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# Citizens' Parliamentary Groups

*A proposal for democratic participation at constituency level*

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# Abstract

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This is a feasibility study for a scheme for citizen participation based on randomly-selected *Citizens' Parliamentary Groups* (CPGs). The essence of the scheme is that there would be a CPG in each parliamentary constituency. The main role of the CPGs would be to defend the fairness and integrity of the political system. They would approach this in three distinct ways: 1) by ensuring that the MP adheres to the agreed code of parliamentary conduct 2) by acting as a link between the MP and the wider constituency 3) by making sure that issues of grave public concern receive proper parliamentary attention.

The study looks at how a scheme of this nature could work in the contexts of the various parliamentary institutions of the UK and Australia. It looks at the balance between the three tasks, the powers needed for their successful operation and the possible constitutional status of the CPGs. Details are put forward concerning the mode of selection, remuneration, regulation, internal structuring and other aspects of the CPGs.

The central portion of the study then examines the feasibility of the scheme from three points of view: political logic, design logic and the logic of the proposed contexts of application. The section on the political logic looks at feasibility in terms of the possible desirability of the overall democratic trajectory of the scheme. The analysis of design logic takes place under a number of headings including space, time, number and points of contact. The contextual analysis takes a more detailed look at how the scheme might work in the parliamentary institutions of the UK and Australia.

After the conclusion there is a brief discussion on how further democratic developments might follow from the scheme and a series of appendices that include hypothetical examples of how the scheme might operate in practice.

# Introduction

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Although I have spent many years exploring the historical use of random recruitment and developing ideas about how to understand its political value<sup>1</sup>, this is my first attempt to design and assess the merits of a particular scheme based on a specific set of contexts for application. The working brief for this paper is to look at the extent to which this scheme might be feasible in the United Kingdom and in Australia.

It is clear from the history of sortition that the lottery selection of citizens for public office invariably operated in conjunction with voting and with forms of direct democracy such as the ancient Athenian assembly. This was my first point of departure: how to design a sortive scheme that retained and complemented the best features of elective representative democracy.

What also became clear during my study of sortition was that lottery selection was not only used as a means of bringing citizens into political office but was also valuable because it brought other qualities into the political arena. The key quality in political terms derives from the fact that a lottery decision excludes rational choice from the process of appointment: it therefore also excludes the exercise of personal power. For this reason it had been traditionally used as a defence of inclusive and balanced political process against concentrations of tyrannical or factional power.<sup>2</sup>

It therefore made sense to think of using sortition in a modern context in a way that could make a virtue of this capacity or potential. In other words it would be valuable to use sortition to select citizens to institutions where this “anti-power” quality might be useful: more specifically where a certain level of impartiality was required. This led me to look at the possibility of deploying randomly-selected citizens in the important and non-partisan task of defending the fairness and integrity of the political process.

If these two factors contributed to the overall design of the scheme, the impetus to move it forward was based on more pressing, more immediate political concerns. The first is the

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<sup>1</sup> See particularly Dowlen (2008)

<sup>2</sup> This was especially the case in the late medieval Italian city states. Manin (1997) p. 62, Dowlen (2008) pp 67-97.

straightforward observation that when the gap between professional politicians and the general citizenry gets too large it is no good for either. The public can lose confidence in the political system, and, unable to make a first hand assessment of what is worth retaining and what deserves reform, can become tempted towards extremes. Meanwhile those who entered politics out of a genuine sense of public service find themselves included in the public's negative assessment of the system as a whole. Even a developed democracy can find itself on a downward spiral if this division is allowed to develop.<sup>3</sup>

The first major modern motivation for the scheme therefore came from the perceived need to bridge this gap. The means that then suggested itself was the creation of a kind of 'halfway house' of citizen offices. These would involve a series of well-defined responsibilities and would be the subject of regular and systematic rotation.

This is not an entirely new idea however. During her 2007 presidential campaign Ségolène Royal put forward the proposal that elected representatives should be held accountable by randomly-selected citizens' juries. This was a brave and potentially far-reaching proposition, but was dogged by an absence of detail as to how it would actually operate. Introduced in the context of a presidential election campaign, therefore, it raised more questions than it answered. Taken at face value, for instance, the idea that elected officials should be subsequently held accountable to such randomly-selected groups would seem to undermine and devalue the accountability exercised by the inclusive citizen-wide elective process itself.

Similarly, without further details it was unclear how the process of accountability would actually operate. Would the citizens, for example, have the power to censor the MP for political decisions such as voting for cuts in services? How could the citizens' juries be kept free of the partisanship that characterises electoral politics? Might the citizens' scrutiny place an intolerable burden on the MP's freedom to think and act independently? These and other considerations indicated that there were many details that needed to be investigated in a scheme of this type and many grey areas where more work was needed.

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<sup>3</sup> See, for example, Mair (2013)

A further motivation for this scheme came from the modern manifestation of a perennial theme: the fight against political corruption. The modern episode of this story goes back to the ‘cash for questions’ scandal in the UK in the mid-1990’s, which was then followed by the influential Nolan report.<sup>4</sup> In Australia a parallel can be found in the Fitzgerald report that investigated the widespread political corruption arising from the Bjelke-Petersen regime in Queensland.<sup>5</sup> Such misuses of public power, I would argue, were the very symptoms that random recruitment was employed to counter in ancient Athens, late medieval Europe and, to some extent, in the later case of the randomly-selected jury.

Prompted largely by these two reports, the introduction of specific codes of conduct for parliamentary and assembly members and other anti-corruption measures have been positive steps aimed at restoring public confidence in the work of political institutions. Nonetheless these measures could still be open to the criticism that that this is the political establishment policing itself.<sup>6</sup> The scheme addresses this criticism by suggesting that the current agencies team up with the Citizens’ Parliamentary Groups or their equivalents to form a type of combined parliamentary anti-corruption team.

The third contemporary starting-point for this scheme was an awareness of how difficult it was, and still is, for citizens’ groups to seek redress when the political establishment organises itself to cover up its wrong-doings. There are numerous examples of this from recent history. Perhaps the most infamous is the cover-up that followed the Hillsborough disaster of 1989 and the fact that it took over 20 years of concerted campaigning by citizens’ groups before any semblance of justice could be seen to be done.<sup>7</sup> It is a point of harsh criticism that this could have happened in a so-called developed democracy. It is also represents a challenge.

The scheme sets out to answer this challenge by creating a new direct link into the political establishment with the power to demand action over what I describe as ‘issues of grave public concern’. These are issues that threaten the integrity of the political system if left

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<sup>4</sup> Nolan (1995)

<sup>5</sup> Fitzgerald (1989), also Lewis et al (2010)

<sup>6</sup> Lord Bew, chairman of the Committee on Standards in Public Life, equates this with the idea “marking one’s own homework”. Reported in The Daily Telegraph, 9<sup>th</sup> March 2016

<sup>7</sup> See especially Scraton (2016)

unresolved. I also envisage this as a means by which citizens could act against any incumbent government that sought to consolidate its power by taking actions that compromised the fairness and integrity of the political system.<sup>8</sup>

These, therefore, were the starting points for the scheme of Citizens' Parliamentary Groups and it was these problems that suggested the three main tasks that the groups would be asked to undertake while in office. Some aspects of the scheme are about monitoring, some are about first-hand experience and education, some about making links, while others concern the citizens' defence of the political system itself in a broader, more profound sense.

Given these modern concerns and the further general political implications of a scheme of this nature, something now needs to be said about the mode of presentation of this scheme. The aim of this study is to bring this type of scheme to the threshold of political practice by stimulating discussion across a wide range of the issues involved. For this reason the scheme has to be presented in detail. This is to enable the reader to imagine how it might work in practice and anticipate what problems might be involved in setting it up and making it operate successfully. It would also be true to say that in this type of scheme the 'devil is in the detail' and in the precise relationship between its parts, its procedures, and its active agencies. If too little detail were to be included there is a danger that a scheme like this might end up in the realm of pure speculation.

There are, however, problems with the presentation of a scheme in so much detail. It could encourage the view that such a scheme can only exist in the form in which it is presented: that it is a unique and fully formed product. As such, it could be vulnerable to rejection because one feature does not quite fit in with its proposed context of application or because one facet of the scheme is awkward or complex. In contrast to the criticism that a scheme can be too speculative is the criticism that it can also be too concrete and too inflexible.

My response to this line of reasoning is that I am primarily presenting ideas for discussion, for acceptance or rejection by those who might be moved to act upon them. The detail is

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<sup>8</sup> The danger of this in a modern context is exemplified by the Fidesz party's virtual take-over of the Hungarian political system following its 2010 electoral victory. Rupnik (2012), Bozoki (2012), Bákuti et al. (2012)

there, not to cast the scheme in stone, but to display the way that one part has to depend on another and to indicate the complexity of design thought that might be required to place an innovation of this nature in a very real institutional setting.

With these considerations in mind, the method that I have adopted follows a very particular pattern that allows for this process of re-evaluation, re-assessment and change. First the scheme is presented in outline and then in greater detail based largely, but not exclusively, on the UK Westminster model. This enables me to focus on certain important matters such as the power conferred on the CPGs and their proposed constitutional status in a reasonably realistic context. I then look at the feasibility of the scheme from three different perspectives or frameworks: its political logic, its design logic and its logic from the point of view of the contexts of its proposed application. In the exploration of political logic I take the view that a scheme of this nature will be feasible if people agree with its basic principles and concur with the general political direction in which it is heading. In the section on design logic I re-look at the scheme through the framework of a series of design headings. These are: *time, space, number, action, points of contact* and *decision making*.

The main reason for this is to analyse the scheme from new and distinct viewpoints and in this way to identify problems or potential problem areas. These design headings are an attempt to put a new framework or structure of analysis in place.

My reasoning is that a new scheme demands a new framework that can look at basic design dynamics through fresh eyes. It would be wrong to look at this scheme from the point of view of institutional design methods based on the exclusively electoral model of democracy. Such re-examination, however, inevitably involves some level of repetition. I apologise for this in advance and hope that the reader will understand what this process sets out to reveal.

In the final section on feasibility I look at the contexts for application and discuss the variations in the scheme that might be necessary in order for it to operate successfully under the various different constitutional arrangements of the UK and Australia.

As I adopted these different viewpoints and addressed these different feasibility tasks new anomalies or problems arose and new changes were suggested. Rather than going back to

alter the original outline in the light of these I decided to retain the transparency of the process of discovery.

There are three main subjects that this applies to. The first is the timetabling of the monthly meetings to coincide with the lack of symmetry in the parliamentary year(s). The second is a similar time-based question: how the periods of special duty could be made to coincide with parliamentary sittings. This was especially pertinent since the rotation of special duty is seen as a major factor in determining the size of the citizen groups. The third subject is the relatively new phenomenon of multi-member constituencies. These pose a challenge because the scheme is so securely based on the idea of the constituency as a defined geographical area and as a defined grouping of citizens to which the parliamentary or assembly member is accountable by election.

In the case of the monthly meeting I have put this forward as an ideal in the first account of the scheme. Only later in the study do I recognise that due to the anomalies of the parliamentary year a cycle of meetings might have to follow a far less regular and predictable pattern. I still, however, use the term “monthly” in recognition of this ideal.

The same approach also applies to the question of special duty and its implications for the size of the CPG groups. The Assembly of the Australian Capital Territory, for example, sits for fewer days than the UK House of Commons. The timetables for special duty are therefore likely to differ and this suggests that there would also be similar variations in the size of their respective CPGs.

These variations, along with the proposals for CPGs in multi-member constituencies are examined in the latter part of the study under the sections on design and context. I have also included examples of timetabling, proposed CPG sizes and multi-member solutions in Appendices 3 and 4. I mention this in the hope that readers who encounter contradictions between the outline of the scheme as a whole and their local political conditions will keep reading and take a positive view about how the scheme might be adapted to suit their local arrangements.

In Appendices 1 and 2 I take the unusual step of inventing hypothetical scenarios in which various CPGs cope with fictitious instances of Code of Conduct allegations and issues of

grave public concern (Task 3) designation. These are meant to provide working examples of how the various procedures might operate. Although they are invented scenarios, they are nonetheless based on real issues or issues that are not outside the realms of possibility. While set in particular locations and based on issues, or combinations of issues that *might* arise in these locations, these scenarios are designed as more general examples of the scheme in operation. The Northern Ireland scenario, for instance, is of particular interest as an example of how CPGs could operate in a post-conflict situation while the Australian Federal scenario raises the important issue of public interest immunity in respect to the activities of security and intelligence services. In these examples I have adopted a generally positive attitude to the CPGs work. It would be easy, however, to imagine scenarios where, for example, a divisive issue creates deadlock within the CPG and fails to be designated as an issue of grave public concern or where an allegation of breach of Code of Conduct causes tension and friction between MP and CPG.

At the end of the conclusion I consider briefly how a scheme of this type might serve as a platform for future democratic developments. I feel this is a very exciting area and one that could form the basis of further exploration and study.

New ideas are always difficult to put forward and I hope that this study can provide a starting point for more detailed theoretical investigation into areas such as the precise constitutional role of such groupings and the way they might co-operate successfully with existing agencies. I also hope that this study will be read by citizens, discussed by citizens and that it can prove to be a valuable background document for more practical forms of investigation such as pilot studies, new initiatives and open discussions between citizen groups and full-time politicians.

# Outline of the Scheme

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## The Aims and Objectives

The scheme is designed to strengthen representative democracy by creating a new collective agency at constituency level. This collective agency would consist of the sitting MP, elected by the citizenry for each parliamentary term, and a Citizens' Parliamentary Group (CPG) made up of randomly selected citizens from the constituency. The members of the CPG would hold office for one year only. The aim of this arrangement is to generate greater trust between the citizens and the political system by giving the citizenry an ongoing position of responsibility within the system in a way that promotes greater transparency, accountability and accessibility. This is summarised in the general working brief of the citizen group: *to defend the fairness and integrity of the political process.*

## The three main tasks.

The scheme sets out to do this by way of three main tasks that are to be undertaken by the groups:

1. To ensure that the MP adheres to the (an) agreed Parliamentary Code of Conduct.
2. To develop stronger links between the work of the MP and the citizens of the constituency.
3. To ensure that Parliamentary attention is given and appropriate effective action is taken over issues of grave public concern where the integrity or fairness of the political system is compromised or threatened.

## Structural features based on the three main tasks.

### *The Code of Conduct*

The work of ensuring adherence to the code of conduct requires that members of the CPG work closely with the MP. In the design of the scheme this is achieved through a simple division of labour: two members of the group would assume greater responsibility each month (or a similar period) and would have a greater 'hands on' role than that of their colleagues. They would attend meetings alongside the MP, attend Parliament and spend time

in both the constituency office and the MP's parliamentary office. For this work they would be granted access to the MP's diary of engagements, financial affairs and access to all official correspondence. For the purposes of this study I call this the period of 'special duty'.

This closer contact has a double function. On the one hand it would enable the members of the CPG to observe any potentially problematic aspects of the MP's behaviour. On the other it would enable them to learn at first hand how the political system worked and how difficult and demanding the MP's work could be.

Exactly how much time should be given to this activity is open to debate and discussion. Constant surveillance would be inhibiting for the MP and unnecessary for the purposes and aims of the citizen group, while too little time spent on the task would make it difficult for the CPG members to understand the complexity of parliamentary work. I would expect that something around the level of two day's work per week on the part of the two CPG members would be appropriate. Not all of this time would necessarily be spent with the MP.

The designation of this role of special duty to *two* members of the CPG each month fulfils a number of purposes. They could share the work in a way that suited their individual circumstances, they could discuss issues and problems and, in a more preventative sense, ensure that each carried out the work responsibly.

#### *Links between MP and constituency*

The second major task, that of acting as a bridge or link between the MP and the wider constituency, also demands a particular formal or organisational framework. In this case the main element in the design is the 'monthly' meeting between the MP and the CPG. This is envisaged as a structured question and answer session involving questions both to and from the MP. There should also be opportunities for discussion. The MP would present a report of the month's major events and issues and this would be supplemented by the report of the two CPG members who had been on special duty that month. The idea is that this would be the main source of public knowledge concerning the MP's work. To communicate the content of this to the wider constituency a report of each meeting would be available to the public on a website.

In addition to the main monthly meeting the CPG would receive petitions from citizens in the constituency and act as a possible first point of call for those with concerns seeking access to the MP. This sharing of concerns means that the CPG would have the capacity for following up certain issues with questions to the MP if they felt that these had wider or more general implications.

In order to augment public understanding of parliamentary processes a CPG could plan and undertake a programme of visits, meetings and discussions during its year in office. These could be organised in conjunction with the MP or independently. The extent of such a programme would probably be best left to each CPG itself to determine, but in order for it to fulfil this task some level of outreach should be incorporated into the mandatory duties of the group.

It should also be recognised that the very participation of groups of citizens in this scheme on a regular basis would, of itself, create a growing connection between the citizenry and the parliamentary process. Since the members of the CPG would be randomly selected, this process of promoting closer interaction with the parliamentary system would be likely to reach people who might have had little previous experience of political activity.

#### *Issues of grave public concern*

The third main task has more complex structural implications. There are three main routes by which such issues might find their way onto the CPG agenda: through the work of members of the CPG in Parliament, through the CPG's greater contact with the wider constituency and the concerns of the citizenry, or through investigative journalism. Once any issue has been discussed by the CPG there would have to be a clear procedure by which it could be accorded the status of 'an issue of grave public concern'. This designation means that the CPG could demand action from the MP on this issue. Once the CPG had determined this, the first stage would be to discuss with the MP as to what action would constitute an appropriate response. If agreement was reached at this point, the role of the CPG would simply be that of making sure it continued to be informed of the MP's action on the issue. If there was no agreement concerning the best response or the CPG came to the conclusion that the response of the MP was inadequate, a further stage of the procedure could commence.

