# PARLIAMENTARY TRANSPARENCY AND ACCOUNTABILITY: SIX LESSONS ARISING FROM BRITISH POLITICO-LEGAL HISTORY

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## Introduction

This paper has one objective. It is to identify six somewhat inter-linked lessons which emerge from the politico-legal history of the United Kingdom. Each one concerns the principle of parliamentary transparency or the related principle of parliamentary accountability or both.

## Lesson (1): Parliamentary transparency, accountability and democracy each hinge upon a contemporaneous, authoritative and accurate official record of parliamentary proceedings coupled with other related parliamentary materials which must be accurate.

For many decades, the Parliament and people of the United Kingdom have been fortunate to have had Hansard at their disposal. Hansard is the official record of the public proceedings of the Houses of the United Kingdom Parliament – the elected House of Commons (the Lower House) and the unelected House of Lords (the Upper House).

Over the decades, Hansard has built up a magnificent archive that facilitates legal, historical and other forms of research into the record of Parliament. That archive is freely available on the website of the United Kingdom Parliament.[1] So, too, is the online archive of televised recordings of these proceedings from 4 December 2007 onwards.[2]

In this context, it is worth quoting Lord Fowler, the then Lord Speaker, in his Foreword to a book by John Vice and Stephen Farrell, *The History of Hansard*, which was published in 2017:

> This history reminds us that Hansard has been producing an official report of proceedings in the House of Lords and the House of Commons since 1909, but an unofficial version dates back to 1803, and the history of parliamentary reporting stretches back to the English civil war. Indeed, the history of reporting political events goes back much further, through ancient Greece to Egypt of the Pharaohs. …
>
> Today, with more than 3,000 volumes published, Hansard remains a key part of our political process. The way Hansard captures and publishes our words has changed – steam printers and pen shorthand have given way to digital recordings and online publication – but the need for a full report remains. Along with broadcasting, it is the way people keep up to date with what is happening in Parliament and, within three hours of a Member giving a speech in the Chamber, Hansard publishes their words online. Hansard is a central part of parliamentary

[1] See https://api.parliament.uk/historic-hansard/index.html and https://archives.parliament.uk/online-resources/parliamentary-debates-hansard/#:~:text=Hansard%20%28the%20official%20record%20of%20debates%29%20was%20introduced,Commons%20and%20House%20of%20Lords%20Debates%20Hansard%2C%201803-present

[2] See www.parliamentlive.tv/Commons, www.parliamentlive.tv/Lords and https://parliamentlive.tv/Search?Area=

> transparency and helps voters to hold politicians accountable for their words and actions; we need it today as much as we ever have.[3]

In the main body of *The History of Hansard*, John Vice and Stephen Farrell identify the rationale behind having a written record for what has been said verbally: 'spoken words are ephemeral, but when they are written down they can live for ever.'[4] Elsewhere in their book, the two co-authors offer additional insights into why Hansard matters so much:

> Hansard is of course a working document, which MPs and peers use from day to day while arguing over political issues and holding the Government to account, and it is also a vital historical and legal record of what was said in the past. Its primary significance is still to be – just as it was in the 18th century, when the reporters first tried to break down the barriers to printing accounts of debates – in giving people a full, accurate and authoritative report of everything that is said and done in Parliament.[5]

Since the landmark judgment of the Appellate Committee of the House of Lords in *Pepper (Inspector of Taxes) v Hart* [1993] AC 593,[6] the importance of Hansard has increased still further. In the light of that judgment, a court of law may consider Hansard or other parliamentary materials for certain limited purposes. More recently, in a judgment handed down in 2020 in the Supreme Court of the United Kingdom ('the Supreme Court') – in *R v Adams (Northern Ireland)* [2020] UKSC 19 – Lord Kerr, with whom his four fellow Justices agreed, encapsulated 'the rule in *Pepper v Hart*' as follows:

> The rule in *Pepper v Hart* [1993] AC 593 can be succinctly stated. As Lord Browne-Wilkinson said (at p 640 [in *Pepper v Hart*]), reference to Parliamentary materials is permitted "where (a) legislation is ambiguous or obscure, or leads to an absurdity; (b) the material relied upon consists of one or more statements by a Minister or other promoter of the Bill together if necessary with such other Parliamentary material as is necessary to understand such statements and their effect; (c) the statements relied upon are clear".[7]

