

Standards of conduct in British public life: ethical backsliding?

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Paper to be presented at the online workshop
The UK: a case for democratic backsliding
University of Exeter, 27-28 April 2022

When commentators or practitioners express concerns about ‘standards of conduct in public life,’ they may be referring to one or more of three things: the expectations associated with the holding of public office; improper conduct that falls short of those expectations; and the rules and arrangements in place for encouraging good behaviour. Standards matter in all respects. Behaviour that breaks or subverts standards of conduct can weaken accountability, undermine trust in government and provide ammunition to populists. It may even be indicative of ‘executive aggrandizement’ and the weakening of checks on executive power.¹

The United Kingdom is no stranger to allegations of declining standards of conduct. Over the last 50 years, the corrupt activities of architect John Poulson prompted such concerns in the 1970s, just as the ‘cash for questions’ affair and the 2009 parliamentary expenses scandal did so in the 1990s and 2000s.² In each case, instances of personal wrongdoing coalesced to convey the appearance of broader if not systemic ethical failings. In each case, official inquiries were established, and new laws or regulations were introduced to improve standards and bolster public confidence.

Various instances of improper behaviour by members of the current government have triggered another wave of concern about declining standards. In November 2020, Lord Evans, the chair of the Committee on Standards in Public Life, warned of a widespread perception that those in public life no longer feel bound by established norms of conduct.³ In February 2022, a former prime minister, John Major, voiced his anxieties about the erosion of standards in public life more generally and their impact on trust in democratic processes.⁴

Much of the alleged wrongdoing is depressingly familiar in form if not in magnitude. But there is also something distinctive about current concerns: many of them relate directly to the conduct of the prime minister, Boris Johnson, and his apparent disregard for existing rules and norms of behaviour. This departure represents a particularly serious challenge to all aspects of standards in public life.

¹ Nancy Bermeo, ‘On Democratic Backsliding’, *Journal of Democracy* 27:1, 2016, 5–19

² Nicholas Allen and Sarah Birch, *Ethics and Integrity in British Politics*. Cambridge: Cambridge University Press, 2015, pp. 53–60.

³ Lord Evans, ‘The Hugh Kay Lecture: Are we in a post-Nolan age?’, 11 November 2020, available at: <https://www.gov.uk/government/speeches/the-hugh-kay-lecture-are-we-in-a-post-nolan-age>

⁴ Sir John Major, ‘In Democracy We Trust?’, Institute for Government, 10 February 2022, available at: <https://www.instituteforgovernment.org.uk/events/john-major?msclkid=8772c1bfbc3b11ec9acfe9c98755f36f>

The British approach to standards of conduct in public life

Britain's approach to standards in public life has long rested on a general belief in the integrity and self-restraint of those in public life or what some have called the 'good chaps' theory of government.⁵ It has also been framed by the UK's majoritarian, 'political' constitution.⁶ This has tended to emphasise the importance of vertical lines of accountability between politicians and voters, as well as placing a special onus on the government of the day to lead responses to ethical failings.

The creation of the Committee on Standards in Public Life in 1994 – an instance of governmental leadership – marked a step-change in Britain's approach to standards of conduct. Set up in response to allegations that several Tory MPs had taken money to ask parliamentary questions, the Committee has since become an established if occasionally vulnerable feature of the political landscape. It was envisaged as a 'running workshop' and performs a strategic role, reviewing existing arrangements across public life and suggesting improvements. The fate of its recommendations has usually depended on the sympathies of the government of the day and the prevailing political climate.

The Committee has played a key role in shaping standards across the political system.⁷ Its First Report, published in 1995, set out seven principles of public life that were expected to guide all holders of public office: Selflessness, Integrity, Objectivity, Accountability, Openness, Honesty and Leadership. The principles' initial descriptors reflected prevailing concerns about financial conflicts of interest. The descriptors were amended in 2013 to acknowledge the public's wider concerns and understandings of honesty in public life, and again in 2021 to promote respectful behaviour.

