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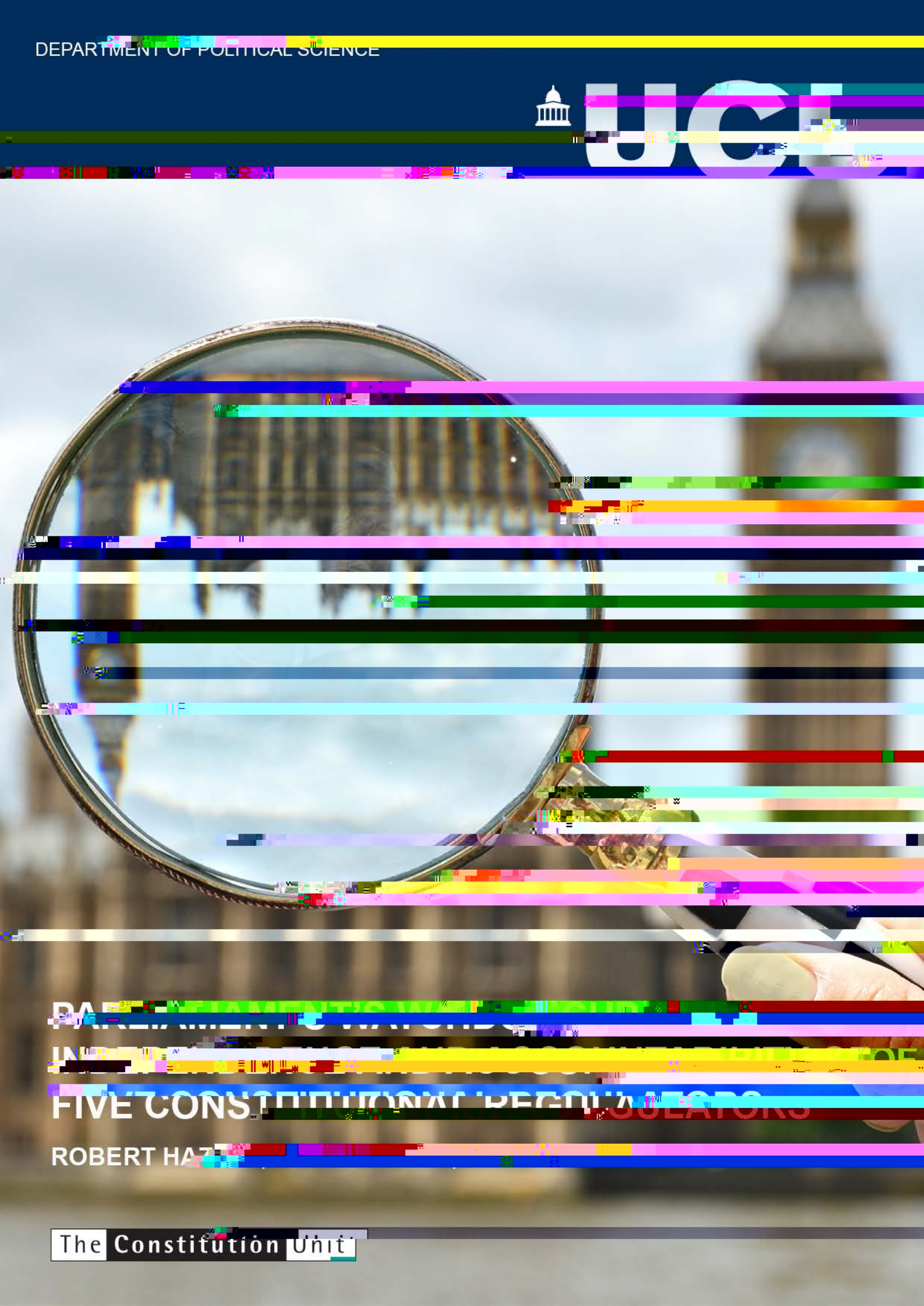

PARLIAMENT'S WATCHDOG
IN THE CONSTITUTIONAL REGULATORS
FIVE CONSTITUTIONAL REGULATORS

ROBERT HA

The Constitution Unit

PARLIAMENT'S WATCHDOGS : INDEPENDENCE AND ACCOUNTABILITY OF FIVE CONSTITUTIONAL REGULATORS

Robert Hazell, Marcial Boo and Zachariah Pullar

The Constitution Unit
University College London

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Foreword

Executive Summary

Over the last 30 years, new independent bodies and officers, often known as ‘constitutional watchdogs’, have been created in the UK. Their role is to ensure fairness and safeguard integrity in the mechanisms of democracy. Their establishment has been ad hoc, and little noticed by the academic literature. This report makes a small start to fill that gap.

Our focus is on four watchdogs concerned with safeguarding the election, payment and conduct of MPs: the Electoral Commission, Boundary Commission for England, Parliamentary Commissioner for Standards, and Independent Parliamentary Standards Authority; plus the Committee on Standards in Public Life. The report examines how the independence of these watchdogs to regulate politicians (individually) intersects with their accountability to politicians (collectively) in parliament.

The report situates these watchdogs within the familiar, tripartite separation of powers, dismissing the argument that they constitute a fourth branch of government. Instead, they should consider as regulatory [illegible]

Chapter 1: Introduction

Constitutional watchdogs take centre stage

bodies might, accordingly, be regarded as comprising a family of ‘ethical regulators’, whose aim is to safeguard the integrity of political governance.[8] In particular, these watchdog bodies variously give institutional expression and weight to the Seven Principles of Public Life, first promulgated

the watchdogs are directly accountable to parliament. The Electoral Commission is also accountable to the Scottish Parliament and to the Welsh Senedd. Accountability at Westminster is through the Speaker for the BCE, the Speaker's Committee for the BCE (SCBCE) and for IPSA (SCIPSA) and the House of Commons Committee on Standards for the PCS. This allows us to explore the extent of parliamentarians' actual or potential influence over the bodies that regulate their election, remuneration and behaviour, given that parliament has power to appoint and dismiss the leaders of the watchdogs, to approve their budgets and work programmes; and to influence their strategies

1.14 The CSPL, by contrast, reports directly to the Prime Minister and the Cabinet Office; which, as sponsor, has responsibility for exercising the powers of appointment, dismissal and funding. In each case, politicians' powers of oversight create obvious tensions with the independent operation of these bodies.[12]

Research questions and methodology

1.15 The report situates these watchdogs within the well-understood framework of the separation of powers between the executive, legislative and judicial branches of government, discussed further in Chapter 2. The main research questions addressed in the report are as follows:

Independence

- What is the rationale for the independence of these watchdogs? From whom do they need to be independent; why; and how?
- How independent are they in practice?
- Could their independence be better secured?

Accountability

- What are the main lines of accountability of these watchdogs, legally and politically?
- Could their accountability be better secured?

Balance between independence and accountability

- What is the right balance between institutional independence on the one hand, and public and parliamentary accountability on the other?

5. How might the watchdogs' governance change to strengthen their independence and accountability, if at all?

1.21 In the second round of interviews, about the role of lay members on parliamentary committees, interviewees were asked:

1. What is the role of lay members?
2. How are they recruited?
3. What difference do they make?
4. What difficulties have been encountered? How could they be overcome?

1.22 In October 2021 we held a private seminar to discuss our draft report, to which all the interviewees were invited, as well as current holders from the watchdogs concerned, and academic experts. We are grateful for their comments and suggestions, which have greatly strengthened this final report.