Notwithstanding 'the rule in *Pepper v Hart*', Article 9 of the Bill of Rights continues to apply. Article 9 stipulates: 'That the Freedome of Speech and Debates or Proceedings in Parlyament ought not to be impeached or questioned in any Court or Place out of Parlyament.'[8] Hence the concepts of absolute parliamentary privilege and qualified

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[3] John Vice and Stephen Farrell, *The History of Hansard* (London: Hansard and the House of Lords Library, 2017), vi, website of the United Kingdom Parliament, www.parliament.uk/globalassets/documents/lords-library/History-of-Hansard.pdf

[4] Ibid, 1.

[5] Ibid, 33.

[6] *Pepper (Inspector of Taxes) v Hart* [1993] AC 593, website of the British and Irish Legal Information Institute, www.bailii.org/uk/cases/UKHL/1992/3.html

[7] *R v Adams (Northern Ireland)* [2020] UKSC 19 at paragraph 33, website of the Supreme Court of the United Kingdom, www.supremecourt.uk/cases/uksc-2018-0104.html and the website of the British and Irish Legal Information Institute, www.bailii.org/uk/cases/UKSC/2020/19.html

[8] See www.legislation.gov.uk/aep/WillandMarSess2/1/2/introduction

parliamentary privilege, subject to the limitations on such forms of privilege identified by the courts.

For example, in the case of *R v Chaytor & Others* [2010] UKSC 52, the Supreme Court effectively confirmed that parliamentary privilege protected Members of Parliament up to a certain point but no further. In the words of Lord Phillips, the then President of the Supreme Court:

> Parliament has never challenged, in general, the application of criminal law within the precincts of Parliament and has accepted that the mere fact that a crime has been committed within these precincts is no bar to the jurisdiction of the criminal courts. In May 1812 John Bellingham was indicted, tried and convicted of the murder of the Prime Minister, Spencer Percival, at the entrance to the lobby of the House of Commons. Bellingham was not a Member of Parliament, but it would have made no difference had he been.
>
> Where a crime is committed within the House of Commons, this may well also constitute a contempt of Parliament. The courts and Parliament have different, overlapping, jurisdictions. The House can take disciplinary proceedings for contempt and a court can try the offender for the crime. [9]

Against this background, a number of MPs and peers were prosecuted in the aftermath of the 'MPs' expenses and allowances' scandal. That scandal came to light after a series of exposés in the *Daily Telegraph*; the scandal was recently revisited in a documentary posted on the Youtube channel of that very same newspaper.[10]

One of the MPs to be prosecuted was the aforementioned Chaytor, i.e. David Chaytor, the Labour MP for Bury North from 1 May 1997 until 8 February 2010 and, from that date until 10 May 2010, the Independent MP for the same constituency.[11] After his unsuccessful appeal to the Supreme Court, Chaytor pleaded guilty to three charges of false accounting contrary to section 17 of the Theft Act 1968.[12] In the words of the sentencing remarks of Mr Justice Saunders, as delivered at Southwark Crown Court on 7 January 2011: 'The reason for the false accounting [to the relevant authorities of Parliament] was to obtain payment of expenses to which he was not entitled on the basis that he claimed them.'[13] In response, the judge sentenced Chaytor to 18 months of imprisonment.

The fate of Chaytor underlines that in a democratic society the rule of law prevails. In consequence, nobody, not even an elected parliamentarian, is above the law.

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[9] *R v Chaytor & Others* [2010] UKSC 52, paragraphs 80 and 81, website of the Supreme Court of the United Kingdom, www.supremecourt.uk/cases/uksc-2010-0195.html and website of the British and Irish Legal Information Institute, www.bailii.org/uk/cases/UKSC/2010/52.html

[10] 'The Disk: the real story of MPs' Expenses - Full Film', 4 January 2020, Youtube channel of the Telegraph, www.youtube.com/watch?v=ZWH0ang_fBU

[11] See https://members.parliament.uk/member/440/career

[12] See www.legislation.gov.uk/ukpga/1968/60/contents

[13] See www.thetimes.co.uk/article/david-chaytor-full-text-of-judges-comments-3q8w7svp5h9

**Lesson (2): Accurate parliamentary materials are not enough to guarantee parliamentary transparency, accountability and democracy. Other functioning mechanisms are also necessary.**