Today the British political system is home to a network of standards regulators, each of which has variable powers and independence. The House of Commons has its own ethics regime, as does the House of Lords. There is a separate Independent Parliamentary Standards Authority responsible for paying MPs' salaries and expenses, and an Independent Adviser on Ministerial Interests to support the Ministerial Code. Elections are overseen by the Electoral Commission, consultant lobbyists by an Office of the Registrar of Consultant Lobbyists. There is a House of Lords Appointments Commission, an Advisory Committee on Business Appointments, and a Commissioner for Public Appointments. The devolved institutions also have their own ethics regulators.

Taken together, the proliferation of various codes and independent regulators has been remarkable. They are consistent with a broader 'counter-majoritarian' trend in the regulation

⁵ Andrew Blick and Peter Hennessy, *Good Chaps No More? Safeguarding the Constitution in Stressful Times*. London: The Constitution Society, 2019.

⁶ J.A.G. Griffith, 'The Political Constitution', *The Modern Law Review*, 42:1, 1979, 1–21

⁷ David Hine and Gillian Peele, *The Regulation of Standards in British Public Life: Doing the Right Thing?* Manchester: Manchester University Press, 2016.

of political life.⁸ They have also reflected and helped sustain an elite consensus on what standards should apply in public life, and how these should be maintained. When egregious lapses have occurred, such as with the 2009 MPs' expenses scandal, ministers have generally responded by introducing new rules and further independent regulation.

Ethical backsliding?

Current allegations about declining standards in British public life are partly symptomatic of concerns about 'post-truth' politics, the incivility of much political discourse and the role of 'dark money' in political campaigning. But they also reflect various instances of improper behaviour by politicians, especially members of the current government. These instances can be grouped into three categories, each of which relates to a distinct kind of ethical threat.

Recurring problems

This category of behaviour covers recent cases of Conservative Party benefactors being appointed to the House of Lords (e.g. Lords Lebedev, Spencer and Harding, among others); of alleged cronyism in other public appointments (e.g. Lord Wharton's appointment as the new chair of the Office for Students); of MPs failing to register interests or engaging in paid advocacy (e.g. Owen Patterson); of public funds being allocated for party-political gain (e.g. the Towns Fund affair); and of so-called 'revolving doors' and former ministers failing to seek official advice before taking jobs (e.g. Boris Johnson) or using their contacts to lobby government (e.g. David Cameron and Greensill).

None of these failings is new in form. Allegations of 'cash for honours' and 'Tony's cronies' plagued New Labour during the late 1990s and early 2000s. MPs' failures to register interests and breaches of the paid advocacy rule are as old as the Register of Members' Interests and advocacy rule. Past governments have channelled funds disproportionately to areas containing marginal constituencies.⁹ The doors between the public and private sector have always revolved.

Recurring problems are nothing to be complacent about, however. At the very least, they are indicative of a failure of leadership. To be sure, the underlying causes may be politically difficult to address, such as the funding of political parties or MPs' salaries, but governments have an obligation to address them. Perhaps more worryingly, the recurrence of party-funding, revolving-doors and lobbying scandals could be indicative of systematic 'legal corruption' and of a political elite using their power to avoid introducing new rules that would limit their ability to look after their own interests ahead of the public interest.¹⁰

⁸ Dawn Oliver, 'Regulation Politics in Government,' in Jeffrey Jowell, Dawn Oliver and Colm O'Cinneide, eds, *The Changing Constitution*, Eighth Edition, Oxford: Oxford University Press, 2015, 307–28, p. 326.

⁹ See, for example, Peter John and Hugh Ward, 'Targeting Benefits for Electoral Gain: Constituency Marginality and the Distribution of Grants to English Local Authorities', *Political Studies* 47:1, 1999, 32–52.

