



# HOUSE OF LORDS

Commissioner for Standards

## **REPORT TO THE SUB-COMMITTEE ON LORDS' CONDUCT ON INVESTIGATION OF COMPLAINT OF BREACHES OF THE CODE OF CONDUCT BY LORD HAMILTON OF EPSOM**

***Submitted on 1 March 2012***

### **Introduction**

- 1) Mr Robert Wyllie (the complainant) submitted a complaint by means of a letter dated 13 February 2012 (Appendix A). I had the complaint acknowledged (Appendix B) and wrote to Lord Hamilton of Epsom on 16 February 2012 (Appendix C).

### **Summary**

- 2) Mr Wyllie's complaint was that, in asking a supplementary question during proceedings on a Private Notice Question on 13 February 2012, Lord Hamilton failed to make a declaration of a 'relevant interest' when he contributed to the discussion (Appendix D).
- 3) Mr Wyllie highlighted the fact that Lord Hamilton was identified as a Director of MSB Ltd in the Register of Lords' Interests. MSB (Managing the Service Business) Ltd is described as a 'management consultancy.' Mr Wyllie also claimed that the MSB Ltd website made it clear 'that its clients have included the NHS and certain companies whose business interests extend to the provision of healthcare.'
- 4) I requested that Lord Hamilton respond in writing with a full and accurate account of the matters in question. I drew his attention to the following sections of the 2010 Code of Conduct, which the complaint suggested may have been breached:
  8. *Members of the House:*
    - (a) *must comply with the Code of Conduct;*
    - (b) *should always act on their personal honour;*
  10. *In order to assist in openness and accountability Members shall:*
    - (b) *declare when speaking in the House, or communicating with ministers or public servants, any interest which is a relevant interest in the context of the debate or the matter under discussion.*

11. *The test of relevant interest is whether the interest might be thought by a reasonable member of the public to influence the way in which a Member of the House of Lords discharges his or her parliamentary duties: in the case of registration, the Member's parliamentary duties in general; in the case of declaration, his or her duties in respect of the particular matter under discussion.*

12. *The test of relevant interest is therefore not whether a Member's actions in Parliament will be influenced by the interest, but whether a reasonable member of the public might think that this might be the case. Relevant interests include both financial and non-financial interests.*

### **The facts**

- 5) The facts in this case are not in dispute. It is a matter of public record that Lord Hamilton is a Director of Managing the Service Business Ltd. The nature of that business being 'management consultancy activities other than financial management'. The MSB website highlights their work with private and public sector clients in amongst other areas, health care. Equally, the context and nature of Lord Hamilton's contribution is clearly set out in Hansard.

### **Lord Hamilton's response**

- 6) Lord Hamilton replied by letter on 21 February 2012 (Appendix E). He openly acknowledged that Mr Wyllie was correct in claiming that he (Lord Hamilton) should have declared his interest. In mitigation, Lord Hamilton stated that he felt Lady Royall's PNQ was concerned with McKinsey and the NHS. MSB's work with the NHS was, he believed, historic. However, Lord Hamilton accepted he was wrong and apologised for the oversight in not declaring his directorship of MSB.

### **Analysis and findings**

- 7) Mr Wyllie rightly identified a failure by Lord Hamilton to declare a relevant interest when speaking in the House. However, on being advised of the complaint, Lord Hamilton immediately acknowledged his fault and apologised for the oversight.
- 8) I have carefully considered the complaint and Lord Hamilton's response. In my judgement this complaint is exactly the type of situation which was envisaged when paragraph 123 of the 'Guide to the Code of Conduct' was approved. Namely, that in cases where 'the complaint, though justified, is minor and is acknowledged by the Member concerned', remedial action may be appropriate. On that basis I invited

Lord Hamilton to submit a formal letter of apology, setting the record straight (Appendix F). In accordance with an earlier decision of the Sub-Committee on Lords' Conduct, that letter is addressed to the Chairman of the Sub-Committee (Appendix G).