In the United Kingdom, the mechanisms of parliamentary transparency, accountability and democracy include but are not limited to those listed below:

- The *Code of Conduct for Members of Parliament* [*of the House of Commons*],[14] the *Code of Conduct for Members of the House of Lords*[15] and related offices such as the office held by the Parliamentary Commissioner for Standards;[16]

- Open access by members of the public to the public areas of the United Kingdom Parliament, including the public gallery of each of the two Houses,[17] and Central Lobby, the latter of which is defined by the website of Parliament as 'the core of the Palace of Westminster', as 'a meeting place for Members of both Houses, and where MPs can meet their constituents', 'the crossroads of the Palace' and 'the spot where corridors from the Lords, Commons, and Westminster Hall meet';[18]

- Calls for written evidence, as issued by Committees of the Houses of the United Kingdom Parliament, coupled with the extension of invitations to citizens to participate in Committee hearings as witnesses;[19]

- The 'surgeries' routinely arranged by each Member of Parliament within their constituency for the benefit of their constituents, coupled with other forms of communication between each MP and their constituents;[20]

- *The Register of Members' Financial Interests* (of MPs in the House of Commons);[21]

- *The Register of Lords' Interests* (of Peers in the House of Lords);[22]

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[14] See www.parliament.uk/site-information/glossary/code-of-conduct-for-mps/ and www.parliament.uk/business/publications/commons/hoc-code-of-conduct/
[15] See www.parliament.uk/globalassets/documents/lords-commissioner-for-standards/hl-code-of-conduct.pdf and www.parliament.uk/mps-lords-and-offices/standards-and-financial-interests/house-of-lords-commissioner-for-standards-/code-of-conduct-for-the-house-of-lords/
[16] See www.parliament.uk/mps-lords-and-offices/standards-and-financial-interests/parliamentary-commissioner-for-standards/
[17] See www.parliament.uk/visiting/access/
[18] See www.parliament.uk/about/living-heritage/building/palace/architecture/palace-s-interiors/central-lobby/
[19] See *Guide for witnesses giving written or oral evidence to a House of Commons select committee: HC 123* (London: House of Commons, Updated in February 2016), www.parliament.uk/globalassets/documents/commons-committees/witnessguide.pdf and 'Guidance on giving evidence to a Select Committee of the House of Commons', website of the United Kingdom Parliament, www.parliament.uk/get-involved/committees/how-do-i-submit-evidence/commons-witness-guide/
[20] See www.parliament.uk/site-information/glossary/surgeries/
[21] See www.parliament.uk/mps-lords-and-offices/standards-and-financial-interests/parliamentary-commissioner-for-standards/registers-of-interests/register-of-members-financial-interests/
[22] See https://members.parliament.uk/members/lords/interests/register-of-lords-interests

- The register of MPs' staffing and business costs maintained by the Independent Parliamentary Standards Authority;[23]

- Requests for Information to the House of Commons under the Freedom of Information Act 2000 and Environmental Information Regulations 2004[24] and Disclosures;[25]

- Requests for Information to the House of Lords under the Freedom of Information Act 2000 and Environmental Information Regulations 2004[26] and Disclosures,[27] together with other House of Commons Transparency Publications;[28]

- The publications of the House of Commons Library[29] and the House of Lords Library,[30] which are freely available online;

- The United Kingdom Parliament website;[31]

- The United Kingdom Parliament Youtube channel;[32]

- The Parliamentary Archives[33] as well as the National Archives of the United Kingdom.[34]

By these and other means, not only may parliamentary transparency, accountability and democracy become real rather than illusory. Furthermore, legal education – and other forms of education – may be facilitated.

**Lesson (3): Subject to legitimate exceptions, Parliament must always remain open for business. Otherwise, parliamentary transparency, accountability and democracy can neither exist nor appear to exist.**

This lesson was essentially articulated by eleven Justices of the Supreme Court in their judgment in *R (Miller) v The Prime Minister* [2019] UKSC 41, otherwise known as 'the second *Miller* case'. To quote from the judgment:

> The issue is whether the advice given by the Prime Minister to Her Majesty the Queen on 27th or 28th August 2019 that Parliament should be prorogued from a

