The Rt Hon David Cameron MP  
Prime Minister  
10 Downing Street  
London  
SW1A 2AA

7th January 2015

Dear Prime Minister,

SPECIAL ADVISERS’ CODE OF CONDUCT

As you know, the Public Administration Select Committee holds a watching brief over the application of the Code of Conduct for Special Advisers (‘the SpAds Code’), as well as the Civil Service Code and the Ministerial Code.

It has been reported that the Conservative Party removed two Special Advisers (SpAds), from the Conservative Party list of approved candidates earlier this month. The reason (which you confirmed) was that they had refused or failed to take part in the recent by-election campaign. The conduct of the Conservative Party is not our concern, but this does raise serious questions about the application of the SpAds’ Code, and also possibly about Ministers’ compliance with the Ministerial Code.

We have taken advice from Speakers’ Counsel on the meaning of the SpAds’ Code, and in particular, whether it permits Special Advisers to take part in door-to-door campaigning or telephone canvassing for a political party in their spare time. We are advised that a SpAd cannot lawfully be required to engage in such activity, and that there is relevant case law which could give rise to legal proceedings if SpAds were given a general direction to take part in such campaigning.

Moreover, since the Code must be laid before Parliament (see s.8(8) Constitutional Reform and Governance Act 2010), a direction given by a Minister to breach the terms of the SpAds Code, would strengthen the case for judicial review. This is reinforced in explicit terms by the SpAds’ model contract of employment, which states, “Special Advisers must not take part in national political activities, which are: […] Canvassing on behalf of a candidate for the institutions or an behalf of a political party.” (Para 19).

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This also means that any Minister who was party to such a direction, whether acting in a
different capacity or not, would be in breach of the Ministerial Code. A Minister under the
Ministerial Code, whatever their position in the Conservative Party, has an obligation to
respect the fact that a SpAd is also a civil servant.

PASC's objective is to ask you to explain what the SpAds Code means; and what therefore
are ministers' obligations in respect of their own behaviour. PASC would urge you to
address this matter swiftly: first, to clarify that SpAds should not carry out political
campaigning; and secondly, to make it clear to all ministers that in future they have a duty
to ensure compliance with the SpAds Code as well as the Civil Service Code, or find
themselves in breach of the Ministerial Code.

We hope to hear from you as quickly as possible. We are writing to you in confidence so
that we can consider your response before deciding whether there is any other action we
should take.

I am copying this letter to the Rt Hon Francis Maude MP, Sir Jeremy Heywood and
Ed Llewellyn.

Bernard Jenkin MP
Chair, PASC

cc: Francis Maude MP
    Sir Jeremy Heywood
    Ed Llewellyn