The structure of this report

1.23 Chapter 2 introduces the terms of the discussion developed in the subsequent chapters, which centres on the watchdogs' independence and accountability; and defines what is at stake. It engages with the academic debate on the role of the three branches of government in relation to independent supervisory bodies; and in particular the argument that these constitutional watchdogs might constitute, or represent, a fourth branch of government. This argument is ultimately dismissed. The chapter concludes, instead, that these watchdogs should be considered to be, or akin to, independent regulators. This then helps to frame the inevitable tension between independence and accountability that comes with the territory of regulation. Chapter 2 concludes with an analysis of the principles underlying the concepts of independence and accountability, and the trade-offs between them.

1.24 Chapter 3 examines the governance arrangements of the five watchdogs under review, by drawing on their constituent and other official documentation, such as annual reports, reports of select committees, and parliamentary debates. The chapter proceeds to analyse those governance arrangements in closer detail, drawing out and expanding on a series of factors contributing to watchdogs' independence and accountability, including their legal (or other) status; capacity to set their own agenda; their board membership; the appointments process to senior positions, and mechanisms for removal; the frequency and transparency of their meetings; the procedures and membership of the parliamentary committees overseeing their work; the process for approving their budget, strategic plan and annual work programmes; and the role of the Speaker of the House of Commons and of the ministers on parliamentary oversight committees.

1.25 This analysis supplies a framework for assessing in Chapters 4 and 5 the design and operation of the watchdogs themselves, with separate lists of factors maximising their independence, and their accountability. This, along with the interview findings set out in Chapter 6, provides the groundwork for developing the report's substantive proposals in Chapter 7. Chapter 6 reports interviewees' views on the watchdogs' independence and accountability, and the role of lay

members. Chapter 7 draws on their wider reflections on how to strengthen watchdogs' institutional design, and the analysis developed in earlier chapters to set out our overall conclusions, with a series of specific recommendations for strengthening their governance arrangements.

The House of Lords

1.26 This report focuses on watchdogs answerable to the House of Commons. The House of Lords has its own Commissioners for Standards (currently Martin Jelley QPM, and Karimullah Hyat Akbar Khan, both appointed in 2021). We did ask consultees on our draft report whether the Lords could play a role in upholding the independence, or strengthening the accountability, of bodies which are primarily accountable to the House of Commons. Unsurprisingly, given the traditional separation between the two Houses, the answer was no. The House of Lords will not interfere in the governance of the House of Commons. The Lords Constitution Committee has shown little interest in these watchdogs (unlike the Public Administration and Constitutional Affairs Committee (PACAC) in the House of Commons, and its predecessor the Public Administration Select Committee); it was felt that sponsorship and scrutiny was best left to the lower, democratically elected House.

Other omissions

1.25 In addition to not including the Lords Commissioners for Standards, this report also omits

2.3 Thus, it has been noted that, like Law Commissions or royal commissions, watchdogs do not fit neatly within a traditional executive–legislative–judicial "separation-of-powers" model, though they have complex operational and institutional relationships with, and across, these three branches;[15] other commentators have made similar observations.[16] It is with the working out and refinement of these 'complex operational and institutional relationships', in respect of a particular subset of watchdogs, that this report is concerned; and reflecting on this separation-of-powers issue provides a useful starting point.

2.4 Constitutional watchdogs could, perhaps, be conceived as falling squarely within or under one of the existing branches of government; for instance, the boundary commission within the parliament (operating, for example, as a select committee of the Commons). But, as principle suggests – and history confirms[17] – treating watchdogs as mere 'adjuncts of electoral politics'[18] would be wholly self-defeating: as Professor Mark Tushnet describes, precisely

> The reason for creating these [watchdog] institutions rather than relegating their work to the [traditional branches of government] is that those branches are placed in a situation of conflict of interest when particular cases challenging democratic functioning arise. Legislators, for example, cannot be trusted to set district boundaries without attention to the effects that doing so will have on their or their parties' electoral prospects.[19]

2.5 He concludes that the 'recurring rationale' behind the creation of structurally independent watchdog bodies, each charged with supervising a specific aspect of the democratic process, has, broadly, two connected aspects: negatively, the inadequacy of the traditional branches' incentives

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comprise 'part of the quasi-judicial branch of government, perhaps affiliated in some way, especially with a written constitution, to a "constitutional court"' (ibid, 209–10).

[15] Gay and Winetrobe, ibid, 199; see also Gay, 'Introduction: Watchdogs in Need of Support' in Oonagh Gay and Barry Winetrobe, eds, Parliament's Watchdogs: At the Crossroads (forthcoming).

to address problems of protecting democracy; and positively, ‘the varying combinations of expertise and independence required to address specific problems of that sort.’

> actions by other state agencies. The former agencies must have not only the legal au
> but also sufficient de facto autonomy vis-à-vis the latter. What I am talking about, of course,
> is nothing new and goes under the familiar headings of separation of powers and checks
> and balances. It includes the executive, legislative, and judicial branches, but ... also
> extends to various oversight agencies, ombudsmen, accounting offices, fiscal offices, and the
> like.[25]

2.8 There are two strong arguments against the 'fourth branch' thesis, as applied to the UK. The first is that although they do not fit neatly alongside the other branches of government, they are clearly subordinate to them. The power and legitimacy of constitutional watchdogs is derived from the executive or parliament: their existence is 'contingent in a way that the legislative, ab (w)uative (,)-7n

rules are set through existing democratic processes in the executive and the legislature.[31] In the case of these watchdogs, however, rather than regulate utility or standards of education, their function is to regulate ethical behaviour and the rules of democracy. As Mark Bovens and Anchrit Wille explain in a recent study, constitutional watchdogs are 'engaged in second-order governance tasks, in delivering accountability by monitoring executive actors in the implementation of their first-order governance tasks ... the work of auditors, ombudsmen, and integrity offices [thus] increasingly complements the oversight functions of the established branches of government', but is not on a level with them.[32]

Independence and accountability

2.11 Considering constitutional watchdogs in this manner gives focus to their two correlative institutional design features: their independence of, and accountability to political and other public actors. For, in their application of legal and ethical norms to politicians, or determination of matters which directly affect their interests, they should plainly be independent of the political power that is regulated or interested; direct political control would make it impossible for watchdogs to protect democracy and public ethics against threats from the traditional branches. In this sense, their existence is justified by their independence.

2.12 Yet, to borrow from Tushnet, watchdog independence is not an 'unalloyed good';[33] nor is it an end in itself, to be given priority over other (competing or counterpoising) values.[34] The interminable issue of who guards the guardians requires to be addressed.[35] Accountability is one of the Nolan principles, and applies no less to watchdogs than to those they regulate, or those public bodies performing public functions, and paid for out of public funds. Without such accountability into the political system, their recommendations or decisions might not seem legitimate – including to those being regulated. When watchdogs operate in areas in which there is clear party-political interest, politicians may be quick to criticise such bodies as out of touch – a claim substantiated in Chapter 6. In extremis, too much independence would deprive the

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[31] See, generally, Malcolm Sparrow, The Regulatory Craft: Controls, Risks, Solving Problems, and Managing Compliance (Washington: Brookings Institution Press, 2000).