Firstly the CPG would approach two other CPGs, only one of which should be from a neighbouring constituency. If the two other groups (debating separately) endorsed the issue's status and the nature of the demand for action, the MP would be asked again to make an appropriate response. If this was then judged by the three CPGs to have been inadequate, procedures for recall could be initiated. This would take the form of calling a by-election in which the sitting MP could stand to defend her/his actions. Should the MP regain the seat in these circumstances the previous CPG would be dismissed and a new group selected. In all the decisions taken by CPGs in respect to this task a super-majority of at least 75% would be needed.

As we can see from the above, the procedure for initiating recall is very much an action of last resort where the CPG becomes aware of increasing intransigence from the political establishment on issues that they judge to be of extreme importance. In most cases it is presumed that the MP would share the CPG's concerns and take appropriate action motivated by his or her own sense of public duty.

### **The balance between the three main tasks.**

We can see from the above how the structures required for the three tasks differ. The first requires a combination of clear guidelines and flexibility, but fixed procedures should any misconduct be suspected. Where codes of conduct and regulatory procedures exist, the role of the CPG would be that of collaborating with and strengthening existing provisions.

The second task is based on a regular, highly structured, meeting but there is space in the system for CPGs to develop their own programmes and initiatives. The third task is largely a preventative measure that has a fixed structure and procedures that would be activated only if and when it proved to be necessary.

The relationship between the first two tasks has a particular relevance to how the scheme could operate. The task of ensuring that the MP adhered to the Code of Conduct requires that the citizens act in a monitoring and preventative capacity. Their very presence as citizen witnesses to the MP's work would discourage misconduct. If there were no issues, problems or concerns on this front, then this task would be, for the most part, achieved.

Beyond the monthly meeting, the task of building trust by bridging the gap between the MP and the wider citizenry is, in contrast, much more open-ended. Each member of the CPG could, for instance, use their year in office to become more knowledgeable about the workings of the parliamentary system. Their time on special duty could also be usefully employed to this end. In comparison to the first task, therefore, the second task can be seen as a more positive, expansive, proactive role with greater opportunities for teamwork and collaboration between MP and CPG.

The final task is of a very different order. Here the citizens combine with others to take an active role in protecting the political system at a higher level. Their decisions and actions in respect to this task could have a considerable bearing on the lives and freedoms of the wider citizenry, not just those of the constituency that raised the issue in question. As we shall see in the next section, considerable attention has to be given to guard this role from misuse.

## The Powers and Status of the CPGs

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### Powers required by the CPGs to fulfil these tasks.

In order for the Citizens' Parliamentary Groups to carry out their role of defending the integrity and fairness of the political system by way of these three tasks, they must have certain powers. Without these powers, the instigation of the CPGs could become a mere exercise in public relations, a useful consultative and educational body, but one ultimately unable to challenge wrongdoing effectively. At the same time these powers would have to be carefully controlled and curtailed to prevent the new CPGs from undermining the very electoral process that they are designed to protect.

Accordingly the powers to be invested in the CPGs fall into two main categories. First are those exercised independently of the electoral process (between elections and with no role for the electorate in their implementation). Second are those that would operate through the electoral process itself in the sense that they leave the decision to censure or endorse the MP to the electorate. In these cases the role of the CPG would be to inform the electoral process through their questioning of the MP at the monthly meetings. The content of these and other conclusions concerning the MP's work would find their public outlet via the monthly reports.

The principle to be followed in these matters is that the electoral process, whether exercised in the election of parliamentary representatives or in referendums, is the primary means by which the will of the people is to be expressed. The powers invested in the CPGs (either to act independently or in collaboration with the electoral process) should therefore inform and strengthen rather than subvert, by-pass, rival or contradict that process.

It is presumed that the powers granted to the CPGs, along with how these powers were to be limited and how responsibility for running the scheme was to be allocated, would be laid out in the statutes initiating the scheme.

*CPG powers in respect to the code of conduct.*

Where parliamentary codes of conduct are already in place they are accompanied by arrangements concerning the investigation of allegations of misconduct and by provision to implement sanctions in the event of proven wrongdoing. The question of what powers the CPGs should have in these matters is therefore primarily about how this new agency should best be incorporated within existing arrangements.<sup>9</sup>

In Britain, for instance, the Parliamentary Commissioner for Standards is charged with enforcing the Code of Conduct.<sup>10</sup> He/she is a Parliamentary Officer and has the power to investigate allegations and impose sanctions. Under this arrangement any member of the public is entitled to make allegations that could result in an investigation. Should this happen the Parliamentary Commissioner for Standards first decides whether or not the allegations warrant further investigation. As members of the public, therefore, members of the CPG would have the same entitlement and no further powers would be needed in order to bring a case to the attention of the Commissioner.

In this respect, therefore, what the proposed scheme sets out to do in the first instance is to place members of the public in key positions with certain powers or entitlements beyond those that they might have as ordinary citizens. These powers would give them access to the MP's work, the MP's correspondence and the MP's financial affairs.<sup>11</sup> These powers would act primarily as a deterrent to misconduct by making the likelihood of discovery that much greater.

It is my opinion, however, that the CPG should have greater powers over the Commissioner's actions. This would involve certain powers in respect to participation in the investigation itself: the power to demand further investigation and the power or entitlement

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<sup>9</sup> It is worth noting that the Wicks Committee on Standards in Public Life of 2002 recommended that there should be external input into a regular review of the Commons Code of Conduct. Gay and Winetrobe (2003) p.20.

<sup>10</sup> See House of Commons Code of Conduct. House of Commons (2015).

<sup>11</sup> To some extent these are already in the public domain via the Register of Interests and other disclosures. It is debatable whether this entitlement should be extended for the CPGs.

to voice a collective opinion on the results of Commissioners investigations and the Commissioner's decision concerning the imposition of sanctions.<sup>12</sup>

Should members of the CPG suspect misconduct on the part of the MP then their suspicions should be reported to the group as a whole so that a joint approach to the Commissioner might be made. At this stage two members of the group (not those on or likely to be on special duty) would be appointed to have a closer role in the decision to mount an investigation and, if an investigation was instigated, to have a special role in the investigation itself. These two members would have the responsibility of discussing the case for further investigation with the Parliamentary Commissioner for Standards and reporting the Commissioner's decision on the matter to the full group for their endorsement.

If the Commissioner's decision was to investigate further, this could not be challenged by the CPG. If, however, the Commissioner made a decision not to investigate and the CPG believed that there were grounds for such an investigation, it should state those grounds and should have the power to demand an investigation. This decision would require a 75% majority of the CPG at a secret ballot after the presentation of views and the opportunity for discussion.

Should an investigation follow, the two members would have regular meetings with the Commissioner and within these meetings could have the power to require that certain matters be investigated further if they felt this might be necessary. They would help to present the findings of the investigation to the CPG upon completion. Except for these official presentations the two members would not be permitted to discuss the course of the investigation with other members of the CPG or with the MP.

Once the investigation was completed the Commissioner's findings and decision on sanctions would be presented to the CPG. If the CPG had any serious and specific criticisms about the investigative process they could demand that the Commissioner address these and re-present his/her findings. This could be done only once.

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<sup>12</sup> See Appendix 1 for an example of how this might operate in the case of Australian state anti-corruption commissions.

Following such a presentation (first or second) the CPG would have the entitlement to public comment on the process and its results. This would take the form of a short report that would be published on the CPG website and submitted to the relevant parliamentary committee for their information. The report should take account of the MPs views of the findings and the CPG should hold a short meeting with the MP to ascertain these. Should the CPG have serious misgivings about the process as a whole, the report should voice these. Before publication the report would need to be endorsed by a 75% vote at a CPG meeting.

*Summary of powers and entitlements for Task 1.*

1. Access to MP's activity, accounts, correspondence and diary of engagements.
2. Entitlement to make a joint application for investigation to the Commissioner, which would then involve a level of CPG participation (two members involved in the Commissioner's decision to investigate).
3. The power to demand an investigation should the CPG disagree with a decision made by the Commissioner not to do so.
4. Entitlement for two members to play a special role in the investigation procedure and to demand further investigation in discrete areas.
5. The power to reject the Commissioner's findings on the grounds of deficiencies in the investigation process and to demand these be addressed and the findings re-submitted.
6. The entitlement to voice criticisms and concerns over the Commissioners' findings and the consequent imposition of sanctions. The report voicing these would go to the Committee for Public Standards and would also be published on the CPG website.

*Limitations to these powers.*

1. The CPG can only make one demand for further investigation following the presentation of the Commissioner's report.
2. The CPG would have no veto or power to accept or reject the Commissioner's final decision following an investigation of misconduct.

*CPG powers in the role of building links between the MP and the constituency.*

In respect to this task, the CPG would exercise the most power in its capacity to comment in the public domain. While it would be the role of the electorate to make the ultimate decision on the MP's future at election time, the CPG could influence its decision through their reports and through their public actions. For this reason it is necessary to consider how these might be made in the fairest, most productive manner.

The monthly meeting is designed to create an arena of intelligent inquiry into parliamentary activity and the issues of the day. It would be counter-productive, however, if the activities of the CPG were to become a replica of party-based electoral politics or if this forum for discussion was used as a platform or domain for such a purpose. If the meeting was structured so as to distinguish between, for instance, questions to the MP and items for wider discussion, this would go some way towards ensuring that it did not become dominated by party dogma and point-scoring. Accordingly the attention should be given in the reports to ensure that all sides of any discussion were represented. It would also be important for the public report of the meeting to be approved by the group and by the MP before publication.

Most importantly, however, the right of the CPG to make collective criticism of the MP should be severely restricted to matters concerning the integrity and fairness of the political process.

I would suggest the following as legitimate ground for criticism:

1. Actions that, in the opinion of the CPG, might prevent the MP from doing his/her job properly (e.g. a second job, an unnecessary foreign visit.)
2. Any action or statement which, in the opinion of the CPG, deliberately misled the public. (e.g. supporting local facilities while in the constituency but voting for cuts in those facilities when in Parliament)
3. Language or actions by the MP that, in the opinion of the CPG, might stir up hatred and division amongst the citizenry.

Discussion of potential criticisms of the MP along such lines could take place in a special CPG meeting (perhaps held after the question and answer session). Any such act of public criticism would have to be approved by 75% of the CPG before publication.

As a means of limiting the potential misuse of these powers, public criticism of the MP would be restricted to these topics and could only be voiced in this format. No individual member of the CPG would be permitted to make unauthorised statements to the press or to voice these or other criticisms of the MP at public meetings or other meetings with constituents during their period in office or afterwards.

*Summary of powers and entitlements for Task 2.*

1. The entitlement to attend the monthly meeting and to ask questions of the MP concerning her/his work and to take part in discussions on key issues.
2. The power to voice collective criticism of the MP's actions in a limited range of contexts.

*Limitations to these powers.*

1. A limited range of areas for public criticism of the MP.
2. A prescribed format for such criticism: website publication of a statement agreed by no fewer than 75% of CPG members.
3. Individual CPG members prohibited from making public criticisms of the MP in any other context.

*CPG's powers in respect to demanding action over issues of grave public concern.*

Among the most complex questions facing this proposed scheme concerns what powers should be assigned to the CPGs and how these powers might be exercised in respect to this Task 3. Let me begin by exploring why I think this task is needed.

The aim of this task, this role for the CPG, is to prevent those in positions of power from abusing that power at the expense of the citizenry at large. This could apply just as much to those within the bureaucracy, the state services or the judiciary as to those in the elected political sector. The best route for initiating or taking action against such abuses must be through the offices of Parliament because Parliament is the institution that is ultimately accountable to the people and has ultimate control of all other public bodies. It could, however, be argued that the parliamentary electoral system is too general and complex a system of accountability to focus on specific issues relating to the misuse of power. There

are simply too many other concerns at stake. From a structural, organisational and constitutional point of view, therefore, the involvement of the CPGs is a way of making abuses of power accountable to the citizenry by bringing focussed pressure to bear on Parliament for remedial action. Because any abuse of power that is not addressed constitutes a danger to the fairness and integrity of the political system, the power of CPGs to guard against parliamentary complacency or inertia in the face of such abuse is fully justified in terms of their fundamental role.

As we have seen above, the ultimate power available to each CPG is the power to initiate recall proceedings if their MP takes no action or insufficient action in response to these ‘issues of grave public concern’. It also has to be recognised that this right of recall would not dismiss the MP from office. It would set up a by-election giving the citizens of the constituency the final word on the importance of the issue.

We have seen how the designation of an issue as one of grave public concern and the demand for action from the MPs would have to be agreed by three CPGs before recall procedures could be instigated. The aim of this measure is to ensure that the issues taken forward in this way would be of genuine general and universal public concern and not such as might only command partisan or special interest support. It therefore guards against one possible avenue of misuse.<sup>13</sup>

The question remains, however, of how to prevent measures that were merely *unpopular* from being designated as those on which the CPGs could demand remedial action from an MP on pain of recall. If the CPGs were to use their power to force local elections on these issues this would have the effect of undermining the parliamentary process and the electorate’s decision to grant executive authority to the party of their choice to govern as they saw fit.

One answer to this would be to draw up clear limits on the type of issue for which this level of action would be appropriate, recognising, of course, that the CPGs would have other outlets such as the monthly meeting for noting the unpopularity of certain government

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<sup>13</sup> In respect to the problem of rotation, I propose that any designation and demand would remain at the change of CPG, but that the new grouping would itself assess the MP’s response.

actions or measures. I would suggest that there are two main categories into which issues would have to fall to be designated ‘issues of grave public concern’. These are:

1. Issues concerning the misuse of public power that have broader implications for the integrity and fairness of the political system but which have met with indifference or intransigence from those holding political office.
2. Measures taken between elections by an incumbent government that severely compromise the integrity or fairness of the political system.

The first of these constitutes a response to inaction. The second is designed to prevent legitimately elected governments from using their position of power to extend their control over the political system. It is a brake on the illegitimate extension of governmental power, and as such constitutes the bottom line in the citizens’ defence of open politics against the threat of tyranny or factional power.

From the opposite point of view I would suggest that no issue that had been part of an elected party’s publicly stated programme should be open to demands for action by CPGs that might lead to the MP being subject to recall.

Perhaps the most straightforward way in which this could be enforced would be through the actions of a special parliamentary regulatory group or committee. The approval of this group (based on the above criteria) would have to be sought before any action could proceed. The best time for this to take place would be at the point when the initiating CPG had themselves voted to designate the issue involved as one of ‘grave public concern’ but had failed to receive a satisfactory response from their MP concerning his or her course of action. The group would also advise on the nature of the demand for action by the MP to ensure that such an action was feasible. Just what the relationship might be between the CPGs and any parliamentary body charged with advice, regulation or oversight is explored in the next section.

#### *Summary of powers and entitlements for Task 3.*

1. The power to designate an issue as being one of “grave public concern”. This would have the effect of creating a higher political profile for that issue.

2. The power to instigate recall proceedings if demands for specific action over issues defined in this way were not met or were subject to an inadequate response.

*Limitations to these powers.*

1. The designation of an issue as one of “grave public concern” and the demand for action from the MP can only be made in conjunction with two other CPGs only one of which can be from an adjoining constituency.
2. The decision to initiate recall proceedings would likewise have to be taken by three CPGs.
3. The nature of these issues is limited to those that threaten the integrity and fairness of the political system. A proposal to move forward on any issue, together with the specific demands for action from the MP would be subject to review by a special regulatory grouping before the process could go ahead.

## The status and constitutional position of the CPGs.

The discussion on the power that might be exercised by the CPGs is closely linked to their constitutional status, in particular the question of who, or what institution should exercise power or control over the CPGs and how that power or control should best operate. In this matter the focus is on the relationship between the CPGs and Parliament. Since their remit is to protect the fairness and integrity of the political system, and since they would do this in collaboration with their sitting Member of Parliament, it is best that the CPGs should be part of the parliamentary system. At the same time, because they would act as a regulatory body in respect to the actions of Members of Parliament and therefore also the actions of Parliament as a whole, they would have to be, to some extent, independent of Parliament. To be more exact, they have to be independent of the partisan interests and partisan pressures that operate within Parliament.

As a new, unique political arrangement, the CPGs would obviously have a special status of their own, commensurate with their role and composition. For the purpose of our analysis, however, and in respect to the problem of how they might operate in a parliamentary context it is useful to pose the question of status by reference to existing institutional arrangements. With this in mind I would suggest that the individual members of the CPGs should be

*Parliamentary Office Holders.*<sup>14</sup> They should not be employees of Parliament because they would be charged with making independent decisions, rather than following instructions. Neither should they be a separate, autonomous organisation because they would be required to work within the rule-governed parliamentary system and share responsibility for its work.

While they would differ from MPs in the comparative narrowness of their remit, their mode of selection and the temporary nature of their tenure in office, they would occupy the same position as Members of Parliament between the arena of political decision making and the citizenry at large. As public office-holders they would be similarly duty bound to serve the people through the institution of Parliament.

It follows that the CPGs should be subject to an appropriate level of control by Parliament to ensure that, as individuals, they understood their role and performed it competently, and that the scheme as a whole worked well. They should, for example, be subject to their own code of conduct and there should be some means of enforcing this based on the authority of Parliament. It would therefore make sense for the CPGs to come under the auspices of some form of regulatory, administrative and supportive institution operated by Parliament. We are then faced with the question of how such a body might be constituted to prevent it from compromising the necessary independence of the CPGs.

