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To the Public Administration and Constitutional Affairs Committee,

This letter is Protect's submission of evidence for the Committee's inquiry on the 'Propriety of governance in light of Greensill'. It answers the following question posed by the call for evidence:

How are potential conflicts of interest of current and former Ministers, Special Advisors and Officials identified and managed and how effective is this? Are there gaps in the current system?

I write to you as the Parliamentary Officer for Protect – the UK whistleblowing charity. Since 1993, Protect has operated its free, legal advice line offering specialist whistleblowing advice to over 3,000 workers a year. We provide consultancy and training services for employers to improve their whistleblowing arrangements which benefits the working lives of 1.3 million people. These experiences inform our policy work in campaigning for better whistleblowing laws.

Whistleblowing occurs where a worker raises a concern about public interest wrongdoing in the workplace. In our view, conflicts of interest in government do qualify as a whistleblowing concern because they risk an individual, such as a senior civil servant, being unable to comply with their obligations under the Civil Service Code. The Code, for example, requires civil servants to act with integrity and honesty which means, amongst other things, not to misuse their position for their private interests or those of others. The Ministerial Code imposes an explicit obligation on Ministers to avoid conflicts of interest. As such, a worker in the Civil Service who raises concerns of this nature would be a whistleblower acting in the public interest.

Whistleblowing can play a key role in identifying and managing the conflicts of interest that arise where a minister, special adviser, or other official works a second job alongside their responsibilities in government. Section 7 of the Ministerial Code address ministers' private interests. It prescribes a procedure for ministers to declare interests that may give rise to a conflict of interest. However, no similar provision exists within the Civil Service Code in express terms. Without a requirement for civil servants to self-declare conflicts of interest, there is a gap in such interests being reported and managed. Whistleblowing can fill that gap. This can be done by including a provision within the Civil Service Code that (a) requires civil servants to declare conflicts of interests and (b) clarifies that a civil servant should feel confident to raise a concern if they believe that a colleague has a conflict of interest. The latter requirement is important because it ensures that any undeclared conflicts of interest are raised and investigated.

Whistleblowing effectively acts as an enforcement mechanism or 'check' on conflicts of interest being reported. This is necessary because civil servants may be reluctant, or deliberately fail, to declare an interest. Whistleblowing intelligence can benefit the Civil Service because it becomes notified of potential conflicts early and can take steps to resolve the matter. It can use the whistleblowing intelligence to decide for itself whether there is a conflict and whether it should have been reported. This will help the Civil Service

to determine whether its workers properly understand when they should be reporting conflicts of interest.

A whistleblowing system is only effective if concerns are properly handled. The Ministerial Code can play a role in ensuring that whistleblowing in government is effective. Currently, the Ministerial Code is silent on whistleblowing: it imposes no obligations on a Minister with respect to concerns brought to his or her attention. This is a problem because civil servants are less free to raise concerns outside of the Civil Service (owing to the obligation not to disclose official information without authority) which means they do not have a clear escalation route if their concern is not considered or investigated. In order to avoid this happening (and thereby allowing small concerns to grow into bigger ones), we suggest the Ministerial Code should be amended so that it is a breach for a Minister to ignore a whistleblower, including where they raise concerns about conflicts of interest.

It is not immediately apparent from media sources whether whistleblowers came forward with concerns about conflicts of interest with respect to Greensill Capital. Our research shows that common barriers to speaking up include not knowing how to raise a concern, fearing reprisal or fearing a poor response from the employer. Assuming that civil servants did know about issues relating to Greensill Capital, this research may explain why a whistleblower would feel unable to speak up. Furthermore, our more recent research found that 57% of workers in Government/Military/Public Service knew that their employer had a whistleblowing policy, yet only 34% knew how to raise a concern at work. This may suggest that employers are not doing enough to clearly communicate how workers can speak up about wrongdoing. For these reasons, it is important that the Civil Service has clear, accessible and robust whistleblowing arrangements to enable the disclosure of whistleblowing concerns, together with an open speak up culture.

The Civil Service Commission can help to fulfil that function. The Commission is an escalation point for any civil servant who wishes to raise concerns about breaches or potential breaches of the Civil Service Code. The Commission, however, is not a prescribed person under the whistleblowing framework. This means that it is much harder for a worker to acquire whistleblower protection if they raise a concern to the Commission. This seems non-sensical given that the Commission is one of the few, if not only, regulators that a worker can approach regards breaches of the Civil Service Code. It remains an open question whether any civil servants raised concerns to the Commission regarding the issues before this Inquiry. The Committee could ask the Commission whether concerns were raised, although we accept that the bounds of confidentiality may not make that feasible. In any event, the Commission should be a prescribed person. This would bring two advantages, namely whistleblowers would more easily acquire protection under whistleblowing law (giving them confidence to speak up) and the Commission would be required to comply with the prescribed persons' reporting duty. This would give a clearer understanding of the disclosures it receives and could, therefore, lead to greater transparency about its ability to act on breaches of the Civil Service Code.

Finally, it is important to remember that civil servants may be blowing the whistle on colleagues with whom they work closely so they will need strong assurances of non-victimisation and confidentiality. The Civil Service Code uses light-touch language in this regard, stating "[your department or agency must] make sure that you are not penalised for raising it." The Civil Service Code should state that victimising a whistleblower will be considered a disciplinary matter and individual departments should consider conducting a risk assessment for a whistleblower in order to identify and reduce the potential of victimisation.

In conclusion, whistleblowing can help to identify and manage conflicts of interest because it provides vital intelligence from workers on such issues where the Civil Service may otherwise be unaware. Whilst the Civil Service Code includes a mention of speaking up, it should also include a requirement for civil servants to declare conflicts of interests (like the Ministerial Code) and civil servants should be encouraged to raise concerns about conflicts of interest. The Ministerial Code should be amended in order to compel a Minister to engage with whistleblowing concerns raised to them so that they are investigated early and resolved. We hope that this submission is useful to the Committee on this important inquiry.

Best wishes,

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