¹⁰ Robert Barrington, 'How corrupt is Britain's chumocracy?', UK in a Changing Europe, 16 April 2021, available at: <https://ukandeu.ac.uk/how-corrupt-is-britains-chumocracy/>. On the concept of

Prime ministerial foibles

This category includes the relatively large number of *personal* ethical failings by the prime minister, instances when he has broken rules or his behaviour has fallen short of the standards usually expected of those in high office. Some of these instances pre-date his premiership, such as his failure to consult the Advisory Committee on Business Appointments before resuming his lucrative column for the *Daily Telegraph* after resigning as foreign secretary in July 2018; his failure to record remuneration in the Register of Members' Interests; and the lack of candour around his friendship with Jennifer Arcuri when Mayor of London. Other instances have occurred during his time as prime minister, including his opacity around the funding of holidays abroad and the refurbishment of the 11 Downing Street flat, and, of course, his receipt of a fixed-penalty notice for breaking of national lockdown rules after attending a party in Downing Street having previously told the House of Commons that there had been no parties.

On a personal level, such ethical failings are hardly unprecedented. Boris Johnson's careers as a journalist and politician have always been overshadowed by a tendency to lie and break rules. In this perverse respect, *The Economist* called him 'Britain's most honest politician.'¹¹ On an institutional level, the frequency of such failings and the apparent prime ministerial disdain for rules are unprecedented. No incumbent of Downing Street has been a saint, but none has been so obviously unconcerned about appearing to follow the rules in his or her own personal conduct.

Appearance matters enormously in this context. A prime minister who breaks rules repeatedly is liable to erode public confidence in the government and wider political system, give citizens reason to act as if the government cannot be trusted, and undermine any sense of political accountability. He or she also sets an example for those in government. If ministers and other officials see rule-breaking go unpunished, it reduces their incentive to respect rules.

Anti-standards

This category covers those instances in which ministers, including the prime minister, have explicitly rejected the applicability of existing rules and/or actively sought to subvert them, either by denying their importance or trying to change them. The most egregious examples are prime ministerial and include Johnson's public support for Dominic Cummings, his chief adviser, after the latter had breached lockdown rules by travelling from London to County Durham in May 2020, and for home secretary, Priti Patel, after his first Independent Adviser, Sir Alex Allan, had found she had breached the Ministerial Code by bullying civil servants. It also includes Johnson's decision to nominate Peter Cruddas for a peerage against the advice of the Lords Appointments Commission, making him the first prime minister to reject such guidance, and his support for attempts to delay sanctions against Owen Patterson after the latter had breached the House of Commons' ban on paid advocacy.

'legal corruption,' see Daniel Kaufmann and Pedro C. Vicente, 'Legal Corruption', *Economics & Politics* 23:2, 2011, 195-219.

¹¹ *The Economist*, 'What did you expect from Boris Johnson?', 15 January 2022, available at: <https://www.economist.com/britain/2022/01/15/what-did-you-expect-from-boris-johnson>

Such instances should be seen as *role* ethical failings on Johnson's part, since they relate to his specific responsibilities as the arbiter of the Ministerial Code and his general responsibilities as head of government to ensure that others behave according to high standards of conduct. Johnson is hardly the first prime minister to seek to save a colleague who has transgressed. Tony Blair initially retained Keith Vaz's services as a junior minister in 2001 despite his breaching the Ministerial Code by refusing to cooperate with an inquiry by the then Parliamentary Commissioner for Standards, Elizabeth Filkin.

Nevertheless, whereas previous attempts to downplay rule-breaking or subvert established rules have been exceptional, they have become prominent features of the Johnson government's playbook. Thus Jacob Rees-Mogg dismissed the prime minister's breaking of lockdown rules as 'fluff' and 'fundamentally trivial'.