One answer to this would be that the body responsible for the CPGs should be part of the parliamentary system but a part that is recognisably impartial in its status and in its immunity from partisan interests and pressures. Another approach lies in the suggestion that the CPG scheme should be as self-regulating as possible once it has been established and that this self-regulation should operate under the auspices of Parliament. It should be quite possible to combine these approaches.

A possible solution in a UK context might be to set up a *Citizens' Parliamentary Groups' Independent Regulatory Body* (IRB). This could be formed as a committee of the Parliamentary Speaker similar in status to that of the Independent Parliamentary Standards

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<sup>14</sup> See Gay, O. and Winetrobe, B (2003). This thorough consideration of the status and functions of Parliamentary Officers places considerable emphasis on the independence and impartiality of officers.

Authority.<sup>15</sup> As such it could be chaired by the Speaker or Deputy Speaker and include Officers of the House, ex-MPs, members of the second chamber and independent nominees from outside Parliament. It is my view that this body should include a specified number of former CPG members. These could be chosen by lottery from a pool consisting of those former CPG officers who wished to serve. This could possibly be organised on the basis of rotation with former CPG members holding office for two years and the number gradually increasing during the first few years of the scheme (except for the first year) until the required level was reached.

In a similar manner to the way that a number of Parliamentary Officers are appointed, the other members of this grouping could be appointed by the Crown, but on the advice of Parliament. After selection the CPG contingent would be endorsed by the Crown to clarify their status.

The role of this grouping, its officers and its employees in the constituencies could include the following tasks:

1. To organise and oversee the random selection of CPG members.
2. To carry out the training sessions for CPG members prior to their taking office.
3. To give support and advice during the CPG members' period of office.
4. To administer the finances of the scheme.
5. To maintain the discipline and behaviour of the CPG members and impose sanctions if necessary.
6. To adjudicate in disputes should they arise.
7. To confirm that the designation of issues of grave public concern fits within the remit of the CPGs and approve of the demands made on MPs for action on such issues.

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<sup>15</sup> See UK Government (2009) Part 1 *Members of the IPSA*. The membership criteria for the IPSA specifically excludes sitting Members of Parliament and, with the exception of one member, only allows those ex-MPs who have been 5 years out of office.

<sup>15</sup> See Gay and Wintrobe (2003) p 12-3.

## Further aspects of the scheme.

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### Reviewing and improving the operation of the CPGs.

In the earlier discussion concerning the designation of issues of grave public concern we opened up the possibility of a number of CPGs acting in concert when appropriate. The proposal to create an arena for review and improvement is based on an extension of this idea. Its central tenet is that there should be a conference of CPG delegates at the end of each parliamentary year to discuss how the scheme was operating and suggest possible improvements. This conference would also include consideration of an annual report produced by the IRB, and would consider such matters as the procedure for the selection of the CPG members of that body.

Should the conference decide on changes or if the report from the Independent Regulatory Body suggested that changes should be made, the conference could then set up a working group that would work in collaboration with the IRB to explore these further. It is presumed that many improvements could be undertaken through changes in standing orders or similar changes at a managerial level. Where improvements might require changes in the original statutes initiating the scheme these would be put to Parliament by the IRB and would require the endorsement from the conference or from the CPGs meeting in the constituencies before this could happen. My view is that major changes to the terms of reference of the scheme such as might substantially extend or reduce the CPGs powers should be put to referendum.

Should the basic terms of the scheme come under concerted attack from within Parliament, CPG's could use their Task 3 powers – the demand for action on issues of grave public concern – to defend the scheme.

### CPG officers

Once a constituency CPG has been selected and all members, including reserves, have gone through their preliminary training the group should elect two officers: a secretary and a chairperson. These office-holders would have particular responsibility for taking decisions on behalf of the group between group meetings. All correspondence to and from the group would be addressed through the secretary. The groups could have the option of deciding

whether the group as a whole should share some of the tasks that would normally be carried out by the chair and secretary, such as chairing meetings or writing up reports of meetings.

### **The size of each CPG, the period of office and other arrangements.**

In earlier drafts of this scheme I set the size of each CPG at 24, and the tenure in office for each CPG as one year. The logic of this is that during this year two members of the group could be on special duty for one month at a time. Of course the periods of parliamentary recess would make this neat arrangement slightly more complicated in practice, and it looks as if a slightly smaller group might be more appropriate.

There is sense in the idea that the CPGs should not be too big or too small. If they were too big the discussions would tend to divide between participants and audience and thus limit the level of participation for some members. A large group could also be unwieldy. On the other hand too small a group could become too much of a clique. Members might be tempted to cut corners because they could rely on the approval of their companions. A larger number would help to limit the level of familiarity.

It should also be noted that those selected as conference delegates should not undertake special duty or have a reduced period of special duty. This should also apply to those selected as officers to the group (chair and secretary) on account of their higher day-to-day workload.

By looking at the timetabling for special duty we can arrive at a workable formula for calculating the optimum size of a CPG in any context of application. This would be:

$$\text{The number of periods of special duty} \times 2 + 4$$

Here the figure 4 is based on the exemption of two officers and two conference delegates from special duty.<sup>16</sup>

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<sup>16</sup> See Appendix 3.

Once the year of office was completed the members would be prohibited from becoming CPG members again. Nevertheless there could be a number of ways that past members could contribute to the scheme. As we saw above, they could put themselves forward into the pool for the IRB or they could be involved in working groups set up by the conference. They could also assist with the training of new members or provision could be made for ex-officers to offer advice and help for new officers and members. While an important aspect of this idea is that it could enable new members to build on the experience of past office-holders, it is also important to limit and control the participation of ex-members so as not to compromise the independence of the new intake. As we shall see in the conclusion to the study, there might be many ways that ex-members can form the pools for citizen participation in other political offices in other areas of political activity.

### The mode of selection of CPG members.

A central tenet of the scheme is that recruitment of citizens to serve on the CPG should be undertaken by random selection. The primary reason for the use of such a mechanism is that it prevents any individual or group from exercising control over the composition of the group. This method of selection is entirely commensurate with the principle that the members of the CPG and each CPG as a collective body should be independent of, and act independently of, partisan concerns. The random selection process also gives a stake in the scheme to the citizenry as a whole in the sense that every citizen knows that he or she might be chosen. This, and the fact that a random selection process excludes partisan influence, means that the scheme can be understood as “belonging to the citizens” in a broad and meaningful sense.

While the principles and political arguments for using random selection are reasonably clear, a number of important practical issues need to be raised. These include the composition of the pool from which CPG members would be selected, the question of stratified sampling, whether participation should be required of those selected and whether those who have strong partisan affiliations should be allowed to hold office.

It is my view that the simplest and clearest way of moving forward on the question of entitlement would be for the random draw in each constituency to be made from all those who were allowed to vote. To make the pool either wider or narrower than this would break

the connection between the scheme and the fundamental defining entitlement of the citizenry: that of voting. This should not be done.

Another, related, question is whether any level of stratified sampling should be used to ensure that divisions within the citizenry could be adequately represented. There are two main difficulties with this question. The first concerns the decision as to what minority groups should feature in the stratified groups and subsequent decision on how these might be reflected proportionately in the CPG. The second concerns the distinction between active and descriptive representation and how “representation” itself should be understood in respect to the scheme as a whole.

One of the problems with a stratified sampling approach beyond the simple question of gender balance is that of deciding which groups should be included and which excluded. Once the first step was taken to produce a CPG that “matched” the make up of the constituency, the door would be open to constant arguments as to how exactly this “matching” could be achieved. At the same time the bodies or body who might be charged with this decision would hold a disproportionate amount of power and control over the make-up of any group.

This would in fact undermine one of the arguments for using random selection in the first place: the equality of all citizens in respect to the process of recruitment. I would suggest, therefore, that the only permissible departures from the principle of complete random selection should be those of gender equality and geographical location. The former could be achieved simply by using two pools for each constituency, one of men and one of women, and by then selecting half the CPG from one group and the other half from the other. In terms of the geographical area the best arrangement would be for each constituency to be divided into local wards or areas and for draws to be held in each area for CPG members. This would ensure that the random selection did not leave one part of the constituency over represented compared to any other. Beyond these no other divisions within the citizenry should play a part in the recruitment process.<sup>17</sup>

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<sup>17</sup> On the question of geographical stratification, my discussion of the use of CPGs in Northern Ireland suggests that such stratification is to be avoided when a constituency is seriously divided

Because the role of the CPGs would be to defend the fairness and integrity of the political system, the job of each member is defined as that of working for the entire citizen community. Where unfairness exists within the range of the CPG remit it is the job of every member to address this as best they can. A CPG member is not, therefore, a representative of his or her race, class, religion or social grouping, but, by his or her actions, represents all groups and all citizens within the constituency. The natural diversity generated by the repeated random selection of members means that a variety of people from different backgrounds and life experiences can contribute to the group's work. This, however, is not the same thing as saying that group members should see their primary role as acting on behalf of particular grouping or sectors of the constituency in their work in the CPG.

## CPGs and political parties.

This question of the independent status and role of the CPGs also finds its practical expression in the relationship between CPGs and political parties. It should be clear by now that the role of the CPGs is to defend the political system as a whole. The phrase "the integrity and fairness of the political system" implies freedom of political expression and a pluralistic approach to political decision-making. Political parties, working within the constraints and rules of such a system have evolved to become a vital part of this process. Political parties, however, can only operate successfully if they are part of a wider system that constrains their activities by rule-governed political procedures and channels their actions and criticisms in support of the general good. The CPGs are designed to assist with this constraining and channelling role.

It therefore follows that the CPGs should maintain a distance from political parties in all their operations. As a straightforward starting point all members of political parties who were selected as CPG members could be asked to renounce their party membership before taking office and would then hold office only on condition that they had no communications with their party throughout their year in the post. This would be made clear in the terms and

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along sectarian lines. In these cases random selection from the entire constituency would be a better option. See pages 69-72 plus Appendix 2.

conditions for office-holding, perhaps accompanied by a simple “non-partisan” declaration to be signed by all office-holders.

Beyond this there are a number of options for preventing possible partisan influence and activity inside the CPGs. The most efficient, but also the most prejudiced solution would simply be to prohibit all those who had held office in any political party or organisation from becoming members of the CPG.

A second solution might be to allow challenges similar to jury challenges, to be undertaken by officers from the major parties. This process would exclude a certain number of those chosen by the draw on the grounds of their known partisan connections.<sup>18</sup> My criticism of this proposal is that it would give too much power and too great a role to parties in the affairs of the CPGs.

My preferred solution is for the CPGs to self-regulate in this matter. All those chosen could be asked to declare details of their membership of political parties or organisations and of their level of activity within those parties or organisations. Since the training of the CPGs would emphasise the importance of non-partisan behaviour, CPGs would be aware both of the dangers and those who might be tempted to transgress. Allegations of misconduct in this area would be handled by the CPG’s own disciplinary procedures (see below).

As a simple preventative measure no two ex-members of the same party would be allowed to share special duties or to become officers.

## The behaviour and profile of CPG members.

I have grouped these two aspects together because there is a close connection between how the CPG members should behave whilst in office and the question of how they might be perceived by the public. As we saw in the previous section, the most damaging behaviour by the members of the CPG would come from possible attempts to use the offices for partisan political purposes. This is not, however, the only danger arising from members’

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<sup>18</sup> See the hypothetical Northern Irish example in Appendix 2 for the idea of Member’s challenges.

misconduct faced by the scheme. Since members have access to much of the inner workings of the political system they are vulnerable to corruption from anyone who might wish to gain access to that information. There is also a risk that certain actions taken by CPG members themselves could undermine the work of the CPG and bring the institution into disrepute. These could include breaches in confidentiality and inappropriate behaviour such as continuous unwarranted antagonism towards fellow members or towards the MP.

To prevent these and to maintain the coherence and focus of the group a strict code of behaviour should be drawn up, some of it subject to internal actions and sanctions, some of it subject to criminal prosecution if the law was violated. One of the central features of this code of behaviour would be confidentiality, and there should be strict lines of demarcation limiting what members could say or communicate in public regarding their work in the group. The boundary for this would be provided by the monthly report following the meeting with the MP. With only a few exceptions this would mark the extent of the information available in the public sphere relating to the work of the CPG. Those on special duty, for instance, would report to the monthly meeting. Matters relating to their work would only reach the public sphere in the form of the report of the monthly meeting posted on the website. No member of the CPG would be allowed to communicate with the press without the express permission of the entire group. Nor could they communicate to any outside body concerning any other matter than those contained in the report or give further or fuller details without the permission of the group as a whole. This confidentiality ruling should also apply to members after the end of their term of office. As with jury membership, those who breached confidence should face prosecution.<sup>19</sup>

As Parliamentary Office-holders, collective statements by the CPG such as, for instance, the permitted criticisms of the MP, would be subject to Parliamentary Privilege. No prosecution for defamation could be made relating to these criticisms or to any other matter contained in the monthly reports.

A special grouping consisting of the officers, members of the Independent Regulatory Body and members drawn from the group (and/or from another CPG) could be set up to enforce

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<sup>19</sup> See Crown Prosecution Services: *Juror Misconduct Offences* [http://www.cps.gov.uk/legal/h\\_to\\_k/juror\\_misconduct\\_offences/#a07](http://www.cps.gov.uk/legal/h_to_k/juror_misconduct_offences/#a07) (consulted 26.3.17) See also Thomas (2013).

the code of behaviour. In the event of an allegation against an officer, the officer concerned would be suspended and a new member of the CPG elected to serve.

While not as anonymous as jury members, a certain level of anonymity should be observed in the group. Reports of the meetings should not name those asking questions or making contributions to the discussions. The names of those holding office should be in the public domain, but the only official channel for communication between the public and the group, even in the form of a letter to an individual member, should be via the group office.

### Remuneration for CPG members.

An essential aspect of the scheme is that the CPG members should be paid for their services. The main payment would be for those on special duty and this would be the equivalent of two day's pay per week. Beyond that a certain fixed fee should be available for the monthly meetings, a certain amount for the officers in respect to their increased responsibility and payment on a daily basis for those attending the annual conference. There should be sufficient in each CPG budget to cover all travel expenses and arrangements should be made for accommodation where and when this might prove necessary.

The guideline in this is that no member should be inconvenienced in their CPG work beyond what would be expected in the course of normal employment. Provision would also have to be made in the legislation to guarantee that those in employment would be given the time off to attend to their special duties and that their employment would not be put in jeopardy as a result of these duties. As a point of principle no person in receipt of state benefits should lose benefits as a result of payments for CPG work. It might also be possible to arrange some remission of income tax for CPG members in the year following their time in office.

### Voluntary or compulsory participation.

The question of whether participation in the scheme for those chosen should be voluntary or compulsory is an important one. The arguments revolve around two issues. The first is whether the scheme would work more effectively with voluntary or compulsory citizen participation; the second is whether it would be politically acceptable in terms of the general trajectory of the scheme to compel the chosen citizens to undertake the work demanded of

them. These two issues are closely linked, but it is useful for clarity's sake to separate them, at least initially.

The answer to the major question, whether participation should be voluntary or compulsory, is also dependent on the exact political circumstances in which a scheme such as the CPG scheme might actually be implemented and who might take the lead in that process of implementation.

If we look solely at the aims and objectives of the scheme – to ensure the fairness and integrity of the political system – then it could be justifiably argued that it would make no difference whether participation was voluntary or compulsory. What would matter would be whether the job was done and was done well by those who were selected to do it. Once it was agreed that the agency responsible for this work was to be the citizenry, i.e. not professional politicians, bureaucrats or NGO members, then, the argument goes, what would matter would be the quality of their work and the structured focus of the scheme. If anything this argument would favour the use of volunteers on the grounds that those willing to participate would be likely to put more energy and enthusiasm into their work than would reluctant conscripts.

The opposing argument concerns the extent of participation and the extent that this scheme sets out to be a step forwards on the road towards a participatory citizen-based democracy. According to this argument those likely to volunteer would constitute only a small sector of the citizenry: those with a predisposition for active participation. If a voluntary system were to be used, therefore, those alienated from the political system would remain alienated. A compulsory system, linked to random selection, on the other hand would ensure that a fuller cross-section of the population would be involved, even if some were involved reluctantly. As I shall discuss in the next chapter, the overall political trajectory or direction of the scheme is towards generating what I call the greater public ownership of the political process. The idea is that this would be achieved through a greater level of participation and to do this it would have to draw members from all parts of the citizen population.

From this point of view I would suggest that the efficiency of the scheme to operate on this wider trajectory would be assisted if random selection meant random selection from the whole (voting) citizenry rather than just from those who put themselves forward. This would

argue in favour of compulsory participation. The main political principle for this is that if the scheme was understood as being “of the people” as well as being “for the people” it would have greater legitimacy and its actions would be invested with greater democratic authority.

With this conclusion in mind we now turn from questions of efficiency to the question of whether it would be politically acceptable to compel citizens to participate. The argument against compulsion rests on the notion that while a high level of participation would be needed and something of the diversity of the population at large would need to be reflected in the CPGs, it would be morally wrong to compel citizens to participate. This argument claims that even though the scheme is designed to benefit the citizenry, citizens should not be “forced to be free” by the power of the state.

This moral repugnance for state compulsion could, of course be moderated by measures designed to make the option of service more attractive. These, as mentioned above, could include remuneration for service, possible future tax breaks and some official recognition for the work undertaken. It should also be pointed out that if the public perception of the scheme was that of an imposition placed on the citizens by a central authority to serve *its* ends, there could be some justification for resisting compulsion. If, however, the scheme was perceived by the public as a measure emanating *from* the citizens and one that would place greater power in the hands of the citizenry, compulsion could be justified in terms of a duty fairly imposed to serve the general good. I believe that the content and overall orientation of the scheme makes it far more likely to be placed in the latter category.