[32] Mark Bovens and Anchrit Wille, 'Indexing Watchdog Accountability Powers, a Framework for Assessing the Accountability Capacity of Independent Oversight Institutions', Regulation and Governance, 2020, 3. See also the discussion of 'second-order governance' in Jan Kooiman, Governing as Governance (California: SAGE Publications, 2003), 153–69. This role is made explicit, for instance, in the statutory requirement that, '[i]n carrying out its functions the IPSA must have regard to the principle that members of the House of Commons should be supported in efficiently, cost effectively and transparently carrying out their Parliamentary functions': section 3A(2) Parliamentary Standards Act 2009 (emphasis added).

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commissions of the political support they require if they are to survive' as permanent constitutional bodies.[36]

2.13 Thus clearly emerges a central conundrum: watchdogs regulating the ethical conduct of parliamentarians, the boundaries of their constituencies and the conduct of their elections are themselves accountable to, and dependent on, these very parliamentarians.[37] It is this central conundrum, and the resulting challenge of finding the combination of structural and practical safeguards to secure an appropriate balance between institutional and "goal" independence on the one hand, and public and Parliamentary accountability on the other,[38] that this report addresses in respect of the subset of watchdogs concerned with politicians' remuneration, election, and regulation of their conduct.

2.14 The following paragraphs develop the concepts of independence and accountability, and the principles underlying them. Four out of the five watchdogs under review perform adjudicatory functions, and the arguments for their independence are similar to the arguments for judicial independence; likewise, the arguments for their accountability.[39] We have therefore drawn on the literature on judicial independence to identify the underlying principles. The fundamental argument for watchdogs' independence – as for judicial independence – is that they must be

existed. Outside parliament, accountability is no longer limited to narrow ideas of legality and probity, but now extends to value for money, efficiency, fairness and equality; with a new emphasis on mechanisms such as complaints procedures, ombudsmen, audits and reporting obligations. Despite this extension, at its core accountability remains a simple idea: it involves the giving of reasons or explanations for decisions or conduct. It therefore requires transparency, and the possibility of challenge to those decisions and their reasons.

2.18 Professor Mark Bovens defines accountability as a relationship between an actor and a forum, in which the actor has an obligation to explain and to justify his conduct, the forum can pose questions and pass judgement, and the actor may face consequences.[42] Implicit in the capacity to call to account, there is an element of control; control and accountability are linked concepts, operating on a continuum.[43] This takes on a particular salience where the relevant account-holder is drawn from the accounter's regulated sector.

2.19 We can identify a number of conditions to ensure the accountability of constitutional watchdogs. Again, this is drawn from the wider literature on accountability, but with specific reference to the more recent literature on judicial accountability.[44]

- Transparency requires publication of board minutes and other papers, and the giving of reasons for decisions.
- Transparency also requires being subject to freedom of information, so that outsiders can request information not readily available
- The decisions of constitutional watchdogs, especially those imposing a penalty, must be capable of challenge by appeal or judicial review. There must also be mechanisms for hearing complaints.
- The finances of watchdogs must be independently audited
- Watchdogs can be required to attend parliamentary committees to explain their governance, and stewardship of their resources
- They can also be required to explain their strategy, policies and performance.
- But when exercising adjudicatory functions, watchdogs are not required to defend individual decisions (which are instead subject to appeal: see above).

2.20 As we shall see, the supervisory role (responsibility for appointing watchdogs, and providing their funding) and the scrutiny role (questioning their strategy, policies and performance) can be performed by different parliamentary committees. But in all cases the emphasis is on explanatory

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[42] Mark Bovens, 'Analysing and Assessing Accountability: A Conceptual Framework', European Law Journal 13(4), 2007, 447; others similarly consider a duty to account as central to the concept: see, e.g., Colin Scott, 'Accountability in the Regulatory State', Journal of Law and Society 27(1), 2000, 40.

[43] Ibid, 39; as Bovens (

where the rules are set through existing democratic processes in the executive and legislature. In the application of the rules, the watchdogs should plainly be independent of the politicians they regulate; but they also have to be accountable, as public bodies performing public functions paid for out of public funds. The central conundrum is that in regulating the ethical conduct of parliamentarians, the watchdogs are themselves accountable to, and dependent on, these very parliamentarians.

2.25 The arguments for the independence of watchdogs are similar to the arguments for judicial independence; likewise, the arguments for their accountability. The fundamental argument for watchdogs' independence is that they must be allowed to issue rulings impartially, according to the rules and the law, and free from improper pressure, whether from the Government or MPs, or outside interests. The second part of this chapter set out a list of conditions necessary to underpin the

Chapter 3: Governance Arrangements of Five Watchdogs

3.1 This chapter describes in some detail the governance arrangements of the watchdogs under scrutiny.[45] For each watchdog it explains its legal status; role and functions; composition, method and terms of appointment; funding arrangements; and main lines of accountability. In Chapter 4 we develop a series of indicators to help determine how much independence and accountability watchdogs have vis-à-vis parliament, the executive and judiciary. These indicators, along with our interview findings in Chapter 6, will assist in developing our recommendations as to how watchdogs' independence and accountability might, in practice, be maximised, considered in Chapter 7.

Boundary Commission for England

3.2 The Boundary Commissions for England, Wales, Scotland and Northern Ireland were first established as permanent statutory bodies in 1944.[46] The principle that the periodic redrawing of constituency boundaries – necessitated by the changing distribution of the electorate over time – 'should not be undertaken (or even driven) by politicians, who would be likely to promote their sectional interests, but instead allocated to an independent body ... with strong links to Parliament'.[47] They are currently established under the Parliamentary Constituencies Act 1986 (PCA).[48]

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[45] A more comprehensive account of most of these watchdogs' (then) governance arrangements, and their development, may be found in works by Oonagh Gay and Barry Winetrobe: see, e.g., Oonagh Gay and Barry Winetrobe, Officers of Parliament – Transforming the Role (London: Constitution Unit, 2003), 51; Oonagh Gay and Barry Winetrobe, eds, Parliament's Watchdogs: At the Crossroads (London: Constitution Unit, 2008); Oonagh Gay, Officers of Parliament: A Comparative Perspective

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through the Speaker who chairs it; to whom the BCE submits its periodical reports; and who lays the BCE's reports before parliament.[58]

3.7 The independence of the BCE has recently been augmented by the Parliamentary Constituencies Act 2020: its recommendations may not now be revised by ministers or by parliament once its periodical reports have been issued – they are automatically implemented.[59] Previously, both Houses of Parliament were required to vote on any draft Order in Council giving effect to the BCE's recommendations, and if the draft Order was debated but not approved, the government could lay an amended draft for approval. This inevitably dragged the work of redrawing constituency boundaries into the political arena. This was graphically illustrated when in 1969 the Labour government delayed implementation of the BCE's Second Periodical Review – which, it was thought, would be prejudicial to its election chances – by instructing its MPs to vote against the draft Orders in Council implementing the commission's recommendations.[60] A similar episode occurred under the coalition government in 2012, when the Deputy Prime Minister Nick Clegg announced that the Liberal Democrats would not vote for the Order implementing

3.11 Commissioners may be appointed for a maximum term of 10 years,[76] and may be re-appointed if the Speaker's Committee so recommends.[77] The party leaders need to consent to the appointment of Commissioners (including the chair). Commissioners may be removed from office by the Queen, on an Address from the Commons; but this must follow a report from the Speaker's Committee, stating that a statutory reason for removal is made out in respect of the Commissioner.[78]