- 9) I find the complaint to be justified but am satisfied that the remedial action agreed, namely a formal letter of apology to the Chairman of the Sub-Committee on Lords' Conduct, is an appropriate outcome in all the circumstances.

Paul Kernaghan CBE QPM

Commissioner for Standards

## APPENDICES

### Appendix A – Letter from R Wyllie to Commissioner, 13 February 2012

I wish to bring to your attention a possible failure by Lord Hamilton of Epsom to properly declare a financial interest.

On 13th February 2012, a private notice question was asked by Baroness Royall of Blaisdon about the use of management consultants by Her Majesty's Government. The text of the question was as follows:

To ask Her Majesty's Government what the role of management consultants is in developing health reforms, including the Health and Social Care Bill, and whether their involvement in the design and implementation of reforms raises any conflicts of interest.

Lord Hamilton of Epsom participated in this question, and his Lordship said:

**Lord Hamilton of Epsom:** My Lords, surely one of the problems of the National Health Service is the wall of money that was thrown at a totally unreformed NHS by the last Government? Do we not need management consultants now to show us the way forward on the savings that need to be wrung out of the NHS so that it can survive into the future?

**Earl Howe:** Yes, we do, my Lords. Part of the benefit of the modernisation programme will be to streamline the architecture of the NHS so that year by year we will be saving £1.5 billion in administration costs and £3.2 billion net during this Parliament. We need good advice in order to achieve that.

The parliamentary website says that Lord Hamilton of Epsom has registered an interest as a director of MSB Ltd. This is described on the register as a management consultancy.

Information maintained by the Registrar of Companies identifies Lord Hamilton of Epsom as a director of Managing the Service Business Ltd. I enclose a copy of the current appointments report which provides information about all present directors.

Information on the website of Managing the Service Business outlines its work. It says [at [www.msbconsultancy.com/our-clients/](http://www.msbconsultancy.com/our-clients/)] that its clients have included the NHS and certain companies whose business interests extend to the provision of private healthcare.

In the light of this, I consider that there is sufficient evidence of a *prima facie* case that paragraph 10(b) of the *Code of Conduct for Members of the House of Lords* has been breached. The relevant parts of paragraph 10(b) of the *Code of Conduct for Members of the House of Lords* states that Members shall declare when speaking in the House, any interest which is a relevant interest in the context of the debate or the matter under discussion.

The relevant parts of paragraph 11 of the *Code of Conduct for Members of the House of Lords* explain that the test of what is a relevant interest is whether the interest might be thought by a reasonable member of the public to influence the way in which a Member discharges his or her parliamentary duties in respect of the particular matter under discussion.

The relevant parts of paragraph 95 of the *Guide to the Code of Conduct* explain that a declaration of interest must be given in the case of questions for oral answer.

It is on this basis that I submit this complaint for your consideration. In accordance with paragraph 107 of the *Guide to the Code of Conduct*, I undertake to keep the fact of this complaint and all information associated with it confidential.

Robert Wyllie

### **Current Appointments Report for:**

### **MANAGING THE SERVICE BUSINESS LIMITED**

**02203362**

**Created: 13/02/2012 18:48:07**

Companies House is a registry of corporate information. We carry out basic checks to make sure that documents have been fully completed and signed, but we do not have the statutory power or capability to verify the accuracy of the information that corporate entities send to us. We accept all information that such entities deliver to us in good faith and place it on the public record. The fact that the information has been placed on the public record should not be taken to indicate that Companies House has verified or validated it in any way.

### **Company Register Information**

Company Number:	02203362	Date of Incorporation:	08/12/1987
Company Name:	MANAGING THE SERVICE BUSINESS LTD		
Registered Office:	WINSLOW HOUSE ASHURST PARK CHURCH LANE SUNNINGHILL ASCOT BERKSHIRE SL5 7ED		
Company Type:	Private Limited Company		
Country of Origin:	United Kingdom		
Status:	Active		

Nature of Business (SIC): 70229 – Management consultancy activities other than financial management  
Number of Charges: 3 (1 outstanding / 0 part satisfied / 2 satisfied)

### Previous Names

No previous name information has been recorded over the last 20 years.