It is my view therefore that the scheme would operate best if participation was a compulsory public duty and understood as a responsibility undertaken regularly by a proportion of the citizenry on behalf of the citizenry as a whole. The random selection process gives all citizens a potential stake in the scheme since each and every citizen knows that he or she might be chosen. This level of engagement, based on the possibility of active involvement and this sense of a genuinely common project, could only operate if participation was made compulsory.

If the introduction of the scheme was to involve discussion by citizen groups prior to implementation, I believe that the question of compulsory service should be high on the agenda.

## Financing the scheme and other matters.

In accordance with the principle that the CPG scheme should be independent of Parliament it is important that it is funded in way that is as independent as possible from executive or parliamentary control. In the UK this could be arranged via a similar arrangement to the contingency fund, or the funding that is available for running the jury service. The funding would be administered by the Independent Regulatory Body and would cover the following:

1. The expenses of the Independent Regulatory Body, the largest of these being the employees of the Body whose task would be to administer, support and train CPG members. I would suggest that one full time official should have charge of this work in 5 constituencies and have the budget to employ extra part-time staff if necessary.
2. Payment and expenses for CLP members. At an estimate the payment for special duty and for monthly-meeting attendance should amount to the equivalent of between two and three full-time workers.
3. Conference expenses and the expenses of those involved in conference working groups.

An addition to the scheme might be the creation of specific purpose-built premises in each constituency that would contain the MP's office, the CPG office, meeting rooms and similar facilities.

## CPG activity and the executive.

While the focus of the CPGs is simply defined in terms of the relationship between the citizenry and the work of their MP, a few words need to be said about the relationship between the CPGs and MPs who are also government ministers. In design terms and in respect to how the powers of the CPG are invested and limited it would be sensible not to extend the capacity of the CPGs to question ministers on their ministerial activities beyond that exercised by Parliament itself. Thus an MP who is also a minister would include a short report of their ministerial work within the monthly report to the CPG and take some

questions on that report at the meeting. CPG members on special duty with access to certain aspects of their MP's work as a constituency MP would not have the same access to governmental material. Nonetheless the scheme should give CPG members the right to question matters further where the integrity and fairness of the political system was seen to be threatened by governmental action or by the action of ministers.

A simple mechanism could be used to allow this to happen. Should the CPGs questions to a government minister on a particular matter be met with a negative response or a response that seeks to close down the CPG's line of inquiry, the CPG could apply to the Independent Regulatory Body. Through their offices they could then obtain the right to submit particular written questions on the matter. The area of ministerial activity that I envisage would be of most interest to the CPG would relate to ministers dealings with lobbyists seeking to influence governmental decisions to their advantage. I believe that special consideration of the possible role of the CPGs in respect to the practice of lobbying might need to be undertaken and clear guidelines put in place.

## Feasibility 1: The political logic of the scheme

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Towards the end of the outline of the scheme I mentioned its overall trajectory. I now turn to this viewpoint or perspective in order to discuss the feasibility of the scheme. The reason for doing so is based on the following logical steps:

1. For a scheme to be feasible people have to want it and have the political will to put it into practice.
2. Before they can do this they have to be able to assess the values that the scheme seeks to promote and consider how these might concur with their own values.
3. For this to happen there needs to be a clear presentation of the political logic of the scheme and of the general long-term implications that could follow from its specific propositions.

The stated aim of the scheme as presented in the outline is the defence of the integrity and fairness of the political process. This overall aim is then manifested in the three key tasks of the CPGs. The primary consequences of the scheme, should it work well, would therefore be an increase in those very qualities of fairness and integrity. By integrity I refer to a political system that is run on clear principles and where there is little or no deviation between the articulation of those principles and how they then work in practice. In other words the system does what it says it will do: it is sound, it is honest and it does not deceive. In the terms of the scheme the term ‘fairness’ carries many of the implications of honesty and clarity conveyed by the term “integrity”. In addition, however, it carries with it the idea of the political equality of all citizens: that all should have equal political entitlements, no one should be discriminated against and all should be equally subject to the rule of law.

So far I have presented the question of citizen participation largely as one of agency. If I ask the question: “who is in the best position to ensure the fairness and integrity of the political system?” - then one answer (the one exemplified in the scheme) is: “the citizens themselves”. The decision that the citizens should be the collective agency charged with this task has, however, further, very important, implications in terms of possible long-term changes in the relationship between the citizen and the political system. It is these further aims and possible consequences that I now seek to explore.

My first premise in this exploration is what I call *political development*. This is a concept or notion based on the observed phenomenon that people have the capacity to understand and improve the political systems under which they live and within which they make collective decisions. In order for this to take place, somewhere along the line decisions have to be made as to whether one solution to a given problem is better than any other. This applies both to what a proposed solution sets out to do and to what it actually achieves in practice. This feed-back process of translating planning into action and the additional process of recognising and achieving improvement I characterise by the term 'political development'.

While this process can happen consciously within select groups of political actors, and while it can occasionally be the subject of more widespread thought and action, it is not seen as a regular concern on the part of the citizens in liberal elective democracies.

Because it proposes that citizens should be regularly and systematically involved in the defence of the political process, therefore, the scheme is innovative and breaks new ground. Central to this innovation is the notion of political development and claim that this will be both good for citizens and good for politics. In the scheme this process is envisaged as taking place in two main ways: first through the successive incorporation of citizens as CPG members, and secondly through the greater qualitative contact with the political system that it is hoped the scheme will generate among the wider citizen body.

The second premise in the political logic of the scheme is that it should be based around the idea, model or paradigm of the *independent citizen*. It is clear both from the means of selection and from the expectations of the CPG members in office that a value is placed upon the individual opinion of the participants and the diverse life experiences that they can bring to CPG activities. Randomly-selection means that any CPG member will not be dependent upon any person or any organisation for their position as office-holder. No one can call in the favour at a later date or demand loyalty on account of electoral support. In terms of the selection the relationship between the citizen and parliament is direct and not compromised by any intermediary. The structure of the CPG tasks and the expectations of non-partisan behaviour echo this theme.

This emphasis on the independent - literally non-dependent – citizen means that the scheme has the capacity to open paths into politics that do not depend on political parties or civil society groupings. They are also free of the financial dependence that might stem from such organisations. This, again, is an innovation in a modern democratic setting.

The third premise in the political logic of the scheme is largely self-evident, but needs emphasis, especially on account of its absence or weakness in modern democratic practice. This is the idea that the scheme has the capacity to create a sense of the *common ownership of the political system*. Arguably the jury system has already achieved this in the judicial sphere; the CPG proposal would be a notable first step towards such a goal within the sphere of parliamentary politics. In terms of the aims of the scheme, if citizens are engaged in the effective defence of the political system, then this can generate a greater sense of ownership. It is the logical consequence of a proper system of popular accountability. This sense of ownership would also be enhanced if the citizenry played a major role in campaigning for a scheme of this type and getting it onto the statute book. The importance of this concept of common ownership of the political process is that current democratic paradigm of elective democracy is currently facing a crisis of alienation. The articulation of this idea as a general aim helps us to see the CPG scheme as a potential solution to this ever increasing, if not to say, dangerous tendency.

My fourth premise in the political logic of the scheme follows from the argument that politics is an essentially *mediative activity*.<sup>20</sup> What I mean by this phrase is that politics is a form of mediation in which those with contending views work within an agreed rule-governed context to resolve their differences peacefully. The rules act as a form of mediation between opposing parties or those with opposing interests or viewpoints. Likewise those who enforce the rules can be identified as a body with a status and a role distinct from the protagonists or potential protagonists. Mediative relations can be usefully contrasted with what I call ‘oppositional’ relations where no such agreement to work within such norms or constraints operates, or where those taking part seek merely to capture the mediating institutions and use them to their advantage. A good analogy would be that of a football match or similar sporting event where, in addition to the contending individuals or teams,

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<sup>20</sup> See Dowlen (2016)

there are referees and other officials on the field whose job it is to ensure that competition operates within agreed rules. In the case of the CPGs, the scheme is designed to place citizens in a position analogous to these sporting officials. The political logic here is that the scheme serves to strengthen the mediative nature of politics and, in doing so, it will diminish the operation of those destructive tendencies that are inherent in unfettered political rivalry and the pursuit of power.

My final premise in this exploration of the political logic of the scheme concerns *the quality of political discourse*. Throughout the scheme there is an emphasis on the creation of forums for discourse that are modest, thoughtful, and based on honest dialogue and the truthful exchange of views. The aim is to create sane spaces in the political arena that are as free as possible from excesses of persuasion and rhetoric. In the modern media driven world this amounts to a conscious search for the truths of politics in contrast to the currently-increasing emphasis on appearances that dominates much of its public face. The measures to limit public pronouncements by CPG members and the limits on public criticism of the MP by CPG members are very much part of this ethos. We can also think of the process of random selection itself as contributing to this end in the sense that it is a non-competitive mechanism and excludes all means of influencing the outcome from its operation.<sup>21</sup>

Together these premises: the political development of the citizenry, the paradigm of the independent citizen, the notion of the common ownership of the political system, the mediative nature of the political process and the idea of honest discourse, constitute the main elements in the political logic of the scheme. Whether or not we begin to think of this scheme as feasible depends on whether enough people generate enough political will to take it forwards. To do this they must firstly understand its political logic and secondly they must agree that this political logic leads in a direction that they consider desirable.

If a scheme is capable of generating enough political will through the desirability of what it promises, the emphasis then shifts to the question of whether the scheme as it stands is capable of delivering those benefits. We can think of this in terms of design, but, as in all design propositions, there is a sense that the potential benefits of the scheme provide the

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<sup>21</sup> See Stone's "sanitizing effect" of the lottery. Stone (2011)

incentives and the energy in the search for creative solutions to any problems that might arise.

## Feasibility 2: The design logic of the scheme.

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A political institution is not a stand-alone phenomenon. It has to exist and operate within a wider political and legal system. Designing a new system is thus the equivalent of designing a new carburettor for an existing engine or changing the arrangement of rooms within an existing building by knocking down some internal walls and building others.

This having been said, there is some value in looking at how an individual scheme is put together and how its different units relate and operate in respect to one another. It is this consideration that gives us the clearest indication of feasibility in respect to design: does the organisation of basic forms and their articulation as procedures operating in time and space indicate that the scheme will function well? The exploration of this question not only helps to establish the general feasibility of any proposed scheme compared to other possible options for achieving the same ends, it also helps us to focus on areas where improvements or changes might need to be made. In other words it helps us to troubleshoot in advance.

With this in mind, in this section I first isolate a number of different primary design categories: space, time, number, and action. These, in turn, suggest a number of further dynamics: points of contact, areas of interaction, and the nature and location of decision-making. An analysis of the scheme based on this framework then enables me to identify possible points of weakness or areas that might require particular attention.

### Design dynamics a) Space.

In an era of information technology it is very easy to neglect the impact of space in politics and institutional design. Most governmental systems rely on a centralised system of political decision-making and this possibly has its origins in the idea that there should be a single perceived locus of sovereignty. The spatial dynamic in institutional design in modern elective democracies such as the UK and Australia is therefore primarily concerned with questions of communication between the centre or centres of political decision-making and the various parts of the territory in which those decisions might be implemented. It is a two way street, however, because at election time the decision concerning what happens at the centre is determined by the collective voice of those living and working in the wider territory.

From a spatial perspective what the scheme sets up to do is to improve the quality of the communications between the constituencies and the central seat of decision making and to give a certain amount of power back to the citizenry at constituency level. The monthly meetings create official outposts of Parliament in multiple locations, and the special duty obligation brings citizens into the centre on a regular basis. Both these provisions highlight the value of personal contact and first-hand experience and recognise the qualitative benefits that this can bring to political work.

Another spatial aspect of the design relates to the random selection of CPG members and their regular rotation in office. This has the potential to extend the geographical range of political participation by countering the tendency for those in local centres of population to dominate political involvement or to become more adept at understanding the system than their more far-flung neighbours.

A final but significant spatial aspect of the scheme is the facility for CPGs to work horizontally in collaboration with each other in the implementation of Task 3 and in the work of the annual conference. The conference, in fact, brings together those normally separated by distance to share experience and ideas.

From a practical point of view it could be claimed that the requirement for those on special duty to travel to Parliament and for members to travel to attend the monthly meeting amounted to an unnecessary expense. This would be particularly relevant to areas where the citizen population was scattered over large geographical areas. The response to this exemplifies the nature of the feasibility argument. This is that the de-centralising dynamic is a vital part of the scheme and the feasibility of the scheme in this respect, as in all others, can best be assessed by weighing up the potential benefits against the projected costs. In this case it could be argued that where a constituency is at a great geographical distance from the centre of decision-making there is a greater need for the disadvantages of that distance to be addressed.

Within a constituency a variety of means could be used to counteract the adverse effects of distance. Skype could be used and meetings could be rotated between different parts of the constituency. In the long term, the best arrangement for this type of scheme would be to set up a purpose-built premises for the MP and the CPG in each constituency. This could include

housing for the MP during his or her term of office, the MP's constituency office, the CPG office, overnight rooms for CPG members and meeting rooms for small and larger meetings. This sort of arrangement would use the spatial element to strengthen the ethos of teamwork that is such an essential part of the scheme.

### *Summary*

The overcoming of the “distance” between citizens and the political system has a real physical and spatial dimension. While the problems of adapting the scheme to remote and far-flung constituencies are very real and the solutions are potentially costly, the essential operation of the scheme as a form of political accountability cannot take place if these problems are not addressed.

### Design dynamics b) Time.

The time dynamic of the scheme is linked to a number of its major features: rotation in office and the division of labour within the CPG, the fixed Monthly Meeting and the annual conference of CPG members. The issue of how much time the CPG members on special duty spend with the MP and how much of their time is taken up by this and other parliamentary work is also an important consideration.

The work of the CPGs follows a yearly cycle and although I have characterised this in terms of monthly changes, it is clear that the CPG activities would have to be tailored to fit with the parliamentary year. This is clearly a time-tabling problem. While the monthly meeting and the terms of special duty have been presented in terms of events equally spaced throughout the year, in practice the timetable would probably be more irregular. Nonetheless the principle of time-tabling regular meetings and periods of special duty needs to be observed as far as possible if the scheme is to operate successfully (see Appendix 3). The solution most likely to complement the parliamentary timetables of the UK Parliament and the Australian House of Representatives would involve 8 or 9 meetings per calendar year. These would be spaced to coincide with the parliamentary sittings and would be as equally spaced as possible within this framework. Along with these regular arrangements there would have to be provision for extra emergency meetings within the constitution of the CPGs.

Linked to the time dynamic are the idea of learning and experience on the one hand and the idea of temporary office on the other. Temporary office is an essential feature of the scheme: it allows a constant level of interaction between large numbers of the citizenry and the arena of parliamentary activity. This breadth of contact over the years has to be balanced with the quality of engagement experienced by the CPG members during their year in office. A longer period of office would limit the breadth of citizen involvement while a shorter period in office would mean that CPG members would have too little time to get to know the complexities of the parliamentary system. The operation of the special duty provision provides the opportunity for greater qualitative engagement while there are some possibilities for involvement beyond a year in the form of membership of the conference working groups or the Independent Regulatory Body.

As we shall see later in this exploration of design dynamics, one of the critical questions in respect to time is the amount of contact time between the CPG members on special duty and the MP. Too much contact time could severely restrict the MP's day-to-day work, while too little would prevent the CPG members from gaining a fuller understanding of that work.

### *Summary*

There are two critical time-based issues in the scheme. The first involves fitting the CPG meetings and the periods of special duty into the existing parliamentary timetables. The second concerns the need to set clear timetables for the CPG members on special duty. Neither of these problems are insurmountable, but if they are not adequately addressed it is doubtful whether the scheme could operate successfully.

## Design dynamics c) Number

The most important question in this category concerns the actual number of CPG members that should hold office for a year in each constituency. We have seen earlier how an approximate equation can be established for determining this. We have also considered how the group dynamics of meeting and the question of cost also have to be taken into account.

On the question of number it is useful to compare a proposed CPG to a jury. We can therefore start from the premise that the decision-making portion of the CPG on any issue should be no less than a jury of 12. If we then consider that between two and four members

might be closely tied up with the practical details of any proposal and would not necessarily be starting from a position of impartiality, then this would point to 16 or thereabouts as the optimum minimum size of a CPG group. In other words, it should contain the equivalent of a jury in respect to the judgements it might be called upon to make.

As we have seen on key questions such as those relating to Task 3, more than one CPG can combine together to make the required decision. Here the numbers are increased to give greater legitimacy to the designation of the issue as one of grave public concern.

The final factor is that of cost, and cost can only be justified in terms of efficiency and value for money. The division of labour during the period of office is designed to reduce inefficiency by reducing periods of inactivity for which the tax paying citizens would be responsible. At the same time, the question of wider participation is addressed by a system of rotation that brings in new energies but at the same time balances this by giving those in office the time needed to understand the work and make a consistent contribution.

In respect to questions of number we can calculate the number of citizens involved in the scheme by a simple act of multiplication. For the UK, with a five year parliamentary cycle, 650 MPs and approximately 22 CPG members per constituency, the number of citizens who would be involved during one parliamentary cycle comes out at 71,500. For the Australian House of Representatives with 18 CPG members for each of the 150 constituencies and a cycle of 3 years the figure would be 8,100 (excluding participation at Senate and State level.)

### *Summary*

The question of the number of CPG members is primarily linked to the division of labour required for special duty. It should also be determined in the light of considerations of cost, efficiency and legitimacy.

### **Design dynamics d) Action.**

The actions of the CPGs can be analysed under two main headings: those that are prompted by the actions of others and those that originate from decisions made by the CPG concerning their own programme of work. We can think of those in the first category as reactive and those in the second as proactive.