3.12 The EC's chair is paid an annual salary (£70,000 in 2019–20 for two days a week),[79] and the other Commissioners receive a fee based on the number of days worked. By resolution of the House of Commons, Commissioners' fees increase on 1 April each year, by the percentage increase awarded to High Court judges; a similar arrangement applies to the chair's salary.[80] Salaries are paid out of the Consolidated Fund. During 2020–21, the EC had an average staff of 153 FTE, and 134 in 2018–19.[81]

3.13 SCEC has nine members, and is chaired by the Speaker; for details of the committee's functions, size and composition, see Table 3.1 below. By statute, the committee includes the Secretary of State responsible for elections, the Minister for local government, the chair of the select committee responsible for scrutinising elections (in 2022, Clive Betts MP, chair of the DLUHC Committee), and five other backbench MPs appointed by the Speaker.[82] The power to appoint five members effectively gives the Speaker control of the party balance on the committee. Previous Speakers have agreed that no single party sho061 (d)-1 5(1pe)1 (p)(f)-n-0.001 Tc 0.046(y)1

Audit Office (NAO) in 2019–20, its annual budget was £22.2 million.[86] The Commissioners met monthly with the EC's senior officials, with board minutes published on the website alongside annual reports, corporate plans and registers of interest. Both the EC and the SCEC must report to the House of Commons annually on the exercise of their functions.[87] The EC has made frequent appearances before parliamentary committees (both select committees and bill committees), and is also accountable to the Scottish Parliament and the Senedd. It publishes statutory reports on elections and referendums, and post-event reports on wider issues such as electoral registration and digital campaigning, making recommendations as necessary. The EC has a social media presence

Table 3.1 The Speaker's Committees, and the Standards Committee

	Speaker's Committee

3.15

responsible for appointing the board members of IPSA, and for overseeing and approving its annual budgets.[100] The Speaker must also lay IPSA's annual report before Parliament.[101] The power to approve the budget can (and has) been used to influence policy, through threatening to block the relevant Supply Estimate.

3.20 Details of the Speaker's Committee are in Table 3.1 above. By statute, the Speaker's Committee comprises the Leader of the House, the chair of the Standards Committee, and five other MPs appointed by the House of Commons. The Leader of the House consults the Speaker and receives nominations from the whips before laying the appointments motion before the House. There are also three lay members on the Committee, each appointed by open recruitment for a fixed, non-renewable period of five years.[102] Apart from the Speaker, in June 2022, the committee had four Conservative members, two Labour and one SNP, giving it a Conservative majority amongst the political members. In the previous parliament, the committee had three Conservative members, three Labour and one SNP, giving it an opposition majority. The committee thus reflected the composition of the House as a whole; but there is no requirement that it should do so. Indeed, in the case of SCEC, the government stated during the passage of

or her own initiative, at the request of MPs or of the public to investigate expenses payments paid

3.25 The PCS is appointed by resolution of the House of Commons on the recommendation of the House of Commons Commission, following an open competition.[118] The term of appointment is

3.31 The whole disciplinary system has changed dramatically in the last 10 years and is still changing. What was essentially a system of self-regulation, with the potential for self-interest and abuse, has evolved into a system with strong independent elements. Important amongst those is

institutions and policies, and reporting on its findings. As examples of its scope, recent reports have concerned such issues as public standards and artificial intelligence; local government ethical standards; MPs' outside interests; a wider review of standards in public life; and the role of leadership in embedding those standards. The CSPL, as an advisory body, has no statutory powers – it cannot investigate individual cases of misconduct in public office, nor compel witnesses to provide evidence.

3.35 The committee comprises a chair appointed by the Prime Minister, alongside four independent members, appointed by open competition, and three political members appointed by the Prime Minister following nominations by leaders of the Conservative, Labour and Liberal Democrat parties. The term of office for the chair and independent members is five years, non renewable; the political members serve m4ce

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Chapter 4: Analysis of Governance Arrangements: Indicators of Independence and Accountability

4.1 Extrapolating from the governance profiles in the previous chapter, and drawing on the literature on watchdogs' institutional design, this chapter identifies the main factors contributing to watchdog independence and accountability. The factors are inevitably interrelated, and cannot be treated as wholly discrete items. As has been noted in the context of judicial independence, 'debates about the practical implications of independence and accountability go hand-in-hand, culminating in difficult and disputed decisions about how to ensure that judges have sufficient independence to fulfil their ... role and manage their collective affairs, while at the same time ensuring adequate accountability.'[135]

4.2 Three preliminary issues should be noted. First, independence features more strongly than accountability: the chapter lists 15 factors affecting watchdogs' independence, and only nine factors affecting their accountability. Second, in discussing independence, a basic but critical question is independence from whom – in the context of constitutional watchdogs, this chiefly refers to parliament or the executive. As Chapter 3 indicates, institutional design choices inevitably involve a trade-off: '[i]ndependence from government can be ensured and fortified by a formal parliamentary connection, but this brings with it a degree of dependence on parliament.'[136] However, as the following analysis suggests, effective design should be capable of mitigating any 'substituted' dependence. As an added complicating factor, this issue is not binary, given that

> Above all, parliaments are forums for the operation of party politics by party politicians seeking re-election and advancement, and so all parliamentary activities, including any [watchdog] oversight and governance, are political and politicised to some degree or other. It is hardly surprising that, while watchdogs often look to parliaments for protection against executive interference, they are wary of moving too close to them for similar reasons.[137]

4.3 Third, as to accountability, this is a term susceptible of various interpretations and definitions. Nonetheless, as we saw in para 2.21, it refers to a relational mechanism that can be analysed within the framework of the questions: who is accountable, to whom, for what and

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[135] Graham Gee et al, The Politics of Judicial Independence in the UK's Changing Constitution (Cambridge: Cambridge University Press, 2015), 8

[136] Oonagh Gay and Barry Winetrobe, Officers of Parliament – Transforming the Role (London: Constitution Unit, 2008), 11.

[137] Winetrobe, 'Conclusion – Parliamentary Watchdogs: Time for a Decision', in Oonagh Gay and Barry Winetrobe, eds, Parliament's Watchdogs: At the Crossroads (London: Constitution Unit, 2008), 118.

how?[38]

constitution where parliamentary sovereignty remains the bedrock.[144] In such a constitution, no practicable governance solution is capable of resolving them entirely. Nevertheless, there is a spectrum. For instance, purely executive appointments, such as those to the CSPL or BCE, place their (perceived) independence and credibility at greater risk than those made by a constitutionally independent actor, subject to a public debate and approval by one or both Houses. And where the choice of nomination has engaged key stakeholders, such as the major political parties and the Speaker (as e.g., with the Electoral Commissioners). Candidates' independence might further be demonstrated through greater use of pre-appointment scrutiny by a Commons select committee, as happens with the chair of CSPL and by bringing parliamentary appointments within the scope of the Governance Code on Public Appointments. Currently the Code applies only to appointments made by ministers, with the Commons complying on a voluntary basis in relation to selected appointments.[145] This means there is no scope for investigation of complaints, nor for an annual audit of performance.