[23] See www.parliament.uk/about/mps-and-lords/members/pay-mps/ and www.theipsa.org.uk/mp-staffing-business-costs
[24] See www.parliament.uk/site-information/foi/foi-and-eir/commons-foi-eir-information/
[25] See www.parliament.uk/site-information/foi/foi-and-eir/commons-foi-disclosures/
[26] See www.parliament.uk/site-information/foi/foi-and-eir/lords-foi-eir-information/
[27] See www.parliament.uk/mps-lords-and-offices/offices/lords/freedom-of-information-in-the-house-of-lords/log/
[28] See www.parliament.uk/site-information/foi/transparency-publications/hoc-transparency-publications/
[29] See https://commonslibrary.parliament.uk/
[30] See https://lordslibrary.parliament.uk/
[31] See www.parliament.uk/
[32] See www.youtube.com/user/UKParliament
[33] See www.parliament.uk/business/publications/parliamentary-archives/
[34] See www.nationalarchives.gov.uk/help-with-your-research/research-guides/parliament/

> date between 9th and 12th September until 14th October [2019, i.e. during the height of the Brexit process] was lawful.[35]

In addressing this issue, the Supreme Court paid close attention to parliamentary accountability. After noting that in 'the first *Miller* case' – *R (Miller) v Secretary of State for Exiting the European Union* [2017] UKSC 5 – Lord Carnwath had described Parliamentary accountability as a constitutional principle 'no less fundamental to our constitution than Parliamentary sovereignty', the Supreme Court went on to quote Lord Bingham of Cornhill in *Bobb v Manning* [2006] UKPC 22 (at para 13): 'the conduct of government by a Prime Minister and Cabinet collectively responsible and accountable to Parliament lies at the heart of Westminster democracy …'. Against this background, the Supreme Court identified the essence of the 'Westminster model' of parliamentary democracy:

> Ministers are accountable to Parliament through such mechanisms as their duty to answer Parliamentary questions and to appear before Parliamentary committees, and through Parliamentary scrutiny of the delegated legislation which ministers make. By these means, the policies of the executive are subjected to consideration by the representatives of the electorate, the executive is required to report, explain and defend its actions, and citizens are protected from the arbitrary exercise of executive power.[36]

The Supreme Court added:

> That principle [of parliamentary accountability] is not placed in jeopardy if Parliament stands prorogued for the short period which is customary, and as we have explained, Parliament does not in any event expect to be in permanent session. But the longer that Parliament stands prorogued, the greater the risk that responsible government may be replaced by unaccountable government: the antithesis of the democratic model. …[37]

With all this in mind, the Supreme Court went back to constitutional basics:

> Let us remind ourselves of the foundations of our constitution. We live in a representative democracy. The House of Commons exists because the people have elected its members. The Government is not directly elected by the people (unlike the position in some other democracies). The Government exists because it has the confidence of the House of Commons. It has no democratic legitimacy other than that. This means that it is accountable to the House of Commons – and indeed to the House of Lords – for its actions, remembering always that the actual task of governing is for the executive and not for Parliament or the courts. The first question, therefore, is whether the Prime Minister's action had the effect

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[35] *R (Miller) v The Prime Minister* [2019] UKSC 41, website of the Supreme Court of the United Kingdom, www.supremecourt.uk/cases/uksc-2019-0192.html and website of the British and Irish Legal Information Institute, www.bailii.org/uk/cases/UKSC/2019/41.html at paragraph 1.
[36] Ibid, paragraph 46.
[37] Ibid, paragraph 48.

> of frustrating or preventing the constitutional role of Parliament in holding the Government to account.
>
> The answer is that of course it did. This was not a normal prorogation in the run-up to a Queen's Speech. It prevented Parliament from carrying out its constitutional role for five out of a possible eight weeks between the end of the summer recess and exit day on the 31st October. Parliament might have decided to go into recess for the party conferences during some of that period but, given the extraordinary situation in which the United Kingdom finds itself, its members might have thought that parliamentary scrutiny of government activity in the run-up to exit day was more important and declined to do so, or at least they might have curtailed the normal conference season recess because of that. Even if they had agreed to go into recess for the usual three-week period, they would still have been able to perform their function of holding the government to account. Prorogation means that they cannot do that.
>
> Such an interruption in the process of responsible government might not matter in some circumstances. But the circumstances here were, as already explained, quite exceptional. A fundamental change was due to take place in the Constitution of the United Kingdom on 31st October 2019 [the then 'Exit Day']. Whether or not this is a good thing is not for this or any other court to judge. The people have decided that. But that Parliament, and in particular the House of Commons as the democratically elected representatives of the people, has a right to have a voice in how that change comes about is indisputable. And the House of Commons has already demonstrated, by its motions against leaving without an agreement and by the European Union (Withdrawal) (No 2) Act 2019, that it does not support the Prime Minister on the critical issue for his Government at this time and that it is especially important that he be ready to face the House of Commons.[38]