The problems with such behaviour are fourfold. First, it directly undermines existing horizontal lines of accountability for poor conduct. Second, it positively discredits the legitimacy of existing rules and ethical arrangements and, in the process, sets uncomfortable precedents for future governments. It is partly in this vein that some have suggested the demise of the post-Nolan consensus.¹² Third, it sets the government on a course for ignoring potential ethical problem areas. Fourth, it leads the government to discount the legitimacy of many citizens' concerns about allegations of wrongdoing.

What might be done?

The different categories of improper behaviour outlined in the previous section require different remedies. Suggestions for addressing some of the 'recurring problems' were set out in the recent twenty-third report of the Committee on Standards in Public Life. These include strengthening the powers of existing regulators, notably the Independent Adviser on Ministers' Interests, the Public Appointments Commissioner and the Advisory Committee on Business Appointments, and placing them on a statutory footing.¹³ It might also help to enshrine the Committee on Standards in Public Life's in statute. More optimistically, a greater element of public funding might help to reduce political parties' reliance on wealth donors.

Such actions would require government leadership, however, which brings us to the second and third categories of recent improper behaviour. There are questions about the prime minister's personal integrity and role integrity. The House of Commons Standards Committee has repeatedly referred to his 'over-casual attitude towards obeying the rules of the House.'¹⁴

¹² Evans, 'The Hugh Kay Lecture: Are we in a post-Nolan age?'

¹³ The Committee on Standards in Public Life, *Upholding Standards in Public Life: Final report of the Standards Matter 2 review*, London: 2021, available at:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1029944/Upholding_Standards_in_Public_Life_-_Web_Accessible.pdf

¹⁴ House of Commons Standards Committee, *Boris Johnson*, First Report of Session 2021–22, HC 549. London: 2001, p. 11, available at:

<https://committees.parliament.uk/publications/6631/documents/71459/default/>

He has demonstrated an ‘over-casual attitude’ to standards in public life more generally. A prime ministerial or government-led crusade to fix widely recognised problems seems unlikely.

A prime minister who is unsympathetic to standards in public life could have deleterious long-term consequences on Britain’s ethical terrain. This raises questions about how parties choose and change their leaders. Parties tend to prioritise electoral considerations, and Johnson was widely seen as a vote winner by both Conservative MPs and party members in the 2019 leadership context. It is unclear how much the unusual circumstances of Brexit, then Covid and, more recently, the conflict in Ukraine have affected Conservative MPs’ judgements. What is clear is Johnson’s security in office if his own MPs prove reluctant to replace him. If that reluctance persists, the current sense of ethical malaise at the heart of government is likely to persist, at least in the short term.

Despite the advent of more horizontal mechanisms for maintaining high standards of conduct, the integrity of those at the top of Britain’s political system depends ultimately on the operation of the political constitution and the vertical lines of accountability that run from governments to voters. For these mechanisms to work, voters need to be aware of any governmental dishonesty and rule-breaking, they need to care about it, and they need to have a more honest alternative. Research suggests voters do generally care about honesty in government, both in Britain and elsewhere.¹⁵ Plenty of voters may choose to discount the various recent allegations, of course, but no one can say that they have been concealed from public scrutiny.

Fears of being punished at the ballot box have often prompted politicians to take action. If that fails, the electorate itself is the final bulwark against ethical backsliding. If the prime minister fails to change his ways, voters: it’s over to you.

¹⁵ Allen and Birch, *Ethics and Integrity in British Politics*; Nicholas Allen, Sarah Birch, Katja Sarmiento-Mirwaldt, ‘Honesty above all else? Expectations and perceptions of political conduct in three established democracies’, *Comparative European Politics* 16:), 511–534; Alan Renwick, Kaela Scott, Meg Russell, James Cleaver and Frances Osborne, *Report of the Citizens’ Assembly on Democracy in the UK: Second Report of the Democracy in the UK after Brexit Project*. London: The Constitution Unit, 2022, available at: https://www.ucl.ac.uk/constitution-unit/sites/constitution_unit/files/report_2_final_digital.pdf