4.9 The tenure of the chair and board members. The Public Administration Select Committee, in its 2007 report on ethics and standards in public life, characterised the prospect of reappointment as 'the greatest threat to independence ... which can risk becoming, or be perceived as being, a factor influencing a watchdog's decisions and actions'.[146] Judges serve for fixed terms with no re-appointment, so that they can deliver their judgments without fear or favour. For the same reasons it should not be open to politicians to terminate an appointment because they dislike the way a watchdog has carried out his or her functions. It was damaging to the reputation of the House of Commons when Elizabeth Filkin was not reappointed as PCS in 2002; and damaging to the reputation of the House and the EC when Sir John Holmes was not reappointed as chair in 2021.[147] The only way to avert w. T(nt)2 f [(T)-1

protection offered to board members of IPSA, but not to members of the Electoral Commission: they can be dismissed following a resolution of the House of Commons alone after a report from the Speaker's Committee specifying the grounds of dismissal.[148] Protection is thus enhanced further if the watchdog's constituent document specifies, exhaustively, the relevant grounds for removal, as with the ECC. Conversely, the Cabinet Office watchdogs enjoy no protection, and may be dismissed by the Prime Minister for minimal or no reason.[149]

4.11 The composition of the watchdog/its board: a core concern for watchdog institutional design sho be to maximise what may be refe7n1i (ak)-23 (e)1 (7n)1rd

the [watchdog's] action by prescribing the rules' under which it works,[166] or influencing the scope of its activities through formal or informal request or suggestion.[167] From an independence standpoint, the watchdog's power to say 'no' is crucial.

4.19 Power to publish reports. In addition to publishing their annual reports, certain watchdogs have specific powers, in their own right, to publish additional reports relating to their remit, separately from their sponsor.[168] Thus the EC issues reports on the administration of past elections and referendums, and about electoral matters more generally,[169]

not at all.[184] Regular appearances matter, because without frequent contact and appearances before select committees watchdogs can quickly be considered as faceless bureaucrats. Effective watchdog oversight by committees requires adequate time commitment, resourcing, and preparation, so that political participants in watchdog scrutiny are sensitive to, and can fully realise their dual role in 'championing' as well as 'challenging' constitutional watchdogs, where appropriate, on their policies, decisions and activities.[185]

4.29 Parliamentary questions – tabled by backbench members of SCEC and SCIPSA (currently Christian Matheson MP and Sir Charles Walker MP, respectively) – are a way for parliamentary questions from MPs about their watchdog. Conversely, the NDPB model requires ministers – in this case the Minister for the Cabinet Office in the BCE's and CSPL's case – to answer relevant questions in parliament. Typically such questions tend to be about the government's responsibilities rather than those of the watchdog, and so they are at best an indirect means of holding the watchdog to account.[186]

4.30 Codes of Conduct – both of the coll-2 [hMies ra (l)-1 (-2 [-.8 (g)-3 -1 (2(ol)-1 (l/ D90 (r))2 (i)-1 (e

> ensuring accountability of government [and parliamentarians] do so within the bounds of their own lawful powers.[195]

This matter is treated separately, and at some length, in the following chapter: as will be seen, not all watchdogs under scrutiny are amenable to legal challenge and accountability; and, in some cases the existing legal precedents may not be capable of providing reliable guidance as to a modern court's approach.

Conclusions

4.36 This chapter has discussed in greater detail the main factors contributing to watchdog independence and accountability. These are an expanded version of the conditions to ensure the independence of constitutional watchdogs, and their accountability, that we set out in Chapter 2 (at paras 2.13 and 2.17 respectively). Those conditions were based upon the generally accepted conditions for judicial independence and accountability. We have disaggregated several items, so that the list of 11 conditions to underpin watchdogs' independence in para 2.13 has been expanded to 15 factors, and the list of seven conditions to ensure their accountability in para 2.17 has been expanded to nine.

4.37

Table 4.1: Factors suppo[redacted] independence

Factor	Electoral Commission	Boundary Commission	IPSA	PCS-4 (t)	CSPL

Factor	Electoral

Chapter 5

'of an amount equal to the value' of donations accepted by political parties from impermissible sources.[197]

5.5 There is, further, a statutory right of appeal to the county court against a civil penalty imposed by the EC under its enforcement powers, on grounds that it was based on an error of fact; was wrong in law; or was unreasonable.[198] Under this procedure, for instance, Mr Darren Grimes successfully appealed against the £20,000 fine imposed on him by the EC, inter alia, for failing to deliver an accurate campaign spending return following the June 2016 referendum.[199]

Independent Parliamentary Standards Authority

5.6 There have been, as yet, no judicial review challenges to IPSA's exercise of its statutory powers and functions,[200] though it has been held legally to account on other issues. IPSA was the losing appellant in a dispute, which reached the Court of Appeal, about whether, in response to a Freedom of Information Act request, it was obliged to yield up copies of original receipts which supported MPs' expenses claims; or whether, as IPSA had argued, providing a transcript of the redacted information contained in the receipts sufficed.[201] It is also likely to be engaged in

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[197] R (Electoral Commission) v Westminster Magistrates' Court [2010] UKSC 40, [2011] 1 A.C. 496 (SC); s 58(2) PPERA 2000. See, e.g., Lord Kerr at [118]: '... where it is shown that a donation has come from an impermissible source it should be presumed that this is a foreign donation and that if the presumption is not rebutted, forfeiture should follow. If, however, it can be shown that the donation was not from a foreign donor but came from someone who was entitled to be on an electoral register, the level of forfeiture should reflect the particular circumstances of the case.'

[198] Sch 19C, paras 2(6), 6(6) and 13 PPERA 2000.

[199] See Grimes v Electoral Commission (Central London County Court, 19 July 2019). Judge Dight CBE held that it was not 'open to the Electoral Commission to reach the relevant factual finding, on the criminal standard, on the material available to the Electoral Commission at the time' ([64]) that Mr Grimes' organisation, BeLeave, was not an unincorporated association capable of notifying the EC that it intended to campaign in the EU referendum, under s 106 PPERA 2000. That finding led it to the erroneous conclusion that Mr Grimes, the individual, and not BeLeave, was the relevant 'permitted participant' for the purposes of making a return as to campaign expenses under s 120.

[200] The PSA 2009 itself provides for an appeal mechanism in respect of the IPSA's decisions on MPs' expenses claims (see the text, below), reducing the practical importance of judicial review in this context; see also R (Birmingham City Council, ex parte Ferrero) [1993] 1 All E.R. 530 (CA) 537. These statutory appeals are 'not confined to an examination of principles that would be relevant if the ... decision was the subject of judicial review proceedings and [are] not required to pay any particular deference to the ... original decision': Byrne v Independent Parliamentary Standards Authority [2017] UKFTT 88(TC)[21](2).