For these and for other reasons, the Supreme Court held that the aforementioned advice of the Prime Minister was unlawful. That being said, the 'second *Miller* case' has a much wider significance.

Most obviously, the case reminded us that Parliamentary transparency, accountability and democracy are inextricably bound up with each other. In other words, parliamentary transparency goes hand in hand with *both* parliamentary accountability and parliamentary democracy. Indeed, transparency and accountability are among the hallmarks of democracy.

More broadly, the 'second *Miller* case' reminded us that the rule of law is a cornerstone of any democratic society. In such a society, nobody, not even the Prime Minister, is above the law. In the words of the Venice Commission of the Council of Europe in *The Rule of Law Checklist* published in 2016:

[38] Ibid, paragraphs 55, 56 and 57.

> The Rule of Law must be applied at all levels of public power. *Mutatis mutandis*, the principles of the Rule of Law also apply in private law relations. The following definition by Tom Bingham covers most appropriately the essential elements of the Rule of Law: "All persons and authorities within the State, whether public or private, should be bound by and entitled to the benefit of laws publicly made, taking effect (generally) in the future and publicly administered in the courts".[39]

That being said, as the late Lord Bingham of Cornhill made clear in both his celebrated article and book on the rule of law, any 'thick' interpretation of that principle entails much more than the definition set out above. [40]

According to Lord Bingham, the rule of law rests on eight 'sub-rules' or 'principles'. In 2013, these were helpfully summarised as follows in a lecture delivered by Dominic Grieve QC MP, the then Attorney General of England and Wales:

1. The law must be accessible, intelligible, clear and predictable.

2. Questions of legal right and liability should ordinarily be resolved by the exercise of the law and not the exercise of discretion.

3. Laws should apply equally to all.

4. Ministers and public officials must exercise the powers conferred in good faith, fairly, for the purposes for which they were conferred – reasonably and without exceeding the limits of such powers.

5. The law must afford adequate protection of fundamental Human Rights.

6. The state must provide a way of resolving disputes which the parties cannot themselves resolve.

7. The adjudicative procedures provided by the state should be fair.

8. The rule of law requires compliance by the state with its obligations in international as well as national laws.[41]

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[39] *European Commission for Democracy through Law (Venice Commission) The Rule of Law Checklist Adopted by the Venice Commission at its 106th Plenary Session (Venice, 11-12 March 2016)* (Venice: Venice Commission of the Council of Europe, 2016), 10, website of the Venice Commission, www.venice.coe.int/images/SITE%20IMAGES/Publications/Rule_of_Law_Check_List.pdf

[40] See *inter alia* Lord Bingham of Cornhill, 'The Rule of Law', *Cambridge Law Journal*, 66(1), March 2007, 67-85 and Tom Bingham, *The Rule of Law* (London: Penguin, 2010).

[41] Dominic Grieve QC MP, 'The rule of law and the prosecutor', transcript of a speech delivered on 9 September 2013, website of the United Kingdom Government, www.gov.uk/government/speeches/the-rule-of-law-and-the-prosecutor

**Lesson (4): Every Parliamentarian must ensure that their private life – and, if they have one, their business or professional life – does not have and does not appear to have any adverse consequences upon either the public office that they hold or the public duties that they perform. Thus, to quote from Rule 11 on page 4 of the Code of Conduct applicable to Members of the House of Commons: 'Members shall base their conduct on a consideration of the public interest, avoid conflict between personal interest and the public interest and resolve any conflict between the two, at once, and in favour of the public interest.'[42]**

This lesson derives from various scandals involving exposures made by the media. Perhaps the prime example is the 'Profumo scandal' of 1963. Commenting on this, Mr Justice Eady said the following in the High Court of England and Wales in the case of *CC v AB* [2006] EWHC 3083 (QB):