### Key Filing Dates

Accounting Reference Date: 31/03  
Last Accounts Made Up To: 31/03/2011 (TOTAL EXEMPTION FULL)  
Next Accounts Due: 31/12/2012  
Last Return Made Up To: 31/12/2011  
Next Return Due: 10/01/2013  
Last members list: 13/12/2011  
Last Bulk Shareholders List: Not available

### Current Appointments

Number of current appointments: 5

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SECRETARY:	HAMILL, ROBERT BRIAN MR.	
Appointed:	pre 13/12/1991	Date of Birth: 28/10/1954
Nationality:	BRITISH	
No. of Appointments:	10	
Address:	WINSLOW HOUSE ASHURST PARK CHURCH LANE SUNNINGHILL ASCOT BERKSHIRE SL5 7ED	
Country/State of Residence:	ENGLAND	

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DIRECTOR:	HAMILL, ROBERT BRIAN MR.	
Appointed:	pre 13/12/1991	Date of Birth: 28/10/1954
Nationality:	BRITISH	
No. of Appointments:	10	
Address:	WINSLOW HOUSE ASHURST PARK CHURCH LANE SUNNINGHILL ASCOT	

BERKSHIRE  
SL5 7ED  
Country/State of Residence: ENGLAND

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DIRECTOR: HAMILTON OF EPSOM,  
ARCHIBALD  
THE RT HON LORD  
Appointed: 11/06/2002 Date of Birth: 30/12/1941

Nationality: BRITISH  
No. of Appointments: 12  
Address: WINSLOW HOUSE ASHURST  
PARK  
CHURCH LANE SUNNINGHILL  
ASCOT  
BERKSHIRE  
SL5 7ED

Country/State of Residence: UNITED KINGDOM

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DIRECTOR: PORTER, DONALD ANDREW  
MR  
Appointed: pre 13/12/1991 Date of Birth: 15/10/1952

Nationality: BRITISH  
No. of Appointments: 4  
Address: WINSLOW HOUSE ASHURST  
PARK  
CHURCH LANE SUNNINGHILL  
ASCOT  
BERKSHIRE  
SL5 7ED

Country/State of Residence: UNITED KINGDOM

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DIRECTOR: RETTIE, BRYN DAVID  
Appointed: 01/07/2011 Date of Birth: 23/03/1985

Nationality: BRITISH  
No. of Appointments: 1  
Address: WINSLOW HOUSE ASHURST  
PARK  
CHURCH LANE SUNNINGHILL  
ASCOT  
BERKSHIRE  
SL5 7ED

Country/State of Residence: UNITED KINGDOM

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This Report excludes  
resignations

### Recent Filing History

Documents filed since 27/07/2010

DATE	FORM	DESCRIPTION
04/01/2012	AR01	13/12/11 FULL LIST
04/01/2012	LATEST SOC	04/01/12 STATEMENT OF CAPITAL; GBP 150000
04/01/2012	CH01	DIRECTOR'S CHANGE OF PARTICULARS / THE RT HON LORD ARCHIBALD HAMILTON OF EPSOM / 01/12/2011
03/01/2012	CH01	DIRECTOR'S CHANGE OF PARTICULARS / MR DONALD ANDREW PORTER / 01/12/2011
03/01/2012	CH03	SECRETARY'S CHANGE OF PARTICULARS / MR. ROBERT BRIAN HAMILL / 01/12/2011
03/01/2012	CH01	DIRECTOR'S CHANGE OF PARTICULARS / MR. ROBERT BRIAN HAMILL / 01/12/2011
03/01/2012	CH01	DIRECTOR'S CHANGE OF PARTICULARS / BRYN DAVID RETTIE/ 01/12/2011
18/08/2011	AA	31/03/11 TOTAL EXEMPTION FULL
10/08/2011	AP01	DIRECTOR APPOINTED BRYN DAVID RETTIE
07/03/2011	AR01	13/12/10 FULL LIST
07/03/2011	TM01	APPOINTMENT TERMINATED, DIRECTOR DAVID COLTMAN
27/07/2010	AA	31/03/10 TOTAL EXEMPTION FULL

This Report excludes 88(2) Share Allotment documents

### Appendix B – Email from Emily Baldock, Clerk to the Commissioner, to R Wyllie, 15 February 2012

I am writing to confirm receipt of your complaint against Lord Hamilton of Epsom. The complaint has been passed to the Commissioner who will respond shortly.