[201] Independent Parliamentary Standards Authority v Information Commissioner [2015] EWCA Civ 388, [2015] 1 W.L.R. 2879 (CA). The Court held that, on a request under the Freedom of Information Act 2000 for specific information, the entitlement under s 1(1) 'to have that information communicated' to the applicant relates to 'recorded information' (cf. s 84 FOIA 2000); and that the disputed material – logos and letterheads on the invoices, handwriting and/or manuscript comments, and the invoices' layout, style and design – could properly be regarded as "information" in a broad sense. It is informative. It does not need to be "linguistic" in character for that purpose: "information" includes visual as well as linguistic information. For example, the design of a logo or letterhead, or the style or layout of an invoice, constitutes information relevant to the identity of the supplier and to the genuineness of the document; and, as the Commissioner said, what a person's signature looks like is information over and above the person's name' ([44]). The Court thus upheld the decision of the Information Commissioner (and decisions of the First-tier and Upper Tribunals), such that the IPSA was required to supply the applicant, the journalist Ben Leapman, with copies of the original invoices/receipts with appropriate redactions.

defending a claim, shortly to be brought by 216 (current and former) MPs' staff, concerning an accidental breach of their personal data in March 2017.[202]

5.7 Additionally, as noted in Chapter 3, the Parliamentary Standards Act 2009 (as amended)[203] provides for a review mechanism if IPSA determines that an MP's claim should be refused, or paid only in part.[204] An MP – after having given IPSA a reasonable opportunity to reconsider its decision – may ask the Compliance Officer to review IPSA's determination. After reviewing the details of the claim against the background of the relevant MPs' allowances scheme, the Compliance Officer must decide whether to confirm or alter IPSA's determination; and an MP may appeal to the First tier Tribunal against the outcome, by way of rehearing.[205]

5.8 At the time of writing, there have been two appeals against a decision of the Compliance Officer under this procedure. In the first, brought by James McGovern MP following IPSA's refusal to reimburse the cost of his travel from his Scottish constituency to Westminster – complicated by a diversion for party political purposes – the First-tier Tribunal upheld the Compliance Officer's decision;[206] in the second, brought by Liam Byrne MP in relation to costs associated with the delivery of 'contact cards' to residents of his constituency which IPSA had deemed political, the First-tier Tribunal allowed the appeal.[207]

Parliamentary Commissioner for Standards

5.9 There has been one attempted judicial review of the PCS, in which it was held, both at first instance and on appeal, that the office's functions are not amenable to judicial review. In R v Parliamentary Commissioner for Standards, ex parte Al Fayed,[208] Mr Al Fayed sought leave to apply for judicial review of a 1997 report by the PCS, relating to a complaint by the claimant against

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[202] See <https://www.bbc.co.uk/news/uk-politics-39459115>. The prospective claimants applied to the High Court for an order granting them anonymity and permitting them to .5 (t)-2.5 i-2 (am)st (t)-r]TJ /(a)3]TJ /(c)-3.2 (la)-2.2 (i)6.5 (m the IPSA withholding their naes and adresses. Nicklin J rejthe application,holding that anony-rmity was 'not nec-ressay either properly-r to maintain the atdministration of jmstice or to protec-rt the lgitimate inteets of the Claimants,'which might be protedaless .ntrusive methods.Vario i-2 (ams)-3.4 ( )0.6 (C)6.2 (l)-4.6 (a)-3.2 (i)5.5 (ma)-3.2 (Authority[2021] EWHC 2020 (QB) [46]-[52].

[203] Se Part 3 CRAG 2010.

[204] Under s]TJ /(6()-3.4 (3))2.6 (a)0.5 (n)-4.1 (d)-3.4 (4))-1.4 (([2013] UKFTT 0256 (TC)]TJ /(18]TJ /(0 Tw s,)6.4 (()-1.4 (()]TJ /(M)-3.3 (P)-2.4 (s)

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Michael Howard MP. The High Court refused leave; Mr Al Fayed appealed to the Court of Appeal, which granted leave to seek judicial review,[209] but dismissed his application.

5.10 Counsel for Mr Al Fayed – David Pannick QC – sought to 'rel[y] strongly on the similarities between the position of the Parliamentary Commissioner for Standards and the Ombudsman'[210] which had shortly before been held to be susceptible to judicial review.[211] Despite noting some analogies between the two offices (for instance, that both are supervised by a parliamentary committee; and have reporting lines to parliament), the Master of the Rolls, Lord Woolf considered that these were outweighed by:

> ... the really significant distinction between the role of the Parliamentary Commissioner for Standards and the Ombudsman ... The Ombudsman is concerned with proper functioning of the public service outside Parliament. On the other hand, the focus of the Parliamentary Commissioner for Standards is on the propriety of the workings and the activities of those engaged within Parliament. He is one of the means by which the select committee set up by the House carries out its functions [now, the Committee on Standards], which are accepted to be part of the proceedings of the House. This being the role of the Parliamentary Commissioner for Standards, it would be inappropriate for this court to use its supervisory powers to control what the Parliamentary Commissioner for Standards does in relation to an investigation of this sort.[212]

5.11 Rather, he continued, '[t]he responsibility for supervising the Parliamentary Commissioner for Standards is placed by Parliament, through its standing orders, on the Committee of Standards and Privileges of the House, and it is for that body to perform that role and not the courts.'[213] In recent years the Standards Committee has made significant changes to the supervisory regime for the PCS, with more to come. As we noted in para 3.20, the PCS

framework within which he operates so singular as to take him wholly outside the purview of judicial review.[214] It is therefore significant that the decision in ex parte Al Fayed turned on the nature of the PCS' functions.[215] As has been held elsewhere, 'the proceedings before the PCS, his report and its acceptance by the [Committee on Standards] [are] all "parliamentary proceedings" and therefore any attempt to investigate or challenge the procedures adopted [would constitute] a breach of parliamentary privilege'.[216] Hence, as Bamforth noted, (in the absence of contrary authority) the 'decision makes clear that if a regulator falls within the scope of Parliamentary privilege, constitutional doctrine dictates that a purely functional-based test must be used: even if aspects of the Commissioner's role are analogous to that of the Parliamentary Ombudsman, the court cannot inquire further since the Commissioner's function is "Parliamentary".'[217]

5.13 As will be seen below, in Chapter 7 (paras 7.11-12), these points are relevant to the case for whether the PCS should be made a statutory officer. The Commissioner currently falls within the scope of parliamentary privilege; a statutory PCS would expose her decisions and process to judicial review.

Committee on Standards in Public Life

5.14 There have been no recorded judicial review challenges to the CSPL. Though PASC's 2007 report on ethics and standards assumed its judicial reviewability,[218] the point is not clear-cut.

5.15 Certainly, following the Court of Appeal's decision in R v Panel on Take-overs and Mergers, ex parte Datafin,[219] the fact that the CSPL appears to have no (distinct) legal – statutory or prerogative – basis, powers or personality will not per se defeat the court's judicial review jurisdiction, provided one can point to a sufficient 'public element' to its activities.[220] Examining current concerns about standards of conduct of all holders of public office, and recommending

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boundaries[240]: even if the challenge had succeeded, therefore, his Lordship would have refused an

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Chapter 6: Interview Findings on Independence and Accountability

6.1 The previous chapters have set out the theoretical context and governance arrangements of the five constitutional watchdogs under review, the principles underlying their independence and accountability, and lists of design features to buttress their independence, and to ensure their accountability. As a reality check, and to supplement that analysis, we conducted two rounds of interviews: the first with 17 senior leaders from the watchdogs concerned and from the House of Commons; followed by a second round of eight interviews about lay members, reported at paras 6.40–45 below.

6.2 In the initial round we asked each interviewee about the rationale for their independence; security against exter the fxt fenide ex chi

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Pressures on independence

6.16 Interviewees agreed that watchdogs, even statutory, could have their independence threatened in practice, due to the 'constant effort by certain MPs to undermine' their processes: as one of them put it, 'there are moments when politicians should behave better'. MPs did not like their regulators, but some were more disliked than others. MPs respected the BCE 'for doing an unpopular, technical job extremely well, even though MPs hate what it does'; while the EC was said to annoy MPs tremendously with its 'legalistic culture [and] investigative approach' or 'political naivety'. There were 'very raw feelings among MPs when IPSA was set up [and] some quite difficult meetings'. It was 'not uncommon for MPs to be in the [Speaker's] ear' about the watchdogs and their work.