> I have little doubt that sexual relationships involving those who are in the public eye, whether they merit the appellation "public figures" or not, are generally likely to be interesting to the public, but they will not necessarily be of genuine public interest. Sometimes, as for example long ago in the case of the "Profumo scandal" [of 1963], the information will fulfil both criteria. The fact that the then Minister for War had a mistress in common with a Russian diplomat or defence attaché, at the height of the cold war, would plainly be of legitimate public interest.[43]

In the light of the 'Profumo scandal' and the related constitutional reality that in the United Kingdom Ministers of the Crown serve in the executive as well as in the legislative branch of government, while being accountable to the latter, it comes as little surprise that in the United Kingdom the *Ministerial Code* provides the following at paragraph 1.3.f: 'Ministers must ensure that no conflict arises, or appears to arise, between their public duties and their private interests'. This is mirrored by the provisions of Part 7 of the *Ministerial Code*, which begins with the following three provisions, the first of which is in bold in the original:

> **General principle**
>
> **7.1 Ministers must ensure that no conflict arises, or could reasonably be perceived to arise, between their public duties and their private interests, financial or otherwise.**
>
> **Responsibility for avoiding a conflict**
>
> 7.2 It is the personal responsibility of each Minister to decide whether and what action is needed to avoid a conflict or the perception of a conflict, taking account

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[42] *Code of Conduct Approved by the House of Commons on 12 March 2012, 17 March 2015 and 19 July 2018 together with The Guide to the Rules relating to the Conduct of Members Approved by the House of Commons on 17 March 2015 and 7 January 2019: HC 1882* (London: House of Commons, 2019), 4, https://publications.parliament.uk/pa/cm201719/cmcode/1882/1882.pdf, https://publications.parliament.uk/pa/cm201719/cmcode/1882/1882.pdf

[43] *CC v AB* [2006] EWHC 3083 (QB) at paragraph 37, website of the British and Irish Legal Information Institute, www.bailii.org/ew/cases/EWHC/QB/2006/3083.html

> of advice received from their Permanent Secretary and the independent adviser on Ministers' interests
>
> **Procedure**
>
> 7.3 On appointment to each new office, Ministers must provide their Permanent Secretary with a full list in writing of all interests which might be thought to give rise to a conflict. The list should also cover interests of the Minister's spouse or partner and close family which might be thought to give rise to a conflict.[44]

Other provisions in the *Ministerial Code* deal with conflicts of interest, or the appearance of such conflicts, between the duties arising from the public office held by a Minister and the duties arising from their party political affiliation. A prime example is found in paragraph 1.3.i of the Ministerial Code: 'Ministers must not use government resources for Party political purposes'.[45]

As indicated above, the Code of Conduct applicable to Members of the House of Commons[46] is in a similar vein. So, too, is the Code of Conduct applicable to Members of the House of Lords.[47]

**Lesson (5): The truth is the lifeblood of Parliamentary transparency, accountability and democracy. The truth is also the lifeblood of justice.**

This lesson is illustrated by the aforementioned 'Profumo scandal' of 1963.

On the one hand, the then Secretary of State for War, John Profumo, who was married, had enjoyed an extra-marital affair with the unmarried Christine Keeler who appeared to have had an affair with the Soviet naval attaché – and suspected Soviet spy – Yevgeny Ivanov.

On the other hand, when 'rumours' started to spread, Profumo did not hold his hands up and tell the truth. Instead, in a 'personal statement' delivered in the House of Commons on 22 March 1963 and recorded by Hansard, Profumo said the following: 'There was no impropriety whatsoever in my acquaintanceship with Miss Keeler.' To make matters worse, Profumo not only made that claim which was untrue. He added: 'I shall not hesitate to issue writs for libel and slander if scandalous allegations are made or repeated outside the House.'[48]

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[44] *Ministerial Code* (London: Cabinet Office, August 2019), website of the United Kingdom Government, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/826920/August-2019-MINISTERIAL-CODE-FINAL-FORMATTED-2.pdf

[45] Ibid.