### Appendix C – Letter from Commissioner to Lord Hamilton of Epsom, 16 February 2012

I am writing to you in my capacity as the Commissioner for Standards. I have to advise you that I have received a complaint against you. Namely, that you have breached the Code of

Conduct by reason of your failure to declare a relevant interest when speaking in the House.

I attach for your information a copy of the letter I have received from the complainant (Mr Robert Wyllie).

It appears on the basis of the complaint that you may have breached the following provisions of the 2010 Code of Conduct:

8. *Members of the House:*
  - (a) *must comply with the Code of Conduct;*
  - (b) *should always act on their personal honour;*
10. *In order to assist in openness and accountability Members shall:*
  - (b) *declare when speaking in the House, or communicating with ministers or public servants, any interest which is a relevant interest in the context of the debate or the matter under discussion.*
11. *The test of relevant interest is whether the interest might be thought by a reasonable member of the public to influence the way in which a Member of the House of Lords discharges his or her parliamentary duties: in the case of registration, the Member's parliamentary duties in general; in the case of declaration, his or her duties in respect of the particular matter under discussion.*
12. *The test of relevant interest is therefore not whether a Member's actions in Parliament will be influenced by the interest, but whether a reasonable member of the public might think that this might be the case. Relevant interests include both financial and non-financial interests.*

I would also draw your attention to the seven general principles of conduct identified by the Committee on Standards in Public Life and incorporated in to the Code of Conduct.

I have conducted a preliminary assessment of the complaint and believe it is appropriate and in the interests of all concerned that I investigate it. Therefore, I now invite you to respond in writing with a full and accurate account of the matters in question. A response by 9 March 2012 would greatly assist me in investigating this matter in a timely fashion.

I attach for ease of reference a copy of the 'Code of Conduct for Members of the House of Lords and Guide to the Code of Conduct.'

## **Appendix D – Extract from Hansard, 13 February 2012**

### **NHS: Management Consultants**

#### ***Private Notice Question***

**3.07 pm**

*Asked By* **Baroness Royall of Blaisdon**

To ask Her Majesty's Government what the role of management consultants is in developing health reforms, including the Health and Social Care Bill, and whether their involvement in the design and implementation of reforms raises any conflicts of interest.

**Baroness Royall of Blaisdon:** My Lords, I beg leave to ask a Question of which I have given private notice.

**The Parliamentary Under-Secretary of State, Department of Health (Earl Howe):** My Lords, the Health and Social Care Bill and all related programmes require input from a wide range of civil servants, lawyers and other experts. Management consultants have been assisting Monitor, the developing Commissioning Board and others on specific issues. Consultancy spend has reduced very substantially since before the election. We have been transparent around spend of over £25,000 and on hospitality received by Ministers and civil servants.

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We have also answered all Parliamentary Questions and FOI requests on these issues, showing our commitment to openness.

**Baroness Royall of Blaisdon:** My Lords, I am grateful to the noble Earl for that Answer. Following recent press reports, I want to ask him about a specific management consultant, McKinsey. What payments has it received since May 2010 from the Department of Health and all other taxpayer-funded health bodies? If he is not able to tell the House that now, will he undertake to place this information in the Library of the House? Given that McKinsey seems to be setting the rules of the game in relation to the Government's health Bill and then benefiting from the outcome, can the Minister declare unequivocally that there is no conflict of interest between McKinsey's role in advising the Government on their health reforms and its commercial relationships with other clients?