6.17 There were concerns that the future independence of the watchdogs might be at risk. The Owen Paterson affair (which happened after our interviews) provided a vivid illustration of the hostility towards the PCS felt by significant numbers of MPs. Two interviewees regretted the procedural changes which had prohibited the PCS from being transparent about investigations under way; though, since the interviews took place, parliament has voted to restore the right of the PCS to publish brief details of ongoing investigations.[255] One regretted that electoral law had not been updated to strengthen the EC's powers.

6.18 Yet interviewees recognised that the watchdogs have, in the main, survived with their independence intact. The Owen Paterson affair, which threatened to undermine the whole standards regime, has seen it emerge stronger than before. MPs saw benefits to giving independence to bodies, like IPSA, that could make payments to MPs instead of politically unacceptable alternative of giving the responsibility to government or to themselves. In some cases, a 'mutual respect' had grown between politicians and their regulators. In the wake of actual or potential scandals, MPs were keen for there to be a perception of independence, even if they wished to retain oversight overall, and the option of questioning the conduct of watchdogs when politically sensitive or controversial issues were at stake.

6.19 The strength of the watchdogs' independence in practice, and their ability to withstand challenge, depended crucially on the culture of the organisations and the character of their leaders. There was unanimity that watchdog leaders must be independent, as they will be regularly subject to challenge. The independence of the PCS is 'as strong as the office and the holder' when he or she has 'independence of mind and spirit, wisdom and judgement, and fortitude, [and] an understanding of parliament … then independence is pretty strong'. CSPL, similarly, was judged

[255] Between December 2010 and July 2018, the PCS was entitled to publish 'information about complaints received and matters under investigation'; but following the 19 July 2018 amendment to SO 150, the PCS could only publish '

to-day thing in the House of Commons. Most MPs were supportive of the watchdogs and their

6.38 If a Speaker chose to apply pressure, it would be felt. ‘Academics underestimate the degree of brute political pressure that the Speaker can exert.’ They could issue veiled threats to the watchdogs unless they gave way, or challenge them repeatedly about particular investigations. It was helpful to remember that the Speaker is not necessarily ‘one of us’: ‘they are politicians after all and they think short-term, and not necessarily about parliament’s long-term interests. This is simply in their nature.’

6.39 The Speaker also has a role in appointments to the committees that oversee the Electoral Commission and IPSA. He directly appoints five members of SCEC, and controls the process whereby the House appoints five members of SCIPSA. In practice he invites the party groups to submit nominations; but in so doing he controls the party balance on both committees. Interviewees commented that not MPs who had been publicly critical of the EC and its independence had recently been replaced on the Speaker’s Committee overseeing its work. But others maintained that the Speaker had not been involved at all in the detail of the watchdogs’ work or appointments, and one praised the Speaker for publicly defending their watchdog when it had been under public attack.

Lay members

6.40 We carried out eight additional interviews to learn more about the role of lay members, interviewing three lay members, three parliamentary officials, and two people involved in recruiting lay members. They are a relatively recent innovation, which has developed haphazardly and incrementally, and deserves closer study than we have been able to give in this report. There are now lay members on the House of Commons Commission, its Audit and Risk Committee (chaired by a lay member), the Standards Committee and SCIPSA.

6.41 The first lay members were those appointed to SCIPSA. Under the Parliamentary Standards

‘lay members are now in the driving seat on the Standards Committee’. It is also reflected in the

- There should be arrangements in place to ensure that constitutional watchdogs receive adequate funds to fulfil their functions, and that their leaders receive fair and secure remuneration
- There must be a general attitude of respect for watchdogs and their functions within parliament, government and the political system
- The arrangements for the supervision and accountability of watchdogs (see below) should not be used to undermine their independence.

The following paragraphs go through these conditions one by one, because in some cases we address two conditions under one heading (as in the first heading below); nor slavishly, because in other cases we have introduced new material (for example, expanding autonomy to include access to independent legal advice)

Appointment of chair and board members; board membership and tenure

7.3 The appointments of independent members to the CSPL and BCE are made by the executive and subject to the Governance Code on Public Appointments,Thesu slheos( )]TJ -0

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Speaker's Committee did before commending John Pullinger as the new chair of the EC.[267] Such hearings should similarly be used before appointing the chair of IPSA and the PCS; but they seem unnecessary for appointment of the deputy chair of the BCE, who will have been selected by the Lord Chief Justice before appointment by the Lord Chancellor.

7.5 All board members should be appointed for a single, non-renewable term, with no possibility of re-appointment. As we noted in para 4.9, it was damaging to the reputation of the House of Commons when Elizabeth Filkin was not reappointed as PCS in 2002; 789 0 Td (ne(i)-1 (on o(or)-2

Dismissal

7.9 Chapter 6 mentioned the extreme pressures to which watchdogs can be exposed, including attempts to remove them from office. As recorded in paragraph 4.10, Electoral Commissioners and the PCS can only be removed for cause, if they are clearly unfit to hold office. Electoral Commissioners can be dismissed following a resolution of the House of Commons only – after a report from the Speaker's Committee specifying the grounds of dismissal. Board members of IPSA enjoy a slightly higher level of protection, in that they can only be dismissed following a resolution of both Houses. This is the protection offered to High Court judges. Similar protection should be introduced for all the watchdogs, to guard against dismissal just by the government mobilising its Commons majority.

Legal status

7.10 The EC, IPSA and the BCE are founded in statute, while the CSPL and PCS are non statutory. The PCS is an officer of the House, constituted under Standing Order 150, and since earlier criticisms by the CSPL S.O. 150 has been expanded to strengthen the role and powers of the Commissioner.[271]

not least in cases where her findings and conclusions are contested (as with Owen Paterson and John Bercow). But, as noted in Chapter 5, proceedings before the PCS, her reports and their acceptance by the Committee on Standards all constitute 'parliamentary proceedings', protected from judicial interference under Article IX of the Bill of Rights 1689. It is, more generally, a long standing principle of the common law that the jurisdiction of the Houses over their own members, their right to impose discipline within their walls, is absolute and exclusive' of any outside interference.[276] Even if it were feasible for the Commons to surrender its privileges in respect of members' discipline to an entirely independent statutory creature – which is not wholly certain[277] – this would plainly represent a significant constitutional move, and abrogate a key aspect of the House's autonomy to an extent our consultees considered unacceptable. As Paul Evans notes, 'Parliament may pass legislation to abridge or define its traditional privileges, but to do so places Parliament at the mercy of the courts'.[278]

7.13 It is noteworthy that some similar difficulties arose as regards the Parliamentary Standards Act 2009, as originally enacted. Thereunder, IPSA would have assumed responsibility for maintaining the register of financial interests and associated code of conduct – a standards matter – supported by a new Commissioner for Parliamentary Investigations responsible for investigating non-compliance.[279] Once CSPL had pointed out the risk of interference with privilege this created, these provisions were repealed.[280]

7.14 Accordingly, subject to the more marginal changes suggested in this chapter, it seems preferable to leave the PCS as a creature of Standing Orders.

