the House of Representatives
SPLA	Standards in Public Life Act

UNCAC	United Nations Convention Against Corruption
VGH	Vitals Global Healthcare
WFD	Westminster Foundation for Democracy

Annex 1: Conflict of Interest Comparison across the UK

		Public declaration of interests?	Code includes prohibition conflicts of interest?	Partner/ spouse included?	Investigations and sanctions regime?	Published as Open Data?	Summary notes
	Ministers	Yes ★	Yes	Yes	No	Yes ★	Strongest ministerial conflict of interest regime and Lords' data transparency is unique. However, the lack of criminal sanctions weakens the regime for legislators.
	Civil service	No	Yes	No*	Yes	No	
	Members of Parliament	Yes	Yes	Yes	Yes** ⊕	No****	
	Members of the House of Lords	Yes	No	Yes	Yes** ⊕	Yes ★	
	Ministers	No ⊕	Yes	Yes	No	No	Untransparent ministerial regime and legislator regime fails to explicitly include partners.
	Civil service	No	Yes	No*	Yes	No	
	Parliamentarians	Yes	Yes	No* ⊕	Yes*** ★	No ⊕	
	Ministers	Yes ★	Yes	Yes	No	No	Strong ministerial regime, and among the strongest regime for legislators.
	Civil service	No	Yes	No*	Yes	No	
	Assembly Members	Yes	Yes	Yes	Yes*** ★	No ⊕	
	Ministers	Yes ★	No	No* ⊕	No	No	Strongest regime for legislators. However ministerial regime fails to include partners.
	Civil service	No	Yes	No*	Yes	No	
	Assembly Members	Yes	Yes	Yes	Yes**** ★	No ⊕	

- * Not explicitly
- ** Standards Committee only, no criminal sanctions
- *** Criminal sanctions apply
- **** Reporting that this will be produced as Open Data in the short term
- ★ Relatively good practice
- ⊕ Relatively poor practice

Source: David-Barett, E., Lifting the lid on lobbying: The hidden exercise of power and influence in the UK, Transparency International UK, 2015

Annex 2: Gifts and Hospitality Regimes across the UK

		Must be registered? (threshold?)	Prohibited? (Threshold)	Partners/ spouses' Interests Included?	Investigations and sanctions regime?	Published as Open Data?	Summary notes
	Ministers	Yes*	Yes (Over £140)	Yes	No	Yes ★	A strong ministerial regime, but the legislator regime lacks criminal sanctions
	Civil service	No	Yes	No	Yes	N/A	
	Members of Parliament	Yes (Over £860 - 1% of salary)	No	Yes	Yes** ○	N/A	
	Members of the House of Lords	Yes (Over £140)	No	Yes	Yes** ○	N/A	
	Ministers	Yes*	Yes (Over £140)	Yes	No	Yes ★	A strong ministerial regime, but the legislator regime fails to include partners
	Civil service	No	Yes	No	Yes	N/A	
	Parliamentarians	Yes (Over £575 - 1% of salary)	No	No ○	Yes*** ★	N/A	
	Ministers	Yes*	Yes (Over £260)	Yes	No	No ○	Ministerial regime let down by lack of open data, but strong legislator regime
	Civil service	No	Yes	No	Yes	N/A	
	Assembly Members	Yes (Over £279 - 0.5% of salary)	No	Yes	Yes*** ★	N/A	
	Ministers	No	No ○	Yes	No	No ○	Strong legislator regime and the civil service regime is the most detailed, but there is no specific prohibition on ministerial gifts
	Civil service	No	Yes**** ★	No	Yes	N/A	
	Assembly Members	Yes (Over £240 - 0.5% of salary)	No	Yes	Yes*** ★	N/A	

* Gifts over the prohibited threshold value must become government property and are published online
 ** Standards Committee only, no criminal sanctions
 *** Criminal sanctions apply
 **** Detailed guidance provided to civil servants
 ★ Relatively good practice
 ○ Relatively poor practice

Source: David-Barett, E., Lifting the lid on lobbying: The hidden exercise of power and influence in the UK, Transparency International UK, 2015

Annex 3: Prohibitions on Lobbying comparison across the UK

		Lobbying while in office is prohibited?	Payment for advice to lobbyists is prohibited?	Investigations and sanctions regime?	Summary notes
	Ministers	Yes	No**	No ⊘	Unlike the House of Lords, the House of Commons fails to prohibit providing paid advice to lobbyists, and the rules and sanctions around ministers are relatively weak
	Civil service	Yes	No**	Yes	
	Members of Parliament	Yes	No ⊘	Yes*	
	Members of the House of Lords	Yes	Yes ★	Yes*	
	Ministers	Yes	No**	No***	No prohibitions exist for paid advice to lobbyists
	Civil service	Yes	No**	Yes	
	Parliamentarians	Yes	No ⊘	Yes ★	
	Ministers	Yes	No**	No***	No prohibitions exist for paid advice to lobbyists
	Civil service	Yes	No**	Yes	
	Assembly Members	Yes*	No ⊘	Yes ★	
	Ministers	Yes	No**	No***	No prohibitions exist for paid advice to lobbyists
	Civil service	Yes	No**	Yes	
	Assembly Members	Yes*	No ⊘	Yes ★	

* Criminal sanctions and investigations do not apply
 ** Not explicitly
 *** However, Ministers would be covered by criminal sanctions covering all legislators
 ★ Relatively good practice
 ⊘ Relatively poor practice

Source: David-Barett, E., Lifting the lid on lobbying: The hidden exercise of power and influence in the UK, Transparency International UK, 2015

Annex 4: Transparency over Lobbying Meetings across the UK

		Requirement to keep a record of lobbying meetings?	Summaries of the content of the meeting disclosed?	Requirement for lobbyists of these officials to register?	Published in an open data standard?	Summary notes
	Ministers	Yes**	Partial ★	Yes***	Partial ★	The ministerial regime for disclosure of lobbying meetings is relatively strong, however the regime for legislators is weak.
	Civil service*	No	No	No	No	
	Members of Parliament	No ⊘	No	No	No	
	Members of the House of Lords	No ⊘	No	No	No	
	Ministers	Yes	No	No	No	The ministerial and legislator obligations to disclose meetings are advised, but available information and data standard is poor quality
	Civil service*	No	No	No	No	
	Parliamentarians	Advised ★	No	No	No	
	Ministers	Yes	Partial ★	No	No	The ministerial and legislator obligations to disclose meetings are advised, but available information and data standard is low quality
	Civil service*	No	No	No	No	
	Assembly Members	Advised ★	No	No	No	
	Ministers	No ⊘	No	No	No	Both ministerial and legislator transparency of lobbying meetings is the weakest in the UK
	Civil service*	No ⊘	No	No	No	
	Assembly Members	No	No	No	No	

- * Not including Permanent Secretaries, who must maintain a record of lobbying meetings akin to Ministers
- ** Only when Ministers claim they are acting in a Ministerial role (rather than a private or constituency interest)
- *** Partial record of lobbyists
- ★ Relatively good practice
- ⊘ Relatively poor practice

Source: David-Barett, E., Lifting the lid on lobbying: The hidden exercise of power and influence in the UK, Transparency International UK, 2015



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