[46] See www.parliament.uk/site-information/glossary/code-of-conduct-for-mps/ and www.parliament.uk/business/publications/commons/hoc-code-of-conduct/

[47] See www.parliament.uk/globalassets/documents/lords-commissioner-for-standards/hl-code-of-conduct.pdf and www.parliament.uk/mps-lords-and-offices/standards-and-financial-interests/house-of-lords-commissioner-for-standards-/code-of-conduct-for-the-house-of-lords/

[48] Hansard, House of Commons Debates, 22 March 1963, Columns 809-810, website of the United Kingdom Parliament, https://api.parliament.uk/historic-hansard/commons/1963/mar/22/personal-statement

In due course, Profumo was rumbled. Accordingly, by 6 June 1963, he was forced to resign in disgrace – as Secretary of State for War and as the Conservative Member of Parliament for Stratford-upon-Avon.[49] Furthermore, Profumo was unable to activate his preposterous threat 'to issue writs for libel and slander'.

Other cases have illustrated the clear nexus between accountability and the proper administration justice. A classic example is provided by the case of *R v Festus Onasanya and Fiona Onasanya*. Fiona Onasanya ('Onasanya') was both a solicitor by profession and a Labour Member of Parliament. Yet, at the Central Criminal Court in London, she was convicted by a jury of perverting the course of public justice by providing false information to the authorities about the identity of a car that had been driven beyond the speed limit. Addressing Onasanya in his Sentencing Remarks, dated 29 January 2019, Mr Justice Stuart-Smith explained:

> The fact remains that, both as a solicitor and as a Member of Parliament you [i.e. Onasanya] are fully aware of the importance of upholding the proper administration of justice. You have not simply let yourself down; you have let down those who look to you for inspiration, your party, your profession and Parliament.
>
> The impact of your conviction has been disastrous for you. You have been expelled from the Labour Party and it seems inevitable that you will be struck off as a solicitor. … I make plain that I will not treat you more severely because of your position as an MP and former solicitor. That said, as Ms Agnew accepted on your behalf, there cannot be one law for those in positions of power, privilege and responsibility and another for those who are not. … You had a choice on 2 November 2017 whether to tell the truth or to attempt to pervert the course of public justice. You made the wrong choice, with disastrous consequences.[50]

Against this backdrop, Onasanya lost her seat in the House of Commons. That arose under the Recall procedure established by the Recall of MPs Act 2015,[51] which is itself a mechanism of Parliamentary accountability.[52]

In the subsequent case of *Solicitors Regulation Authority v Onasanya*, the Solicitors Disciplinary Tribunal found that Onasanya was guilty of professional misconduct. More specifically, the Solicitors Disciplinary Tribunal found that, by virtue of her conduct resulting in her conviction, Onasanya:

- had failed to 'Uphold the proper administration of justice in breach of Principle 1 of the SRA [Solicitors Regulation Authority] Principles 2011 ("the Principles")';

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[49] See *inter alia* https://api.parliament.uk/historic-hansard/people/mr-john-profumo/index.html and https://api.parliament.uk/historic-hansard/commons/1963/jun/17/security-mr-profumos-resignation
[50] See www.judiciary.uk/wp-content/uploads/2019/01/sentencing-remarks-onasanyadocx.pdf
[51] See www.legislation.gov.uk/ukpga/2015/25/contents/enacted
[52] See www.electoralcommission.org.uk/sites/default/files/2021-05/Recall%20Act%20-%20initial%20factsheet%20-%20amended%20April%202021.pdf and https://commonslibrary.parliament.uk/research-briefings/sn05089/

- had failed to 'Act with integrity in breach of Principle 2 of the Principles'; and

- had failed to 'Behave in a way that maintains the trust the public places in her and the provision of legal services in breach of Principle 6 of the Principles'.

In consequence, the Solicitors Disciplinary Tribunal ordered that the name of Onasanya should be struck off the roll of solicitors. In reaching this decision, the Solicitors Disciplinary Tribunal cited the leading Court of Appeal case on the meaning and implications of integrity – *Wingate v Solicitors Regulation Authority* [2018] EWCA Civ 366.[53] To quote from the Judgment of the Solicitors Disciplinary Tribunal:

> Ms Bruce [counsel for the Solicitors Regulation Authority] had correctly submitted that the test for integrity was set out in *Wingate*. At [100] Jackson LJ had stated [in *Wingate*]:
>
> > "Integrity connotes adherence to the ethical standards of one's own profession. That involves more than mere honesty. To take one example, a solicitor conducting negotiations or a barrister making submissions to a judge or arbitrator will take particular care not to mislead. Such a professional person is expected to be even more scrupulous about accuracy than a member of the general public in daily discourse".[54]

Bearing in mind the comparatively large number of parliamentarians around the world who are lawyers, by profession, the multi-dimensional fate of Onasanya is salutary, to say the least.