Broadly speaking the initiation of an investigation for breach of code of conduct or the designation of an issue as being of grave public concern and the call for action on that issue fall into the first category. Actions that further the links between the MP and the wider constituency and any initiative taken by a CPG member to learn more about the parliamentary system would fall into the second. One key feature of the scheme is that when there are no problems that might require reaction from the CPG or from a CPG member, further time and effort can go into proactive activities. We should also note that some of the standard regular actions of the CPG, such as the periods of special duty and the CPG/MP monthly meetings have the potential to belong in both categories. The advantages of this arrangement are: 1) The CPG is not perceived solely as a ‘policing’ body and can be understood as part of a team that includes the MP. 2) CPG members can be actively and usefully engaged throughout their period in office, even in the absence of serious issues or suspected breaches of the code of conduct.

Another framework for analysing the actions of CPG members is to make a division between those that are *required* of those chosen, those that might reasonably be *expected* of a CPG member, those where greater *initiative* might be shown, and those understood to be *inappropriate* for those holding office. From this we can draw up a table as follows:

<p><b>REQUIRED:</b> to attend training, attend CPG meetings, undertake special duty, observe procedural and confidentiality rules, contribute to the collective decision-making of the CPG, participate in Code of Conduct investigations if required. <u>Officers:</u> write or supervise the writing of the reports, deal with all correspondence, chair meetings or organise the chairing of meetings, call emergency meetings and instigate executive actions where appropriate, liaise with the Independent Regulatory Body when necessary, participate in disciplinary procedures.</p>
<p><b>EXPECTED:</b> to play an active role in meetings, take an active interest in parliamentary affairs during special duty, understand the political significance and value of the CPGs, see themselves as acting on behalf of the wider citizen community, assist with report writing/checking.</p>
<p><b>INITIATIVE:</b> to undertake further research during year in office, give local talks about CPG work, stand for office in the CPG, put name forward for conference working group or Independent Regulatory Body membership, assist with training after year in office, suggest improvements for conference consideration.</p>

**INAPPROPRIATE:** to use the CPG as a platform for personal or partisan advantage, attempt to form a faction or grouping within the CPG, breach confidentiality or procedural rules, undertake actions that might endanger the

This framework for analysis gives an overview of what action or work a CPG member would be engaged in. I would expect that a formulation of this nature could be used in the training sessions for new CPG members.

### *Summary*

The action of the CPG groups and members consists of a positive balance between the proactive and reactive. In the planning of the scheme it would be necessary to draw clear distinctions between what actions would be required of all members, what would be expected, what initiatives would be welcome and what actions would be inappropriate.

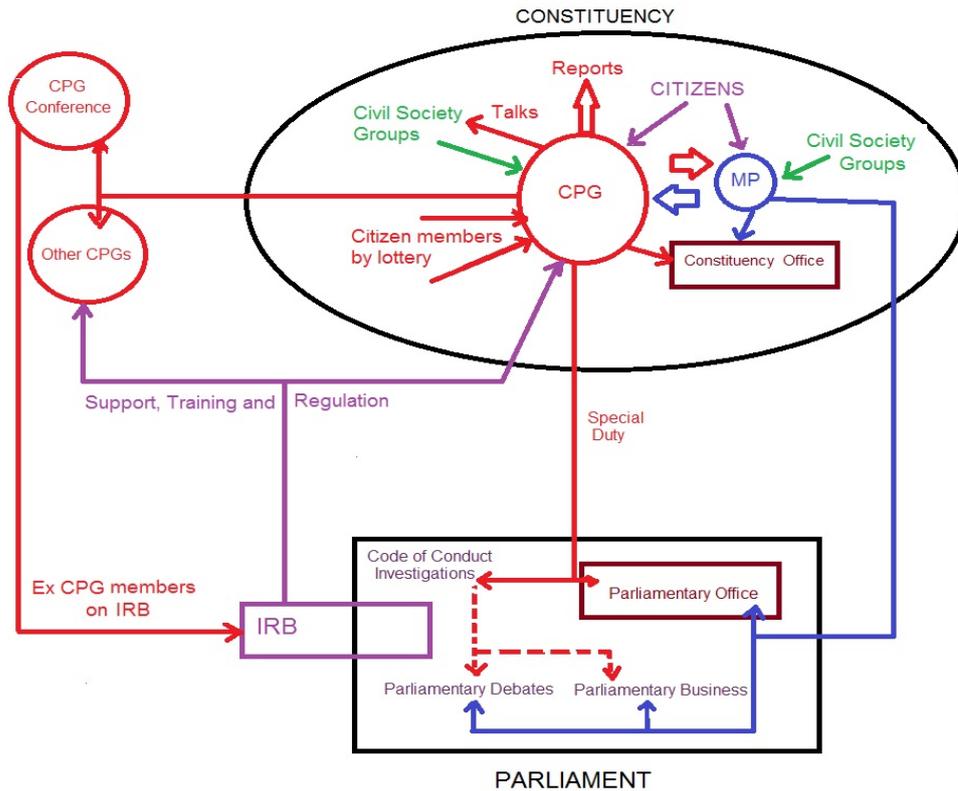
### Design dynamics e) Points of contact and interaction.

In any industrial design detailed and special analysis is given to the points of contact between components, especially where moving parts or load-bearing areas are concerned.<sup>22</sup> It is possible to import this idea into the field of institutional design. By doing so we can focus our attention on the action that is likely to occur at the various interfaces or points of contact that are proposed in any scheme. This enables us to identify possible problem areas and make any adjustments that might prove necessary. Below is a spatial diagram of the points of contact for the scheme.<sup>23</sup>

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<sup>22</sup> Tjalve (2003)

<sup>23</sup> The broken red line indicates that CPG members would not be active participants in parliamentary debates or other parliamentary business.



These points of contact can be expressed and explored in terms of spatial dynamics as above or by examining the interactive elements as they occur in the proposed timetable of events and meetings. A draft version of this extending from the draw for CPG members up until the publication of the first report is presented below.

1. IRB employees make the draw for CPG members.
2. Invitation by letter for those selected. Includes invitation to a special presentation.
3. Special presentation (and social event). Includes MP.
4. Training weekend: staffed by IRB + previous CPG members. MP present for part of the weekend. Confirmation of office-holder status for CPG members. Fixing of meetings timetable.
5. First CPG organisational meeting: election of officers, allocation of special duty rota. IRB staff present.
6. First special duty group meets MP's staff to arrange timetable of visits and contact. MP present to endorse decisions and meet special duty members.
7. First special duty timetable enacted.
8. Special duty members meet with CPG officers to prepare report and consider agenda for CPC meeting.

9. Full CPG meeting, followed by CPG/MP meeting, followed by short CPG meeting. IRB staff present for first meeting.
10. Report written within one week, circulated and then published on the website. MP informed of any points of criticism or other CPG decisions before publication of report.

An examination of the points of contact/areas of interaction in this manner helps to identify potential problem areas. In this case the first point to note is the early contact with the MP and the MP's presence (even for a short time) at the training session. This would help to establish the idea of a shared enterprise and an ethos of teamwork from the outset of each period of office.

The second point exposed by this form of examination is the idea of timetabling the special duty events by agreement between the MP, the MP's staff and the CPG members concerned. This would help with the smooth-running of the scheme but a case could also be made for a certain provision for unscheduled visits to the constituency or parliamentary office by CPG members. This would counter any tendency for the MP to schedule all the difficult, problematic or nefarious meetings for times when CPG members were unlikely to be present. An arrangement could be made for each CPG member on special duty to attend one debate, spend one day at the parliamentary office, one day at the constituency office and to accompany the MP for one meeting (e.g. with a constituency member, a member of a civil society group or a lobbyist.) If these visits were timetabled at the start of the special duty period, provision could also be made for the CPG members to consult the appointments diary at a later date during their period of special duty and arrange an agreed number of further visits.

A third point that emerges from the point of contact examination is the importance of dividing the regular CPG meeting into three parts. The first would be to attend to CPG business such as correspondence, concerns about code of conduct, consideration of possible issues of grave public concern etc. The second would be attended by the MP and would involve a report of the MP's activities, the report from those on special duty, particular questions to the MP based on the CPG's remit, general questions and discussion. The third part would allow the CPG to discuss whether any action needed to be taken as a result of the MP's earlier responses.

While I have examined a possible ‘points of contact’ scenario in terms of the appointment, training and fixed business schedule of the CPGs, it should also be possible to adopt the same approach for more reactive processes such as investigations for breaches of the Code of Conduct. More proactive aspects of the scheme, such as contacts with the wider constituency could be examined in a similar manner.

### *Summary*

The *points of contact* model provides us with a useful analytical tool. According to this form of analysis the key areas that demand special attention are the points of direct contact between CPG members and the MP. These include the induction of new CPG members, the work of those on special duty and the nature of contact should the CPG need to be critical of the MP.

## Design dynamics f) Decision making.

In terms of design it is useful to isolate a number of basic principles pertaining to the balance of decision making areas in the scheme.

1. The first of these is the principle that the more important a decision is, the more people should be involved in making it. The rationale for this is, in the first place, the practical issue of ensuring that the decision is a good one. Simply stated, the greater the number of independent individuals involved in a decision, the greater will be the breadth of experience and knowledge brought to bear on the judgement. In the second place, and following on from this, is the notion that a decision made by a larger number of people has more democratic legitimacy: i.e. it comes closer to the notion of the ‘will of the people’. A third, and connected, aspect of this is idea that a decision made by too small a grouping runs the risk of falling prey to the exercise of arbitrary or self-interested power. A larger decision-making body guards against this possibility.

In respect to the scheme there are two main areas where this principle operates. The first is the incorporation of three CPGs in the designation of an issue as one of grave public concern, the demand for parliamentary action on the matter and the response to inaction that could follow from this. The logic of this, combined with the requirement for a 75% vote, is to prevent an issue of local or partisan content being incorrectly given the status of an issue of

general interest. The second area where this principle is in operation is the coming together of the CPG delegates in the annual conference to share experiences and suggest improvements. The principle is, of course, also present in the electoral system itself and the notion that those who govern do so by the consent of those who are governed. In supporting the electoral system and enhancing the level of accountability that operates within that system, the scheme supports the principle that decisions made by large numbers have greater legitimacy and authority than those made by smaller numbers.

2. The second principle is that those with greater expertise and experience should be involved in the making of decisions. In some ways this can be seen as a principle that stands in outright opposition to the first, but this is only the case if it stated solely and exclusively in terms of agency: government by the few *or* by the many. If, however, we recognise the value of both principles, the design challenge then consists of how we combine the two. From this point of view the scheme is designed with the relationship between experience and decision-making at its centre. CPG members will bring their diversity of experience to the office, but their first hand experience of the political system whilst in office will also inform their decision-making. In terms of political experience the scheme sets out to provide an interim stage between the high level of involvement of the professional politician and the relatively lower level of involvement of the public at large.

Apart from this general point about the relationship between experience and decision-making, the scheme involves a number of points where small numbers of experienced people make key decisions. Notable in this respect is the IRB: its members and its employees. In the enforcement of the code of conduct, a key role in the scheme belongs to the existing Parliamentary Officer or Officers who are charged with this. It should be noted, however, that the scheme acts in a way that moderates the concentration of power in the hand of these officers and effectively spreads the load of decision-making in these areas.

3. From a design point of view an important principle is the distinction between substantive political decisions and decisions concerning political form and political procedure. This lies at the heart of the contrast between the work of the MP and the CPGs. The MP acts within an agreed political system to make substantive political decisions; the CPG acts to ensure that he or she conforms to the rules of that system and in the defence of the integrity and fairness of the system. The two roles are not exclusive since the MP can also act in the

defence of the system and can vote to change the system as well as acting within the system. At the same time it should be clearly stated that the CPG scheme relies on the maintenance of this distinction in terms of the CPGs' input. If the CPGs were to assume a greater role in the making of substantive decisions then a randomly-selected grouping would begin to challenge both the authority of the elected representative and the primacy of the act of election. Without this important design distinction, therefore, the scheme would rival rather than complement and strengthen the existing parliamentary system.

Having made this clear, particularly in terms of the actual powers accorded to the CPGs, we should also note that there are areas of overlap within the scheme that can be seen as generally beneficial. Discussion within the CPG/MP meeting (and hence also the Report of the discussion) would be devoid of real political meaning if there was no consideration of the substantive decisions made by the MP. Similarly CPG action over an issue of grave public concern might find its expression in support for a particular substantive issue. The point here, however, is that it would have to be an issue that *also* involved serious consequences for the integrity of the political system before it could be acted upon by the CPGs.

4. The final principle in terms of the design dynamics of decision-making is the distinction between dependent and independent decision-making. Throughout the scheme the emphasis is on the independence of the CPG members and on promoting their capacity for independent decision-making. As we have seen their selection by lottery means that they are not dependent on any organisation or body for their position as office-holders. Once in office the presumption (reinforced by the training) is that they will act and make decisions as independent citizens. The temporary nature of their office, moreover, means that the need to retain their position is not a factor governing or influencing their decisions or actions.

This is in contrast to the tendency in parliamentary politics for MPs to be governed by, if not dependent on, party concerns and the need for party advantage in their decision-making and actions. This is not necessarily a bad thing and the party system does enable citizens to make clear decisions at election time in terms of their preferred party policy in the knowledge that the system will enable those policies to be implemented. Excessive party dependence and partisan zeal, however, can often mislead the public and the search for party advantage can come to dominate political discourse.

What the scheme sets out to do, therefore, is to add a more constant independent presence to the political mix. The aim of this is to counterbalance the more “dependent” voices of the party system and defend the political system itself against excessive partisanship. This is most clearly manifested in the entitlement to criticise the MP for misleading the public, and their entitlement to demand parliamentary action on issues of grave public concern.

### *Summary*

By examining and comparing the different types of decision making we are able to appreciate the balance between number and experience, understand the need for a clear dividing line between substantive and formal issues and appreciate the need to maintain independent decision-making within the design of the scheme.

### Design dynamics g) conclusions.

Our examination of the design dynamics of the scheme took place under the headings of *space, time, action, number, points of contact* and *decision making*. This structure provided a useful series of crossing frameworks for analysis: the equivalent of looking at a physical subject from a series of different angles or through a series of different forms of viewing apparatus. The first purpose of this was to expose any major errors or problems in design such as would render the scheme inoperable or lacking in feasibility. The second was to pinpoint areas where more design input might be needed: areas where problems could be addressed and solved without the need to make major changes to the structure or the overall nature of the scheme. This analysis also made it possible to track how guiding principles translate into detailed arrangements while at the same time we can note how detailed arrangements, adopted for purely practical reasons, might impact on the major principles and values of the scheme.

Of the problems raised by the analysis the most serious one, raised under the heading of *space*, concerned the distance between the location of Parliament and the CPGs of far-flung constituencies. This would be particularly applicable in an Australian context. Because the scheme involves first-hand contact between the CPG members and the work of their MP in Parliament, it could be argued that the costs of travel and accommodation would make the scheme unattractive and potentially difficult to put into practice. My response to this is that

the potential costs would have to be weighed against the potential benefits of the scheme. It is precisely because of distance (physical distance as well as “administrative” distance) that citizens feel that government is remote and unresponsive to their concerns. First hand experience is a vital component in overcoming this problem and this is an essential part of the scheme. The answer to the question of whether this problem might jeopardise the whole scheme is therefore linked to whether the citizens (who would be footing the bill) think the scheme as a whole is worth having. This comes with the obvious rider that overcoming distance should be approached efficiently and realistically and that other means of communication can be used where appropriate.

It is also clear from the analysis that parliamentary time-tables are not symmetrical and that this could cause problems for the organisation of special duty. The scheme as a whole does not, however, stand or fall on the basis of such symmetry and it should be quite possible to organise the size of the CPG groups and the division of the parliamentary timetable to give approximately equal periods of special duty.

The same conclusion applies to the other problems raised in the design analysis. Good training, well considered guidelines and proper procedural safeguards would overcome any problems relating to inappropriate behaviour on the part of CPG members. Exploration of the contact areas shows how a careful balance has to be struck so that CPG members on special duty can operate successfully without unnecessarily impeding the MPs work. This analysis also highlights how the CPG meetings and the CPG/MP meetings should be organised and how care should be taken to ensure that any criticism of the MP is fairly, sensitively and resolutely handled. Again these are issues that demand careful planning and adjustment rather than issues that suggest that the scheme as a whole might be unworkable. Obviously severe problems could develop if these issues were not properly attended to.

The final point of analysis, that of decision making, gives an indication of an important design consideration concerning the number, experience and expertise of decision-makers within the scheme. It also raises the important distinction between decision making on substantive political issues and decision-making on issues that effect the nature of the political system itself. This distinction is an essential characteristic of the scheme and identifies it as a scheme designed to support and enhance parliamentary democracy. As I suggested earlier, the scheme would face huge difficulties if this distinction failed to be

observed and the CPGs began to usurp the decision-making role of the elected member.

## Feasibility 3: The political contexts of proposed application.

### a) The general case.

The rationale for examining the scheme in relation to its proposed political contexts of application is simply to see how well it might fit in these contexts and determine if there is anything within these contexts that would make the scheme difficult or unfeasible to put into practice. We can think of this under two main headings: firstly, how the scheme fits with general ethos and direction of its proposed context of application; secondly how might it operate within existing institutional arrangements. The first of these is the most important because institutions can be adjusted if the general trajectory of the proposed changes is desirable and concurs with generally accepted values already existing within a given political context. Any proposed change that seeks to challenge the existing paradigm and take existing norms in a completely new direction will encounter considerable difficulties in its transition from theory into practice.