**Earl Howe:** My Lords, I received notice of this Question just over an hour ago so I do not have precise figures about McKinsey. What I can say is that whereas the previous Administration in 2008-09 spent £100 million in the Department of Health on consultancy, my department has spent under £10 million on consultancy this year—very considerably less.

I read the article in the press this weekend which probably prompted the noble Baroness's Question. I think we need to be careful before casting doubt on the integrity of public servants-and, indeed, of McKinsey. The article referred to Monitor. Those at Monitor are bound by very strict rules and procedures to ensure transparency and openness in all their dealings and to avoid any possible conflicts of interest. They follow those rules and procedures to the letter.

**Lord Laming:** My Lords, does the noble Earl take from this important Question the significance of having in place a robust implementation strategy should the Bill become law, because translating the aspirations of the Bill into day-by-day practice will be a considerable challenge? Can he assure the House that that will be attended to in the proper way?

**Earl Howe:** Yes, I can. The reform of the NHS is a major project. Frankly, it would be irresponsible if the Government were not to commission expert professional advice in undertaking a project of this kind. Consultancy, if used judiciously, can be highly cost-effective. I assure the noble Lord that the implementation of the Health and Social Care Bill is occupying our minds night and day and, so far, I am pleased to report that it is going well.

**Baroness Jolly:** Can my noble friend tell the House how many reports were written for the Department of Health by McKinsey between 1997 and 2010?

**Earl Howe:** I do not have the figure that my noble friend asks for. I do have a figure for the spend by the previous Administration between 2006 and 2010 on consultancy from McKinsey. That amounted to nearly £30 million. In 2005-06, just one year, the previous Government spent more than £170 million on consultancy services with Accenture plc.

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**Lord Campbell-Savours:** Have civil servants been sharing information during the course of meetings with McKinsey people which McKinsey has been giving to its corporate clients? In other words, has McKinsey been discussing what has been going on in the formation of the Bill and the potential business benefits which arise from the Bill with its corporate clients? Have civil servants at any stage received any sponsorship for their travel or entertainment from McKinsey during the development of the Bill? Is it true that some meetings with civil servants and McKinsey have taken place at McKinsey headquarters in Jermyn Street in London? Does not that whole area of activity by McKinsey suggest that there is a conflict of interest which the public should know about at this stage in the development of the Bill?

**Earl Howe:** The noble Lord is, I think, insinuating some impropriety on the part of McKinsey and, perhaps, on the part of civil servants. I know of no such impropriety. Indeed, as I said earlier, there are clear and strict rules about transparency and openness. Declaring hospitality received is something that all civil servants and Ministers have to do. The results are published regularly. I will of course ask the question of McKinsey, which I have not yet had time to do. If I discover that there is any substance to the questions that the noble Lord

has asked, I shall of course write to him and place a copy in the Library, but I very much doubt that I shall find any substance to them.

**Lord Naseby:** My Lords, as the Question refers to consultants and not to any specific consultant, is it not a fact that consultants provide a good interim role of management, suggestion or policy for consideration for Her Majesty's Government rather than their taking on ever more central staff? Is that not particularly appropriate, bearing in mind that the Prime Minister held a consultation on the whole of the Bill, as a result of which, as I understand it from listening to the debates in this House, changes have been made to the Bill which will have to be implemented pretty quickly? One can understand why consultants are brought in at the centre of the National Health Service. Surely on the whole it can only be healthy to have consultants there to speed up the implementation of this very important Bill.

**Earl Howe:** My noble friend is quite right. As I said earlier, the use of consultants-provided that that use is judicious and they are engaged in open competition processes-can be very cost-effective. It is a very flexible way of obtaining high-class advice without incurring long-term costs.

**Lord Hughes of Woodside:** Has McKinsey been given access to the risk assessment studies, which have been subject to some controversy in this House?

**Earl Howe:** I am not aware that it has or that it would need to have been.

**Lord Hamilton of Epsom:** My Lords, surely one of the problems of the National Health Service is the wall of money that was thrown at a totally unreformed NHS by the last Government? Do we not need

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management consultants now to show us the way forward on the savings that need to be wrung out of the NHS so that it can survive into the future?