**Lesson (6). Every Parliamentarian and other person holding public office must abide by *The Seven Principles of Public Life*.**

*The Seven Principles of Public Life* (*The Seven Principles*), otherwise known as *The Nolan Principles*, are Selflessness, Integrity, Objectivity, Accountability, Openness, Honesty and Leadership. Ethics are inherent in each one of them.

*The Seven Principles* – and the explanations underpinning them – were composed by Lord Nolan, a Law Lord, during his tenure as Chair of the Committee of Standards in Public Life. They were published in 1995.[55] As such, *The Seven Principles* were

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[53] See www.bailii.org/ew/cases/EWCA/Civ/2018/366.html

[54] See www.solicitorstribunal.org.uk/sites/default/files-sdt/11938.2019.Onasanya_0.pdf and www.solicitorstribunal.org.uk/judgements-list?field_case_no_value=&field_case_no_year_value=&field_sra_id_value=&field_hearing_outcome_value=All&field_hearing_type_value=All&field_hearing_date_value%5Bvalue%5D%5Bdate%5D=&field_resp_parties_first_name_value=&field_resp_parties_last_name_value=onasanya

[55] *Standards in Public Life: First Report of the Committee on Standards in Public Life: Chairman: Lord Nolan: Volume 1: Report: Presented to Parliament by the Prime Minister by Command of Her Majesty* (London: Her Majesty's Stationery Office, May 1995), https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/336919/1stInquiryReport.pdf

published during the 1990s which were blighted by one British political scandal after another. These included the 'cash-for-questions' affair.

As Mr Justice Warby recalled in the case of *Yeo v Times Newspapers Ltd* [2015] EWHC 3375 (QB):

> On 25 October 1994 the Prime Minister, John Major, announced the setting up of the Committee on Standards in Public Life, chaired by Lord Nolan ("the Nolan Committee"). Its remit was "to examine current concerns about standards of conduct of all holders of public office, including arrangements relating to financial and commercial activities, and make recommendations to any changes in present arrangements which might be required to ensure the highest standards of propriety in public life." The announcement made clear that for these purposes "public life should include Ministers, civil servants and advisers, Members of Parliament …" As is common knowledge, the establishment of the Nolan Committee followed the "cash for questions" scandal, in which certain MPs were accused of accepting bribes in exchange for asking Parliamentary questions and undertaking other tasks on behalf of Mohamed Al-Fayed.[56]

Such is their importance that *The Seven Principles* are built into *The Ministerial Code* and *Code of Conduct* binding on MPs in the British House of Commons.[57] To quote *The Seven Principles* and the accompanying explanations in full:

> The *Seven Principles of Public Life* (also known as the Nolan Principles) apply to anyone who works as a public office-holder. This includes all those who are elected or appointed to public office, nationally and locally, and all people appointed to work in the Civil Service, local government, the police, courts and probation services, non-departmental public bodies (NDPBs), and in the health, education, social and care services. All public office-holders are both servants of the public and stewards of public resources. The principles also apply to all those in other sectors delivering public services.
>
> **1.1 Selflessness** Holders of public office should act solely in terms of the public interest.
>
> **1.2 Integrity** Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.
>
> **1.3 Objectivity** Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.

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[56] See www.bailii.org/ew/cases/EWHC/QB/2015/3375.html at paragraph 35.
[57] See www.gov.uk/government/organisations/the-committee-on-standards-in-public-life

**1.4 Accountability** Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.

**1.5 Openness** Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.

**1.6 Honesty** Holders of public office should be truthful.

**1.7 Leadership** Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.[58]

## A closing thought

Parliamentarians and other holders of public office around the world would do well to reflect upon the six lessons of British politico-legal history identified in this paper. Such holders of public office would also do well to act in line with the *Seven Principles*. In a sense, they are not British *Principles*. They are universal principles with an ancient heritage. After all, each one seeks to promote an intrinsically Aristotelian approach to ethical, virtuous and otherwise good conduct in the public interest. If any parliamentarian fails to behave accordingly, the principle of accountability must kick in, with all that entails.

[58] See www.gov.uk/government/publications/the-7-principles-of-public-life