My claim is that this scheme is so firmly based on the existing practice, ethos and expressed aims of Westminster-style parliamentary democracy that in this very major sense it is entirely feasible in the two contexts, Britain and Australia, for which this study is prepared.

My argument for this is as follows:

1. It is designed to reinforce the elective principle as one in which the citizens act to give consent to those who hold political office and hold the office holders to account for their actions.
2. It is designed to augment the operation of codes of conduct that are either already in place or are generally regarded as desirable.
3. It is designed to strengthen the links between the office holder and their elective constituency.
4. It is designed to strengthen the operation of the political system as a whole and not to give advantage to any one sector to the detriment of any other.

This can be summarised in a very straightforward argument: since the citizens already select their political office holders and since they already pay their wages out of the public purse,

it is entirely logical that the citizenry should also have some level of considered oversight of their activities.

A further argument in favour of the general applicability of the scheme to Westminster style parliamentary democracies is that it is being proposed at a time when, it has been argued, confidence in representative democracy is beginning to wane. As a scheme that is specifically designed to strengthen the links between the citizens and those who purport to act in their interests within the political system, this scheme sets out to fill this gap. Arguably therefore the scheme is not merely commensurate with existing expressed aims in what it proposes, but it is proposed at a time when such a solution might be valuable.

## b) The particular contexts of the study.

With these general considerations in mind we can now turn to the particular contexts of proposed application: the UK and Australia. My first task in this respect is to note the variety of political institutions that are contained within the constitutions of these two states. Australia is a federated state with two elected chambers at the federal level and eight separate state systems, most of which are bicameral. The political system in the UK consists of an elected House of Commons, an unelected second chamber in the form of the House of Lords and devolved governments in Scotland, Wales and Northern Ireland.

Across this range of institutions there are a number of distinct issues that affect the feasibility of the proposed scheme. The first of these is whether codes of conduct for MPs or MLAs are already in place. The second concerns the arrangements for enforcing those codes of conduct. The third concerns multi-member constituencies where a number of members are elected from each constituency, thereby breaking the direct link between an individual office holder and a specific geographical area. It is also important to note how particular factors such as the size of certain constituencies and the historical reasons for the setting up of particular institutions might necessitate changes in the design of the scheme in order for it to operate successfully.

The primary task, therefore is to establish how these factors operate across the range of institutions under consideration. This can be illustrated by way of the following table.<sup>24</sup>

State/Country	House	C of C	Commissioner	Advisor	Constituency + details
UK	Commons	√	√		All Single Member Constituencies
UK	Lords	√	√		No Constituencies
Scotland	Parliament	√	√		Single Member Constituencies + Multi Seat Regions
Wales	Assembly	√	√		Single Member Constituencies + Multi Seat Regions
N. Ireland	Assembly	√	√		All Multi-seat Constituencies
Australian Federal	Representatives.				All Single Member Constituencies
Australian Federal	Senate				Multi-Seat States
NSW	Legislative Assembly	√		√	All Single Member Constituencies
Victoria	Legislative Assembly	√			All Single Member Constituencies
Queensland	Legislative Assembly	√	√		All Single Member Constituencies
W. Australia	Legislative Assembly	√			All Single Member Constituencies
S. Australia	House of Legislation	√			All Single Member Constituencies
Tasmania	House of Legislation	√	√	√	Multi-seat constituencies
ACT	Legislative Assembly	√		√	Multi-seat constituencies
Northern Territory	Legislative Assembly	√			All Single Member Constituencies

### c) The absence of an agreed code of conduct.

The first subject that needs to be addressed is how the scheme might be introduced in an institutional context where no specific code of conduct for Members of Parliament or

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<sup>24</sup> This table is an expanded version of the table set out in McKeown (2006). The most recent state to adopt a Parliamentary Code of Conduct is South Australia. See <http://www.abc.net.au/news/2016-02-23/politicians-code-conduct-passes-sa-parliament-house-assembly/7193270>

Assembly Members is in operation. This applies particularly to the Australian Federal House of Representatives and the Australian Senate.<sup>25</sup>

The answer to this question is that the existence and operation of a code of conduct is not a pre-condition for the serious consideration of the scheme. In the case of the Australian Federal institutions many of the functions performed by a code of conduct are present in other institutional arrangements such as the Register of Members' Interests and other basic anti-corruption measures. It is clear that the prospect of a scheme involving randomly selected citizens charged with maintaining the integrity of the political system would stimulate demands for standardisation and change in these areas.

The key factor here is the proposed involvement of a new agency: the active citizenry. The involvement of CPGs would not therefore constitute a duplication of effort, but would be understood as a qualitatively distinct positive step in the relationship between the citizens and the political establishment. For those who might argue that the old measures were working well comes the response that extra scrutiny from members of the public would pose no threat and could be of considerable benefit to the level of public confidence in the system as a whole.<sup>26</sup>

Nearly all the Australian states have set up specialised anti-corruption agencies or commissions, some following the Fitzgerald Report, others more recently. While these are independent, they are accountable to the state legislatures through specially constituted assembly committees or through the existing working committees of their respective legislatures. It is my view that a way must be found for these agencies to work in co-operation with the CPGs if the anti-corruption/code of conduct element of the scheme is to operate successfully.<sup>27</sup> The proposal that two members of the CPG should be seconded to

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<sup>25</sup> See McKeown (2006) also the draft Code of Conduct presented in Nov 2011. House of Representatives (2011).

<sup>26</sup> See Guardian article <https://www.theguardian.com/politics/2015/dec/23/parliamentary-standards-kathryn-hudson-yeo-straw-rifkind> concerning the lack of confidence in exclusively internal systems of accountability.

<sup>27</sup> See Transparency International (2016) The report cites a number of problems facing Australian anti-corruption agencies. These include questions of sufficient independence from government

act as witnesses to the proceedings of any anti-corruption investigation could indicate a way that these different agencies could be more closely linked together.

From the democratic point of view, of course, it could be argued that citizens should be regularly involved in some official or oversight role in *all* anti-corruption agencies since the role of all such agencies is to defend the public polity.

#### d) Multi-member constituencies.

The question of how CPGs (or their equivalent) could operate in multi-member constituencies is an important one.<sup>28</sup> In the outline of the scheme it is clear that the relationship between the MP and his or her constituency is a vital part of how the scheme as a whole is envisaged. How then can the scheme operate where this definite link between a single member and a single geographical area does not exist?

The first answer to this question lies in the assertion that it is better in all forms of democracy if there is a strong link between those who are governed and those who govern or contribute to the making of laws on behalf of the citizens at large. Since the scheme sets out to strengthen this link, the question then becomes one of design: is it possible to re-create this relationship outside of the context of the single member constituency? There is also a second question relating to the power of recall in Task 3, which I will address later.

In response to the design question I need to draw two distinctions based on the multi-member constituencies that we are considering. Firstly it is clear that there are different factors that motivate these arrangements. In the Welsh and Scottish regions, for instance, the aim was to create a fairer representation of the overall distribution of votes in the devolved assemblies. In Northern Ireland, however, the need for an inclusive proportional electoral system also stems from the presence of serious social, political and religious divisions. The multi-party solution is an important part of the Good Friday power-sharing agreement for the devolved assembly.

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and questions over the adequacy of oversight. Greater public oversight features in the report's recommendations.

<sup>28</sup> Constitution Unit (1998)

The second important distinction to draw is between multi-member constituencies that cover a large geographical area (such as the Australian Senate seats) and those where the constituencies are relatively compact (such as Northern Ireland and the ACT). For the purpose of this study I call those of the first category ‘Type I’, and those from the second ‘Type II’ constituencies.

With these distinctions in mind we can move to the proposed design solutions for multi-member constituencies. The essence of the solution is that CPGs (or their equivalents in the devolved or state contexts) are established in Type I constituencies drawn from a series of equal geographical sectors. The number of such sectors would depend on the number of members and the number of years in the electoral cycle. The members will then each be allocated to one of these artificial constituencies for their first year in office another for their second and so on in a system of rotation. In Type II constituencies one CPG per Assembly Member could be drawn from the entire constituency regardless of geography. During their year in office the CPG meetings would be held in different locations throughout the constituency coinciding as near as possible to the areas where the CPG members lived to facilitate travel arrangements for all.

The great advantage of these proposals over the existing multi-member arrangements is that they would give the Assembly Members, or Senators a structured scheme for interaction with CPG members drawn from their entire constituency. In the Type I arrangement this would give each Member one year’s contact with each area (as nearly as possible). In the Type II constituencies the advantage of drawing CPGs from the entire constituency is that it would produce a diverse and shifting pattern of CPG membership. In the case of Northern Ireland this would serve to break up the concentrated geographical patterns of partisanship that were, and still are, potential causes of conflict. Citizens from all communities would be asked to work together to ensure the fairness of the system as a whole.

Because the Australian Senate has a six-year cycle and there are twelve Senators from each state it would be more appropriate to divide each state into six sectors and create two Senatorial CPGs in each sector. One could be allocated to the Senator on one electoral cycle and one to the Senator on the other.

The Scottish regions have a five-year cycle and have seven Assembly Members allocated to

each. Any division into sectors would therefore be less symmetrical. If each Scottish Region was divided into 5 sectors then one Member could be assigned to the first sector, two to the second, one to the third, two to the fourth and one to the fifth. A CPG for each Member would then be selected from within their allocated sector. For the second and subsequent years the arrangement would rotate so that the double Member arrangements would move around the Region.

Diagrams illustrating these proposals can be found in Appendix 3.

### e) Recall in multi-member constituencies.

The second problem relating to multi-member constituencies concerns the right to instigate recall proceedings in response to inaction on tasks of grave public concern. This is problematic because by-elections cannot be called in multi-member constituencies.

In terms of the areas under consideration the first point I need to emphasise is that no Devolved Assembly Member, Senator or State Assembly Member should be asked by their CPG to take action in an area that is outside the competence of the institution to which they belong. Thus, while CPGs aligned to all these bodies can raise or designate issues of this nature, they cannot demand action on pain of recall where such action is not part of the constitutional powers of the institution concerned.

The second point is that this task is envisaged as a protection against instances of establishment cover up or the taking of excessive powers by an incumbent government that might threaten the fairness and integrity of the political system. No member should be exempted from CPG scrutiny over this. The third point is that the designation and the demand for action should be subject to a final decision by an electorate.

In the case of Type I multi-member constituencies, the most straightforward way that these conditions could be met is for the respective sector to act as a voting constituency in the circumstances of recall. Because the designation of the issue and the demand for action would have to be endorsed by two other CPGs and subject to a super-majority within these groups the Member would be guarded against frivolous or partisan actions. This could be extended in the case of multi-member constituencies or regions to involve, for instance, two

regional CPGs (apart from the original grouping of the Member in question) and one from outside the region.

In the case of a Type II constituency it might be better to approach the question from a constituency wide basis. If all CPGs made the demand of their members and a majority of members ignored that demand, then recall would take place and a whole constituency election would be held.

## f) Political context: summary

The most important point in respect to political context is that the scheme is generally commensurate with the aims, structure and ethos of Westminster-style parliamentary democracies.

The absence of an agreed code of conduct in some of the institutions under consideration suggests that there might be problems putting the scheme into operation. On the other hand it could be pointed out that the introduction of a scheme of this nature could stimulate the introduction of new codes of conduct designed with the role of the CPGs in mind.

Multi-member constituencies could easily be adapted to the scheme by the creation of new sectors and their temporary allocation to members on a rotational system. Small multi-member constituencies could have CPGs drawn from the entire constituency for each of their members. This could avoid exacerbating local divisions and could help divided societies to work for the benefit of a single inclusive political system.

The question of recall in respect to task three could be resolved by holding sector by-elections in larger multi-member constituencies. In smaller constituencies of this type a constituency-wide approach is called for and an election only initiated in cases where the majority of members were the subject of recall measures.

## Conclusions.

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By way of a conclusion to this study I first set out what this scheme would achieve procedurally: i.e. what changes it would make to the way things are done irrespective of the general political values it attempts to promote. I then look at those values themselves on the basis that these are desirable additions to the current state of Westminster style democracies.

The feasibility of the scheme is then to be found in its capacity to deliver these benefits. This in turn is dependent on the resolution of a series of design problems and on the extent that those who participate in the scheme understand the principles upon which it is based and why they are needed.

I end the conclusion with a consideration of what the scheme could mean in the current political landscape and what further political innovations might follow a scheme of this nature once it is established.

The main procedural building blocks of the scheme can be understood as follows:

1. The scheme sets up a series of controlled forums for discussion, exchange of information and considered political action in all constituencies. These would involve the parliamentary or assembly member and members of the constituency.
2. The constituency members are to be chosen randomly and would hold office for one year only.
3. The citizens provide an extra input into the monitoring of the members' parliamentary conduct as set out in the agreed codes of conduct or similar guidelines or regulations. They would also have an insight and overview of investigations into alleged breaches of such codes.
4. The publication of reports of their regular meetings and the outreach work of the CPG members acts as a link between the citizens at large and the parliamentary system.
5. Through the operation of periods of special duty the citizens have first-hand contact with the workings of the parliamentary system.
6. The scheme sets out to establish a series of defined obligations and responsibilities on each MP or Assembly Member and on the citizens of the constituency.

7. In Task 3 the scheme establishes a strict process by which the citizens can defend the political system from the misuse of power.
8. The scheme operates in co-operation with the elective system and does not seek to challenge or replace it.

The aim of this study is to show how these procedural innovations could generate potential political benefits. I have attempted to isolate the main benefits as follows.

Because the scheme sets out to involve groups of citizens on an almost daily basis rather than only at election or referendum time, the first potential political benefit of the scheme is the development of an **active, responsible citizenry**. It therefore represents a step away from the separation between the essentially private individual periodically exercising his or her entitlement to vote and the professional full-time political class that has become a feature of modern representative democracy.

The second potential benefit is the capacity of the proposed scheme to **improve the working of the political system**. In the first instance this would be achieved by the particular set tasks of the CPGs and their focus on defending the integrity and fairness of the political system. The scheme also has the potential to generate improvements in the political system by encouraging a higher level of education, communication, transparency and accountability.

The proposed general effect of this would be to **restore the citizens' confidence in parliamentary democracy** in a manner that avoids the dangers of demagoguery. It is also designed to complement and **enhance the electoral process** by strengthening active political representation and making voters more informed about the nature of the political system.

My final potential benefit is that the scheme sets out to give the ultimate responsibility for the defence of the political system to the citizens themselves via their Task 3 powers. It is this aspect of the scheme, above all others, that has the capacity to develop the notion of the **citizens' ownership of the political process**.

I can envisage that there could be a number of secondary benefits, some of which I will discuss later in the conclusion. I now turn my attention to those aspects of design and

implementation that would either contribute to the realisation of the scheme's potential or, if ill-considered or ignored, would mean that the scheme would be less than successful. I call these "conditions for feasible operation". Another way of expressing this is as factors that would need to be taken into account to ensure the success of any scheme of this nature. I have separated these into design issues and issues of ethos and general political viability.

## Design issues

1. The scheme must be properly timetabled to work with the parliamentary year. This has a bearing on the dates of the CPG/MP meetings and the timetabling of special duty arrangements.
2. The group size would be determined by the number of special duty allocations.
3. There must be a properly constituted Independent Regulatory Body with a formalised series of procedures for regulation, the settlement of disputes and the training of CPG members. Regulation should include the capacity for ongoing self-regulation and the progressive incorporation of ex-CPG members on the regulatory body.
4. Attention must be given to the limitations to CPG powers in the following areas:
  - a. The wider endorsement of procedures that might lead to recall.
  - b. Limits to the grounds of public criticism of the MP.
  - c. The discipline of CPG members, especially concerning communications in the public sphere
  - d. The distinction between substantive matters and matters concerning the nature of the political system must be observe.
  - e. A clear procedural protocol has to be established for CPGs of MPs who are part of the executive.
5. In cases of multi-membership constituencies a flexible but principled approach would have to be adopted to CPG design either through the creation of sectors or by drawing of CPG members from the constituency as a whole.
6. CPGs would have to be incorporated into the operating schemes of existing anti-corruption agencies to ensure that in any state the two institutions were not in competition with each other.
7. Compliance by the citizens selected should be compulsory.
8. CPG members should receive fair and sensible remuneration for their activities.

## Issues of ethos and general political viability.

1. CPGs should maintain a good working relationship with the MP. They should consider themselves as part of the same team.
2. CPG members and the CPG as a collective body should everywhere maintain their distance from competitive partisan politics and avoid the possibility of partisan manipulation. They should act throughout as independent citizens.
3. The scheme cannot be successful if it does not have the support of the citizenry at large. Membership of a CPG should not be seen as an imposition placed on the citizenry by a government to fulfil its own ends but rather as a public duty in support of the rights and entitlements of all citizens.

On the whole, therefore, the picture is that the overall benefits and potential of the scheme outweigh the potential difficulties in designing, planning and introducing the scheme. Even in the case of the more complex changes required to introduce the scheme in multi-member constituencies, the organisational changes required are not outside the scope of a reforming government backed by an active and engaged citizenry. A brief look at the changes required for the re-organisation of local government or for a change in the electoral system, to cite two examples, indicate that this scheme could easily be accommodated from an organisational and administrative point of view. Altogether, therefore, any competent body working on the basis of experience, common sense and a willingness to see the scheme operating effectively could address and meet these design conditions.

The same sort of comparison can also be usefully applied to the systematic involvement of citizens in public roles or in public offices. The two examples I have in mind are school governors and juries. In both these cases citizens are required to perform quite specific tasks and in both cases the citizens are subject to well-defined regulations as to what is appropriate behaviour both in office and afterwards.

