Rt Hon Jeremy Wright QC MP, Attorney General
Attorney General’s Office
20 Victoria Street
London
SW1H 0NF

29th January 2015

Dear Jeremy

Code of Conduct for Special Advisers

The Public Administration Select Committee (PASC) took evidence from Sir Jeremy Heywood on Tuesday 26 January 2015 concerning the Code of Conduct for Special Advisers, and how Sir Jeremy has advised it should be interpreted.

PASC has taken advice from Speaker’s Counsel Michael Carpenter on the question of whether the Code (and the model contract of employment for Special Advisers) permits Special Advisers to conduct telephone canvassing in a Parliamentary by-election. I enclose a copies of my letter to the Prime Minister, Sir Jeremy’s response, and Speaker’s Counsel’s advice.

Speaker’s Counsel advises PASC that Article 19 of the Code is not capable of allowing any interpretation of the Code which would permit Special Advisers to telephone canvass; that Sir Jeremy’s argument that the Code is merely intended to “ensure that … public funds … are not used for party political purposes” represents “too narrow an approach” which disregards the “general prohibition on canvassing in Article 19”; and that telephone canvassing by a Special Adviser represents “the crossing of the Rubicon”. He previously advised us that any general direction to Special Advisers to conduct canvassing would be “unlawful”, would be vulnerable to judicial review, and could give rise to a case for constructive dismissal. It is my understanding that such a direction has effectively been given, though it is our understanding that no guidance on this matter has been issued. Sir Jeremy insists that his interpretation reflect precedent.

While there will not be any further by-elections in this Parliament, this remains relevant in respect of Special Advisers’ conduct in the run up to the General Election. PASC is not concerned to criticise anyone in particular. We concerned to understand what attitudes and behaviour in the Whitehall culture have allowed this situation develop, and that is should be put right forthwith.
On cross examination, Sir Jeremy stuck to his interpretation. In the light of Speaker’s Counsel’s advice PASC cannot accept this. Either the Code, and the employment contracts, should be amended, or it should be made clear that Special Advisers must comply with the Code, and their contracts, as they are currently drafted. PASC pressed Sir Jeremy to consult the Government’s Law Officers, and he undertook to “take legal advice”.

I am therefore writing to you, so that you are formally aware of PASC’s concern. We will be referring to this matter in a forthcoming report, but before we decide what conclusions and recommendations to make, we would prefer to give the opportunity to the Government to have considered your advice and to respond to this letter accordingly. We should be grateful for any further comments from you or Sir Jeremy.

I am copying this letter to Sir Jeremy.

Bernard Jenkin MP
Chair, PASC

cc. Sir Jeremy Heywood
Re Rt Hon Francis Munden MP
Ed Llewellyn, No 10.

Ps. I had a call from Francis today, and told him about this; and Ed Llewellyn is also interested in this matter.