7.15 Different considerations apply to CSPL, which too has no legal basis, and could be swept away by prime ministerial fiat. Abolition came close to happening under David Cameron in 2012, mothballing was also considered, reducing CSPL to a 'care and maintenance' basis, to be activated

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[276] Bradlaugh v Gossett (1884) 12 Q.B.D. 271, 275; Prebble v Television New Zealand Ltd [1995] 1 A.C. 321 (PC) 332; and R v Chaytor [2010] UKSC 52, [2011] 1 A.C. 684 (SC) [63], [75]–[77].

[277] As noted in Chapter 4 in relation to the PCS, there is a limit to the extent to which, procedurally and constitutionally, it is proper and/or desirable for the House to delegate its sanctioning powers in respect of standards issues to external bodies: see Committee on Standards, Sanctions in Respect of the Conduct of Members, Seventh Report of Session 2019–21, HC 241 2019-21 (London House of Commons 2020) para 36.

2012.[287] Some interviewees suggested that in the past the PCS was kept deliberately short staffed – although her recent annual reports remark on the House authorities' commitment to ensuring that the PCS is appropriately resourced, and duly show her staff costs increasing from £524k in 2018–19 to £894k in 2020–21.[288]

7.22

members on the Standards Committee is clear; less so on the Speaker's Committee (see para 6.45) If it is essentially the same – to guard against MPs being self-serving, or excessively inward-looking – then that needs to be clearly articulated. And there is

- Transparency requires publication of board minutes and other papers, and the giving of reasons for decisions
- Transparency also requires being subject to freedom of information, so that outsiders can request information not readily available
- The decisions of constitutional watchdogs, especially those imposing a penalty, must be capable of challenge by appeal or judicial review. There must also be mechanisms for hearing complaints
- The finances of watchdogs must be independently audited
- Watchdogs can be required to attend parliamentary committees to explain their governance, and stewardship of their resources
- They can also be required to explain their strategy, policies and performance
- But when exercising adjudicatory functions, watchdogs are not required to defend individual decisions (which are instead subject to appeal: see above).

As above, the following paragraphs go through these conditions: more by one, because in some cases we have consolidated two conditions under one heading, as in the first heading below

Increased transparency and accountability to the public

7.37 Thanks to the creation of constitutional watchdogs, the transparency of elections policy and administration, of MPs' expenses and allowances, and of MPs' discipline has been transformed. The Electoral Commission is a model of transparency compared with the General Department of the Home Office, which was responsible for elections until PPERA 2000. IPSA is a model of transparency compared with the Fees Office of the House of Commons, responsible for MPs' expenses until the Parliamentary Standards Act 2009. The Commissioner for Parliamentary Standards is a model of transparency compared with the casework of the Standards and Privileges Committee of the House of Commons which existed until 2013. That is worth stating lest we forget how far we have travelled in the last 20 years.

7.38 The watchdogs' websites provide huge amounts of information about their policy work and about their regulatory activities, with lots of granular detail. The Electoral Commission publishes quarterly updates of political parties' donations and loans. IPSA publishes annual data of MPs' staffing and business costs, with more detailed breakdowns. The Commissioner for Parliamentary Standards publishes a list of MPs currently under investigation, and the matter investigated, together with details of her findings and the evidence in matters which have been concluded. The watchdogs' websites are generally easily navigable and provide public access to an extraordinary range of regulatory information. We had a minor criticism that the webpage recording the BCE's responses to FOI requests should be updated more regularly, but that has since been remedied.[303]

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303 See <https://boundarycommissionforengland.independent.gov.uk/freedom-of-information2/freedom-of-information-responses/>.

7.39 The watchdogs also have a social media presence. Each watchdog under review, except for the PCS, has an active presence on Twitter, but only the EC and BCE engage with the public via Facebook and platforms more closely associated with younger audiences, such as Instagram. The PCS's absence from social media cannot be criticised, given the nature of her functions; but the other watchdogs should consider branching out to other platforms, and, perhaps recruiting a dedicated social media team, as the EC already does.

Accountability by appeal or judicial review

7.40 All the watchdogs are accountable to the law: as recorded in Chapter 5, their regulatory decisions are capable of challenge on appeal, or by way of judicial review. The Electoral Commission has experienced half a dozen judicial review challenges, all of which it has won; but it has lost appeals about fines it has imposed, and a case about forfeiture of donations. IPSA's determinations are subject to appeal by MPs going to the Compliance Officer, with a further appeal to the First Tier Tribunal. The findings of the PCS can be challenged before the Standards Committee; under the proposals in the Ryder report, her findings will be opinions only, and Standards Committee will make the determination and decide on any penalty, with a right of appeal to the Independent Expert Tribunal (IEP). In ICGS cases, the Commissioner will make the determination, but again with a right of appeal to the IEP. The Boundary Commission has experienced four judicial review challenges, all unsuccessful; now that parliament has lost its role in approving the Boundary Commission's reports, judicial review is the only means of ensuring the Commission observes its statutory remit.

Complaints mechanism

7.41 As for complaints mechanisms, we noted in para 2.28 that the BCE, Electoral Commission

budget. The PCS sets out the running and staffing costs of her office; but it would be helpful to have a more consistent record of its size, and how this bears on its resourcing requirements.

Accountability to parliament

7.44 Accountability to parliament varies for the different watchdogs. The PCS is both sponsored and scrutinised by the Standards Committee. Standing Orders say that the Standards Committee is responsible for oversight of the PCS, but that is not further defined. The Committee adheres to the principle that it does not seek to direct the Commissioner in operational decision-making, and she decides whether to open investigations. The Ryder review suggested an-1 (an-1 (a0.22 02 (

watchdogs considered in this report, but its remit could extend to other watchdogs like the Parliamentary Ombudsman.

The central role of the Committee on Standards in Public Life

7.43 The final body to whom watchdogs are accountable is CSPL. CSPL might not conceive of its role in these terms; but it has conducted occasional reviews of the Electoral Commission, and it has shown a steady interest in improving the standards regime of the Commons, leading to the introduction of lay members onto the Standards Committee, and subsequently to the strengthening of their role, and that of the PCS. Although CSPL has not shown a direct interest in IPSA since its establishment, it produced a report in 2009 on MPs' Expenses and Allowances as the MPs' expenses scandal was taking place.[304]

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This report is about five specialist watchdogs concerned with safeguarding the election, payment and conduct of MPs. Watchdogs must be independent of the politicians they regulate; yet they also need to be accountable, as public bodies performing public functions, and paid out of public funds. For this they need accountability lines into the political system, or their decisions will not seem legitimate to those being regulated, nor to the wider public.

There is a particular tension for watchdogs whose role is to regulate the behaviour of parliamentarians, being themselves appointed and sponsored by parliament. That is the central conundrum explored in this report, which concludes with a series of practical recommendations on how best to maintain the balance between watchdogs' need for a high degree of independence, while also maintaining proper lines of accountability. It is based on a thorough review of all the relevant literature and case law, as well as 25 interviews with senior figures in the House of Commons and the watchdogs being studied.

About the Constitution Unit

The Constitution Unit is a research centre based in the UCL Department of Political Science. We conduct timely, rigorous, independent research into constitutional change and the reform of political institutions. Since our foundation in 1995, the Unit's research has had significant real world impact, informing policy makers engaged in such changes – both in the United Kingdom and around the world.

About the Authors

Robert Hazell is Professor of Government and the Constitution in the Department of Political Science at UCL. As the first Director of the Constitution Unit