The 'issues of ethos and general political viability' present more of a challenge. It is clear that the scheme will not operate successfully if the CPGs approach their work with the MP in an overly vindictive manner or bring some of the worst prejudices of competitive party politics into the CPG meetings. The ethos of teamwork between MP and CPG is essential to

the success of the scheme. This would need to be developed from the onset in the training and by the regulatory role of the IRB or similar body.

Similarly, it is vital that the CPGs are able to discuss important issues with the MP, issue reports and talk to the public about their work without falling prey to partisan point-scoring. If this becomes the norm the scheme will become undermined from the very beginning. Yes, this can be the subject of rules and regulations, but the making and enforcing of rules is no substitute for the self-motivation and self-discipline of those involved. It is best that the CPG members know what they are doing, why they are doing it and how the benefits of their work can best be achieved and maintained.

It is also clear that a scheme like this can only work if the citizens themselves want it to work, advocate it, vote for it and partake in its planning. Above all a scheme of this nature has to be owned by the citizens. While this paper can draw up the ideas and basic principles and seek to answer questions and solve problems in advance, it is in the hands of the citizenry to make it operate in practice.

## The broader democratic context

In the final section of this conclusion I try to find a place for this scheme in the context of the development of democracy and to think a little about further democratic developments that could follow from its introduction and operation.

It would be fair to say that this scheme faces in a different direction from the major post-war liberal paradigm of democracy in the sense that it places the active independent citizen, rather than the voting citizen and the political party, at its centre. In some ways it can be seen as a response to the perceived failings of that paradigm: the indulgences of competitive elites on the Schumpeterian model and the tendency for Dahl's civil society pluralism to become prey to factional manipulation.

Against this background there have been a whole range of initiatives designed to bring the citizens back into the centre of democratic politics, the most prominent and successful of

these being the citizens' deliberative forum.<sup>29</sup> The CPG scheme shares the same basic democratic vision and motivation as these initiatives. Where it differs is in its emphasis on the defence of the political system rather than on citizen participation in the substance of decision making. What I need to make clear in this final afterthought to the conclusion, however, is that I do not envisage a scheme of this nature as separate from, or in competition with, the majority of other genuinely democratic innovations that are currently being developed. On the contrary, I see it as a way of helping to open the door for such developments. This is mainly because the scheme seeks to preserve what is valuable about the representative system while opening it up to wider citizen involvement and engagement.

There are many exciting ways that the CPG scheme could facilitate further democratic progress. Former members could form the pool from which a citizens' second chamber or a citizen element in a second chamber could be randomly drawn. A citizens' parliamentary initiative scheme could easily be linked to the CPG structure and the role of the CPGs could be extended to instigate referendums, either singly at a local level or at a wider level through combined action. Deliberative forums could play a pivotal role in the introduction of CPG schemes and could be regularly integrated into the work of CPGs in a way that would give them greater and more consistent influence.

The point here, and the point on which I end this study, is that I see this scheme as a means of linking the past achievements of democracy with its present and future needs and of creating a platform from which further democratic innovations can follow.

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<sup>29</sup> For a summary of these developments see Smith (2009)

## Appendix 1.

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*Two fictitious scenarios of code of conduct cases.*

The aim of these scenarios is to give an indication of how the scheme might work in practice. I have chosen to present one from the UK House of Commons and one from an Australian state. The UK example is to show how the CPG could co-operate with an investigation carried out by the Parliamentary Commissioner for Standards. The Australian example shows how a CPG might work with an anti-corruption agency. It raises the important issue of whether, in what circumstances and to what extent, allegations of misconduct should be in the public domain and looks at the possible role for CPGs should this should be the case.

### UK House of Commons Example.

During the November meeting between the MP for \*\*\*\*\* and the CPG, the MP mentioned that he was going to take his family to Switzerland for a short skiing holiday during the January recess. During that same month members of the CPG on special duty visiting the constituency office had seen a brochure advertising a major Zurich conference *The Way Forward for the Pharmaceutical Industry* organised by a major Swiss-based multinational pharmaceutical company. They had noticed this but had thought little of it. After the January meeting, a member of the CPG who worked for a drugs company discovered that the MP had been scheduled to speak at this conference. This was reported to the CPG officers who then checked the register of members' interests but found no mention of this. Under the Code of Conduct, members are required to list all foreign visits, with various exceptions including those unconnected with political work such as family holidays.<sup>30</sup> The officers also consulted the MP's schedule of meetings for the previous year and found that he had held a meeting with a member of the strategic planning unit of the Swiss multinational in London the previous summer.

The CPG officers then checked with the IRB as to whether this might constitute a breach of the Code of Conduct. They received the answer that if the attendance at the conference was

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<sup>30</sup> House of Commons HC1076 (2015) Chapter 1; Category 4; sections 31-36; pp.24-26.

in any way connected to the MP's political work, failure to register details would, indeed, constitute a breach.

The officers produced a report for the next CPG meeting (the section of the meeting prior to the question and answer section) expressing, among other matters, concern that the MP was on the influential Health Committee and that proposed changes in NHS policy on acquisitions were coming up for discussion.

The meeting decided to submit the evidence to the Parliamentary Commissioner for Standards for further investigation as constituting a suspected breach of the Code of Conduct. A copy was sent to the IRB. Two CPG members were then chosen to be involved in the investigation in advance of the Commissioner's decision so that the next stage could proceed smoothly if the decision was made that an investigation was to be set in motion. The meeting also confirmed that the matter was confidential and that no mention of it was to be made in the public reports of CPG activities until the conclusion of any investigation was reached. The matter would be kept from the MP until the Commissioner's reply was received. If an investigation was to follow, the Commissioner herself would be the first to inform the MP.

The Commissioner decided that an investigation was required and informed the MP and the CPG. The MP was informed that the allegation had "come through the CPG" but was given no further details of its precise origins or of any individual involved in the process. A short meeting was held between the officers and the MP to communicate that the process was underway and to confirm the role of the two CPG members. The purpose of this was to ensure that the day-to-day relationship between the rest of the CPG and the MP was not adversely affected by the proceedings.

The two CPG members attended a preliminary meeting with the Commissioner, a member of the IRB was also present. During the investigation, the two members attended two more meetings with the Commissioner in which they were given updates on the investigation. After each of these meetings they were asked if they felt the investigation had been thorough enough. In both cases they agreed that it had been.

At the end of the investigation the Commissioner produced a report of her findings. A copy was first sent to the CPG who, at a specially convened meeting, agreed that no further investigation was necessary. This decision was communicated to the Commissioner who then informed the MP of her findings.

The investigation concluded that the Code of Conduct had indeed been breached by the MP's failure to register his visit to the conference and his part in it. No payment had been made for participation, however, and no payment made to cover the MP's expenses. The conference appearance was part of the MP's ongoing general interest in the state of the British pharmaceutical industry. This had been the subject of the discussion at the meeting with the company member held the previous year. The Commissioner recognised that there had been no further breaches of the Code in respect to the conference and was able to resolve the issue through the rectification procedure. The MP apologised for his omission and a belated entry was made to the current Register with an explanatory note. The Commissioner sent a memorandum to the Committee on Standards informing it of the investigation and the conclusion and published the determination letter on her webpages along with details of the evidence.<sup>31</sup>

At this stage it was permissible for the CPG to publish the determination letter as an annexe on their report. This was accompanied by a statement confirming that the CPG had been satisfied with the investigation and by an explanation that two CPG members had been party to the investigation and that they also had been satisfied with its impartiality and its thoroughness.

### Australian State Parliament example.

Following the receipt of an allegation of corruption concerning a member of the State Legislative Assembly, the State Crime and Corruption Commission (SCCC) contacted the CPG of the member in question to inform the CPG of the allegation. In terms of the procedure set up for this purpose, the SCCC also invited the CPG to co-operate in the investigation that they were about to undertake.

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<sup>31</sup> House of Commons HC1076 (2015) Chapter 4; sections 13-21; pp.45-47.

The allegation concerned the acquisition of land to the immediate north of the main city by a major construction company that specialised in building “affordable homes” in conjunction with the public sector. The firm had purchased the land at a time when it was designated as recreational: i.e. there was no planning permission for it to be used as housing. As such it obviously commanded a low selling price.

The land’s designation, however, changed as part of the new State Infrastructure Plan and housing was now permitted. The construction firm now put in a planning application for a major housing development on the site. The allegation was that the Member, who was not from the ruling party but was an important member of the Infrastructure, Planning and National Resources Committee, had informed the firm of the proposed changes prior to their purchase, thereby breaking the Assembly’s rules on confidentiality. The member was a champion of affordable homes and had close connections with the construction firm in question. He had been influential in getting a previous partnership project underway and had actually brought a house there and moved into the estate.

A prominent Assembly Member from the ruling party made the allegation. In it he cited the Member’s close links with the company and alleged that payment was made in exchange for confidential information about the proposed changes in the planning status of the site. The Member making the allegation had also gone to the press and told them of his allegation. This immediately gave the issue a high public profile and made it subject to outrage and speculation in the media.

The CPG met to discuss the allegation and chose two of its members to participate in the SCCC’s investigation. Because the issue was already in the public domain, the CPG decided that it was appropriate to make a press statement on the matter. The statement assured the public that the CPG had every confidence in the investigation to be carried out by the SCCC and that two of their members (not named) would be involved in the investigation by receiving regular updates of developments. These two members would also have the entitlement to make certain demands concerning the direction of the investigation. The CPG press statement also made it clear that the CPG had a good working relationship with the Assembly Member who was the subject of these allegations, and that they were in a position to confirm his adherence to the Code of Conduct in his general work for the Assembly. The

CPG stated that they saw no reason why the Member should resign on the basis of this allegation (a call that had been made by some of his political opponents and in some quarters of the media.) The CPG consulted the IRB over the exact wording of the press statement.

The IRB also suggested that a brief television appearance by either a CPG officer or an IRB member speaking on behalf of the CPG might be necessary to calm the situation and assure the public that the investigation was fair and in good hands.

As the investigation got underway it became clear that the situation was far from straightforward. Around 30 individuals, Assembly Members and government employees in the planning department, knew of the proposed change in planning status prior to the firm's purchase of the land. With this in mind, the two CPG members asked the investigation to look at possible leaks from other sources and asked the SCCC to take a brief preliminary look how similar planning issues might have impacted the wider implementation of the Infrastructure plan. A joint press release by the SCCC and the CPG was put out to confirm these changes.

The preliminary look at the wider planning issues immediately unearthed a wide range of anomalies concerning the awarding of contracts for the State Infrastructure Plan, and a new inquiry into these was launched. The investigation did, however, conclude that the original allegations against the Assembly Member were unfounded. The main evidence for this was their discovery that the firm had been drawing up plans for the leisure park and sports complex long before it had purchased the land and long before there had been any discussion concerning the change of status under the State Infrastructure Plan. Their purchase had not therefore been directly connected to the proposed changes. The Assembly Member making the allegations had been unaware of the firm's plans.

The SCCC had submitted their investigation report to the CPG who agreed that no further investigation was needed concerning the allegations. The SCCC then passed the report on to the Parliamentary Crime and Misconduct Committee who endorsed their findings and their decision to set up the wider inquiry into the issuing of contracts. The CPG put out a brief statement following the findings thanking all who had co-operated in the investigation and assuring the public that the investigation had been thorough and had been carried out correctly.

## Comments on the hypothetical examples

These two hypothetical examples illustrate a number of points about the possible value of the scheme. The Australian example shows how a CPG could act in support of an MP or Assembly Member at the same time as undertaking a more critical monitoring of his or her conduct. The point that both examples emphasise is the importance of co-operation between the investigatory bodies and the CPGs, especially in respect to public confidence in the investigation procedures. It should also be noted how the two CPG members would have a limited but significant role in this. In the hypothetical Australian State Parliament case we can see how the CPG adopted a higher public profile than usual, and how their public pronouncements, although carefully limited to procedural matters, would carry considerable authority in circumstances of this nature.<sup>32</sup>

I have been favourable to both the MP and Assembly Member in these fictitious scenarios, but readers can easily imagine how the code of conduct provision might operate where greater wrongdoing was involved.

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<sup>32</sup> The question of public allegations of corruption is an important ongoing issue. See, for example, Crime and Corruption Commission, Brisbane (2016)

## Appendix 2. Three fictitious scenarios of Task 3 cases

These three fictitious examples illustrate some of the ways that the Task 3 provisions might operate. The UK example is based on a problem that concerns a “forgotten minority” of people but one that nonetheless enshrines an important principle concerning the nature of due judicial process. The second fictitious example, from the Northern Ireland Assembly, illustrates how changes to the Task 3 procedures could be made to suit severely divided societies in post-conflict situations. The example features a positive outcome, but some of the problems of designating issues as appropriate for Task 3 are also explored. The final example is based in Australia but could equally well apply to any country that was faced with the dilemma of how to ensure the accountability of its security and intelligence services without compromising their operational efficiency.

In all three examples the CPGs are shown as acting in response to particular cases or circumstances in a way that enabled them to identify general constitutional issues that required political attention. This might be an optimistic interpretation, but nonetheless it represents the principle behind the Task 3 provisions and the reason for the procedural limitations on the power of the CPGs that these entail.

### UK House of Commons example

The CPG for a Midlands constituency was contacted by a family in their constituency over the case of their son, a 23 year-old, who was in prison. The young man had been jailed for assault at the age of 20 and had been given a three-month prison sentence. This was not his first offence: he had two convictions for petty theft as a minor. Nearing the end of his sentence, he had been involved in a fight of some description in the prison and the parole board decided that he should be kept in prison for the protection of the public. This decision had been renewed twice during the subsequent three years. The family were desperate either to secure his release or to get a clearer judgement on the danger he posed that offered him some hope for future improvement and therefore some prospect of eventual release. The family had been met with negative or evasive responses from all they had approached. This included the current MP before the onset of the CPG scheme.

The CPG discussed the issue and looked at the correspondence between the MP and the family. The MP had raised the matter with the Justice Minister and had been told that this was a matter for the individual parole boards' assessments. The system was due for revision but this had been delayed because of more pressing problems in the prisons. Apparently there were more than 400 or more cases of this type: i.e. those involving the further detention of prisoners serving relatively short sentences on the grounds of public safety.

The matter came up in the next CPG meeting with the MP. She was sceptical about the possibility for change, especially in the context of current levels of public concern over law and order, but she agreed to raise the issue with the Justice Minister again.

The CPG felt, however, that it would be valuable to attempt to designate the issue as one of grave public concern. The threat to the integrity of the political system was posed by the discrepancy between the original sentencing, the product of due judicial process, and the subsequent decisions made by the parole boards. These decisions had the same consequence as the imposition of a longer sentence but the context and the nature of the decision-making procedure gave fewer opportunities for any prisoner to present a viable case for his or her release. There was a sense of urgency over the existing cases, but there was also a need for a long-term solution, especially in the cases of those imprisoned for short sentences for relatively minor crimes. The CPG felt that some sort of arrangement that involved members of the public, similar to a jury, was called for because the public was best qualified to address issues concerning the balance between its own safety and the need for justice.

The CPG agreed to designate the issue as one of grave public concern and approached the IRB. The IRB agreed with the CPG's decision and suggested that this was an appropriate issue for the CPGs to be involved with. This was on account of the earlier neglect and the fact that that the prisoners themselves would be unlikely to be able to generate enough support for the issue and would not necessarily constitute the best agency to take the issue forward. It was an issue involving relatively few people, one that could easily be forgotten or swept aside, but one that could cause future problems if it was not addressed.

The CPG then approached two CPGs from very different constituencies for an endorsement of this designation and an endorsement of the demand for an immediate response to the existing cases together with a plan for future consideration of the issue. The officers from

the original CPG presented the case but gave the other CPGs the opportunity to consider the issue and find speakers both for and against the designation and the demand for action. The designation and the demand were endorsed by the other two CPGs who also agreed to approach the CPG of the Minister of Justice and the CPGs of the members of the Justice Committee informing them of the decision and inviting them to take it up with their respective MPs. The three CPGs issued a short press statement on their decision. It also featured in their public reports for that month.

The week after the original MP had raised the issue with the Minister of Justice and the Minister of Justice herself had been involved in a discussion with her own CPG, two measures were announced. The first was the setting up of a special group of judges to look immediately at the cases of all prisoners on short sentences who had been held in prison for more than three times their original sentences on grounds of public safety. The second was the setting up of a working group of the Justice Committee to investigate a longer-term solution to the problem. The matter was reported at the following CPG conference and a CPG conference working group was set up, mainly consisting of those who had previously been involved. This group then produced a study of how citizens might be included in the making of decisions concerning the extension of prison sentences on public safety grounds. This was considered as part of the Justice Committee's inquiry.

## Northern Ireland Assembly example

Following the Westminster example, the Northern Ireland Assembly welcomed the idea of adopting a similar scheme in Northern Ireland based on the devolved Assembly. Recognising that the Northern Irish constituency structure and constitution of the Assembly differed considerably from the Westminster model, the Assembly decided to set up a series of pilot studies in three widely differing constituencies.

The nine-month pilot study reported great interest in the scheme from the citizenry, from the MLA's involved in the study itself and from the citizens' forums convened to discuss aspects of the scheme at the start and at the conclusion of the study period.

While there was general agreement that Tasks 1 and 2 could work well in Northern Ireland, there were potential problems connected with Task 3. There was still a high level of distrust

between Catholic and Protestant communities and much of this concerned issues that had remained unresolved after the secession of open hostilities and constitutional reforms that followed the Good Friday Agreement. The pilot study found that during discussions of potential Task 3 issues (issues of grave public concern) participants, drawn from all communities, raised a long list of the unresolved problems, all of them serious. It was, however, very difficult to reach agreement within the groups as to how to proceed with them in the context of the Task 3 element of the CPG scheme. The most prominent of these questions involved alleged crimes committed by paramilitary groupings or perceived injustices suffered by communities or individuals by the actions of others or in the hands of those in authority. While political reconciliation had occurred at the level of Assembly politics and was taking place in practice on a daily level, this had not necessarily carried through to the communities.