**Earl Howe:** Yes, we do, my Lords. Part of the benefit of the modernisation programme will be to streamline the architecture of the NHS so that year by year we will be saving £1.5 billion in administration costs and £3.2 billion net during this Parliament. We need good advice in order to achieve that.

**Lord Winston:** My Lords, the noble Earl said that this Government have spent less on consultants than the previous Government. Does he agree that, perhaps had they spent a bit more, we might have had a Bill that damaged the health service a great deal less?

**Earl Howe:** My Lords, I cannot help observing confused and contradictory messages coming from the Benches opposite. I would be happy to take that advice back to my department.

**Lord Kinnock:** My Lords-

**Lord Brooke of Sutton Mandeville:** My Lords, is my noble friend aware of the age-old aphorism among management consultants, of whom I was once one, although not at McKinsey, that 10 per cent of the work is diagnosis and 90 per cent is persuading the client to accept the advice?

**Earl Howe:** We have been on the look-out for that and I hope that we have not fallen victim to it.

### **Appendix E – Letter from Lord Hamilton of Epsom to Commissioner, 21 February 2012**

Thank you so much for your letter of 16 February with the copy of the correspondence from Mr Robert Wyllie of Lincoln College, Oxford.

Mr Wyllie is right that I should have declared my interest as a Director of MSB when I intervened in Lady Royals PNQ.

In mitigation, I would say that Lady Royals PNQ was concerned with McKinseys and the NHS.

MSB is nothing like McKinseys. The company turns over £1-2m p.a and normally provides training or customer satisfaction surveys for their customers.

Years ago MSB pitched for work with the NHS but I do not think that they have fulfilled a contract during the ten or so years that I have been a director.

My question was more about the “well of money” that the last government threw at the NHS rather than the use of management consultants, of which MSB could never be one.

I apologise for the oversight of not declaring my directorship of MSB and wait to hear from you.

### **Appendix F – Letter from Commissioner to Lord Hamilton of Epsom, 23 February 2012**

Thank you for your letter dated 21 February 2012 in response to my own letter of 16 February 2012.

I have carefully considered your response and note your admission that the complainant was correct, in asserting that you should have made a declaration in the House. In the circumstances, not least your prompt acceptance of error, I believe that this is a case where

remedial action is an option. Paragraph 123 of the 'Guide to the Code of Conduct' deals with remedial action.

I am satisfied that the complaint whilst justified, highlights an oversight which you readily acknowledged. Thus, I feel it is appropriate that I propose the following course of action. I suggest that you write a letter addressed to Baroness Manningham-Buller (Chairman, Sub-Committee on Lords' Conduct) but forwarded via my office. That letter should, in essence, repeat the core facts contained in your letter of 21 February 2012. Namely, that you accept the complaint was justified, you should have made a declaration and you apologise for not declaring your directorship. I am of the view that such a letter setting the record straight, is all that is required in this instance. I would then forward your letter, together with my accompanying report, to Baroness Manningham-Buller. A copy of your letter and my report would also be forwarded to the complainant in due course.

I look forward to hearing from you.

### **Appendix G – Letter from Lord Hamilton of Epsom to Baroness Manningham-Buller, Chairman of the Sub-Committee on Lords' Conduct, 26 February 2012**

Mr Paul Kernaghan wrote to me on the 16th February 2012 with correspondence from Mr Robert Wyllie of Lincoln College, Oxford.

Mr Wyllie is correct in alleging that I contributed to the PNQ on the NHS and management consultants without admitting that I was a director of MSB. I apologise for this oversight.

To put it into context, Lady Royal's PNQ was about the role of McKinseys in the NHS.

MSB is a small company with a turnover of £1-2m mainly in training and customer surveys.

I have checked with MSB as the last time they indirectly worked for the NHS was as a sub-contractor to CARE-UK doing patient research. The contract ended in the first quarter of 2009 after 2 years.

My intervention was more to do with the "wall of money" the last government threw at the NHS rather than management consultants.

However, I should have declared my interest and apologise for not doing so.