In the light of this it was suggested that certain changes were made to the basic CPG model.

- 1) The first of these had been used for the pilot studies and involved the setting up of CPGs in multi-member constituencies. For each MLA in a given constituency a CPG would be drawn from the entire constituency with no stratification in respect to different geographical subdivisions of that constituency. The only stratification was in terms of gender.
- 2) To reduce the potential harmful intrusion of overtly partisan politics in the CPGs, only those who had not been in political parties or pressure groups for more than a year would be allowed to hold office once drawn in the ballot. All those selected as CPG members would be asked to declare any earlier political affiliations and each MLA was permitted to make up to three challenges based on those declarations. Stronger disciplinary measures were put in place to guard against any overtly partisan misuse of the office.
- 3) The recall element was removed from the Task 3 measures. This was replaced by the idea of a mandating constituency-wide referendum. All the constituency CLPs would have to agree (by a 75% vote in each case) before an issue could be designated as one of grave public concern, and a constituency referendum would be held only if a majority of the MLAs refused to take the action demanded of them. This change was made to prevent recall being used as a partisan political weapon in the context of the Assembly and to focus pressure on the issues rather than on the MLAs.

As predicted by the pilot studies, the first year of the scheme in Northern Ireland saw lengthy discussions at CPG level of a wide range of unresolved issues from the pre-Good Friday

period. In these meetings these particular frustrations were translated into a general concern over the legacy of the troubles and the difficulties this still posed at community level. The progress made by Good Friday was recognised, but these new forums were able to articulate the fact that more needed to be done, especially at a local level.

These points were clearly stated at the first CPG conference and a resolution was unanimously passed calling for a comprehensive *Community Reconciliation Programme*. The aim of this was to bring just closure to a whole range of post conflict issues and to bring a forward-looking programme into play in which divided communities would be brought into more regular contact and co-operation with each other. A working group was set up to bring this to the attention of the new intake of CPGs. It was understood that the resolution could constitute, in itself, an issue of grave public concern – albeit expressed as a positive proposal – and that the new CPGs had the capacity and the power to place this firmly on the political agenda through their Task 3 provisions.

## Australian Federal example

Following the 2014 National Legislation Bill<sup>33</sup> a number of cases were brought to court concerning the exposure of incidents involving intelligence-related information. One of the most notable was the prosecution and subsequent acquittal of a local newspaper editor for publishing details of the alleged harassment of charity workers by security and intelligence officers. The charity concerned assisted with the welfare of refugees in an internment centre that had not long been open in the region. Members of the charity had recently been critical of the centre, claiming that many of the inmates were denied basic human rights.

The newspaper had received a report from the secretary of the charity claiming that security and intelligence agents had raided her house in the early hours of one morning. Other workers told of similar raids. The newspaper also discovered, through an anonymous leak,

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<sup>33</sup> Commonwealth of Australia (2014) Also: Brown (2006), Brown (2013) and Brown (2014) See also Guardian article: <https://www.theguardian.com/commentisfree/2014/sep/26/journalists-and-whistleblowers-will-go-to-jail-under-new-national-security-laws>

that the charity's telephone lines and computers had been the subject of the intelligence operations' scrutiny.

The editor had decided to publish in the belief that the public interest element in the case justified the placing of the details of the security and intelligence operation in the public domain. He had investigated the possibility of approaching an anti-corruption agency, but was advised that this case fell outside their remit since no element of corruption was discernible in the actions of the security and intelligence services who were, it was argued, doing what was required of them.

The prosecution sparked a considerable amount of interest in the social media, much, in fact, directed against the editor and there was some doubt about whether it would be possible to find an impartial jury. When the trial was eventually held, however, the editor was acquitted. In the aftermath of the affair, however, there was some debate in the mainstream media about whether a non-jury trial might be a more appropriate way of dealing with such cases.

The CPG in the federal constituency where the internment camp and the charity's office were located discussed the issue with their Member of the House of Representatives. Despite the difficulties in finding an impartial jury, the argument for allowing members of the public to judge whether possible disclosures were in the public interest was compelling. The CPG felt that a system for recognising the public interest *prior* to publication could be the best way forward. The local CPG therefore instigated procedures to designate the issue as one of grave public concern. Their demand was that a commission of inquiry should be set up to look at how citizens could be involved in determining the public interest prior to the potential disclosure of matters involving the security services.

This action was unanimously approved by the local CPG and was approved by the IRB as being an issue that constituted a defence of the integrity and fairness of the political system. The Member agreed to act on the issue, but the CPG moved the procedure forward to the next stage (that of a formal designation and demand) in order to give the issue a higher profile. Support from two other CPGs achieved this and the issue was subsequently taken up by a number of other CPGs.

## Comments on the hypothetical examples.

The three examples give some indication of the type of incident that could prompt CPGs to think about using their Task 3 powers and entitlements.

In the UK House of Commons example the threat of a Task 3 designation and demand in the Minister of Justice's own constituency forced a reaction to an issue that otherwise might have been ignored. The possibility of a by-election in a minister's constituency on this issue was, in this hypothetical case, a risk not worth taking by those in power. In terms of the CPG actions, the key was the capacity of the CPG to move from showing an interest in a local case to articulating a general principle concerning the fairness or lack of fairness of the system as a whole based on that case.

The Northern Irish scenario indicates that in very different circumstances, different adaptations of the basic scheme might be needed. It suggests that in post-conflict situations the Task 3 procedure, designed to counter the intransigence of an entrenched political elite on major issues, could be used to serve sectarian and partisan ends or be seen to do so. This shows the importance of the limitations and procedural checks in the Task 3 provisions, but emphasises that in certain circumstances greater controls might be needed.

I deliberately gave the scenario a positive ending, but this is actually an indication that once agreement can be reached on an issue, the CPGs, acting together, can constitute a valuable "third voice" in circumstances of division and distrust.

The Australian fictitious example again suggests how a CPG, looking at the general implications of a particular, potentially divisive, issue has the capacity to turn a problem into a new initiative. There is, of course, no guarantee that this would happen, but the nature of the CPG groupings and the nature of the roles that they might be asked to undertake mean that such new initiatives could have a genuine chance of getting onto the political agenda.



## Appendix 3: Timetabling CPG Meetings and Special Duty

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The following pages show examples of how CPG meetings and the onset of special duty sessions can be planned to ensure that CPG members have the opportunity to observe parliamentary sessions. They are based on 2016-7 timetables.

UK House of Commons

2016

September						
Mo	Tu	We	Th	Fr	Sa	Su
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30		

October						
Mo	Tu	We	Th	Fr	Sa	Su
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

November						
Mo	Tu	We	Th	Fr	Sa	Su
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30				

2017

December						
Mo	Tu	We	Th	Fr	Sa	Su
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

January						
Mo	Tu	We	Th	Fr	Sa	Su
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16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31					

February						
Mo	Tu	We	Th	Fr	Sa	Su
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28					

March						
Mo	Tu	We	Th	Fr	Sa	Su
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6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

April						
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24	25	26	27	28	29	30

May						
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22	23	24	25	26	27	28
29	30	31				

June						
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26	27	28	29	30		

July						
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17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

August						
Mo	Tu	We	Th	Fr	Sa	Su
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7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

— = CPG meeting/commencement of special duty

— = Parliamentary recess

# Australian House of Representatives

## January

S	M	T	W	Th	F	Sa
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

## February

S	M	T	W	Th	F	Sa
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28				

## March

S	M	T	W	Th	F	Sa
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26	27	28	29	30	31	

## April

S	M	T	W	Th	F	Sa
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16	17	18	19	20	21	22
23	24	25	26	27	28	29
30						

## May

S	M	T	W	Th	F	Sa
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14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

## June

S	M	T	W	Th	F	Sa
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	

## July

S	M	T	W	Th	F	Sa
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31					

## August

S	M	T	W	Th	F	Sa
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

## September

S	M	T	W	Th	F	Sa
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30

## October

S	M	T	W	Th	F	Sa
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

## November

S	M	T	W	Th	F	Sa
			1	2	3	4
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12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30		

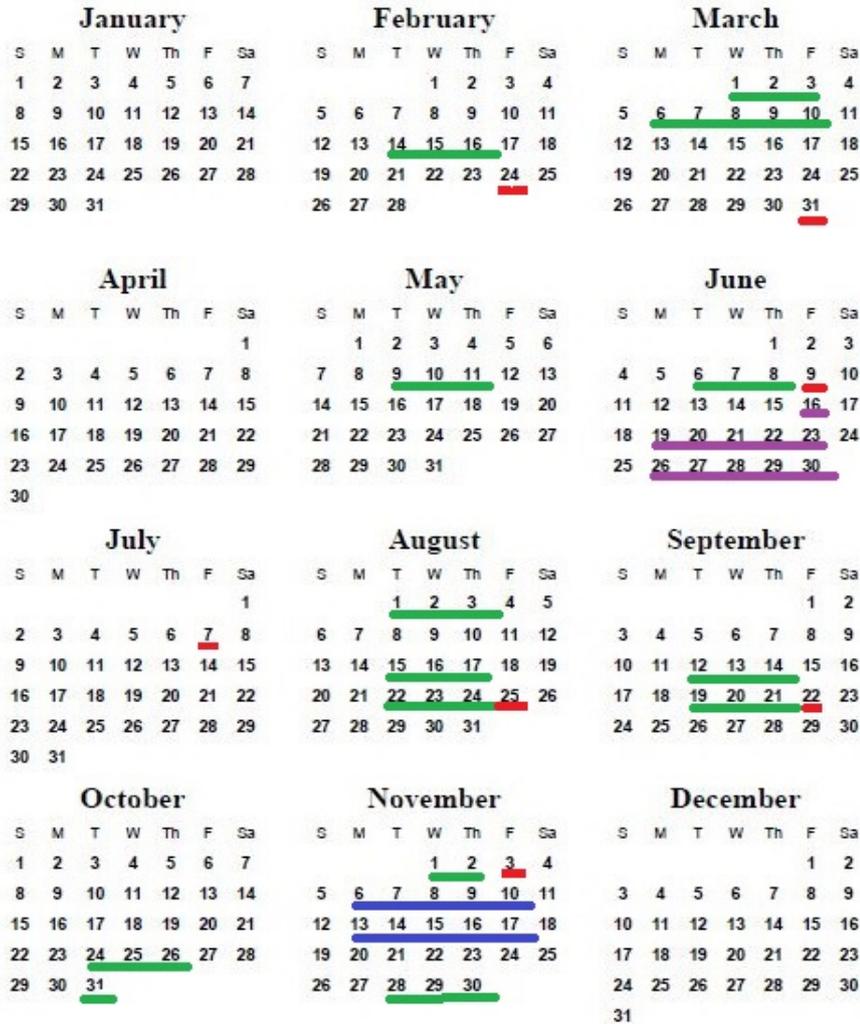
## December

S	M	T	W	Th	F	Sa
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

 = Sittings     = Budget

 = CPG Meetings, start of special duty

ACT Legislative Assembly



- = Sittings
- = Estimate Hearings
- = Annual report Hearings
- = CPG Meetings, start of special duty

I have tried to divide the periods of special duty as equally as possible to accommodate the parliamentary sittings. On this model the UK House of Commons would require 9 special duty sessions. This would indicate a CPG size of 22.

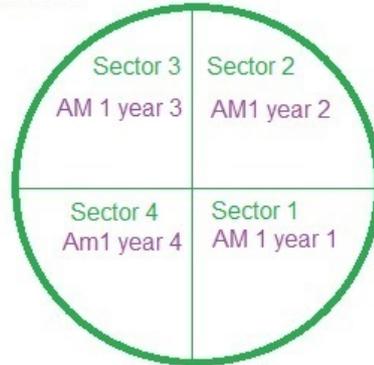
The Australian House of Representatives and the ACT timetables divide into 7 periods, indicating a possible CPG size of 18 for both institutions.

## Appendix 4: Arrangements for multi-member constituencies

The diagrams here illustrate two Type I arrangements (Wales and Scotland) and one possible Type II solution (ACT)

### Welsh Assembly Regional Members

5 Regions  
4 Members per Region  
5 year cycle



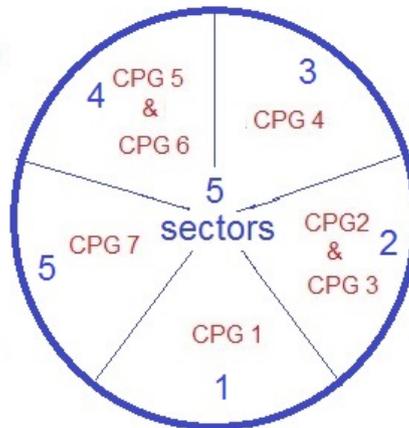
CPG equivalents are set up in each Sector of the Region.

Assembly members are allocated to each Sector and rotate during the 5 year cycle.

The final year of the cycle will therefore resemble year 1

### Scottish Assembly Regional Members

8 Regions  
7 Members per Region  
5 year cycle



CPG Equivalents are set up in the Sectors as illustrated for year 1.

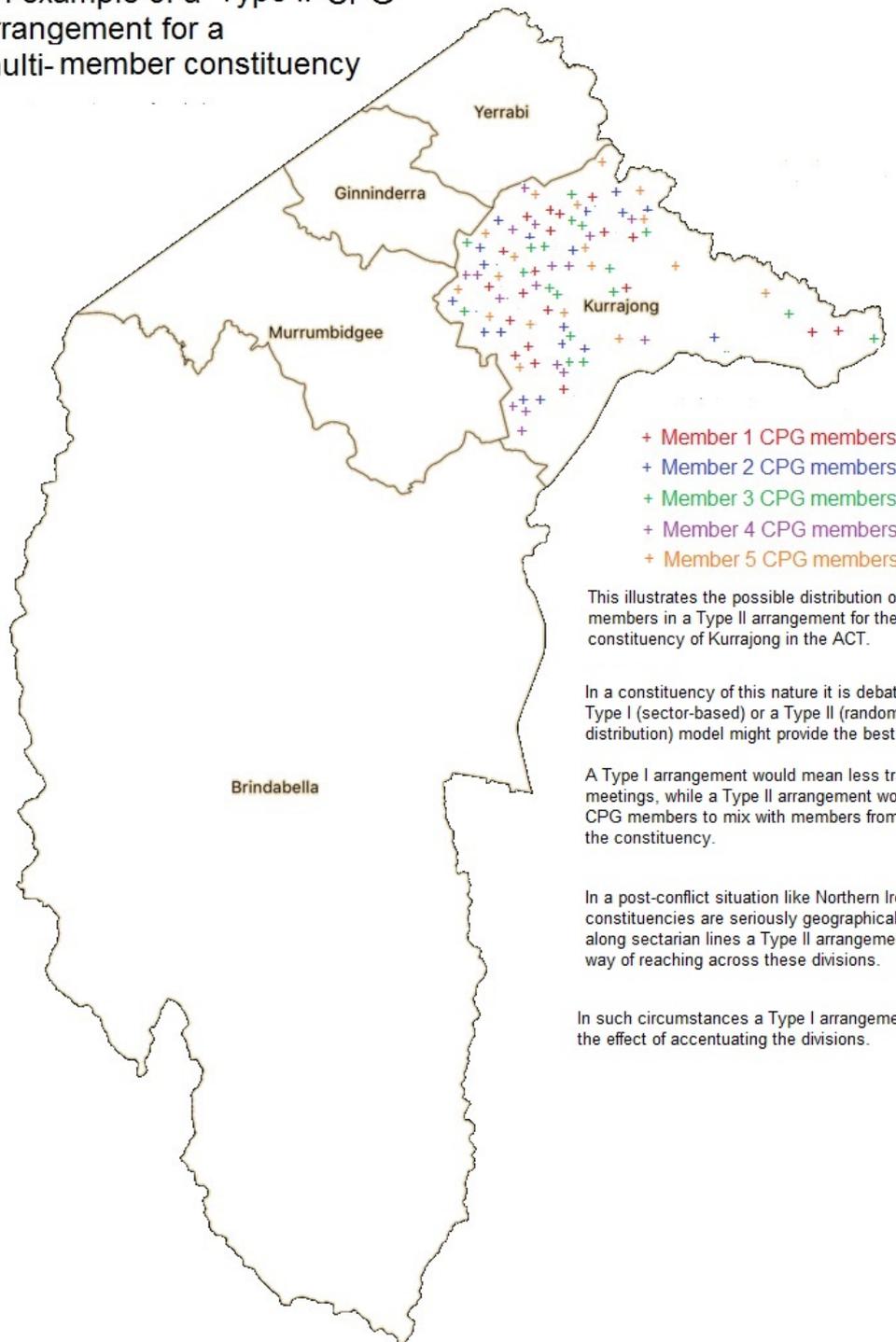
Regional members are allocated to CPGs for year 1.

In year 2 the regional members move anti clockwise to the next sector. The nature of the sectors also change :

sector 2 will be a single member sector,  
sector 3 will be a two member sector,  
sector 4 will be a single member sector and  
sector 5 will be a single member sector

This continues for the 5 year cycle.

## An example of a Type II CPG arrangement for a multi-member constituency



This illustrates the possible distribution of CPG members in a Type II arrangement for the constituency of Kurrajong in the ACT.

In a constituency of this nature it is debateable whether a Type I (sector-based) or a Type II (random geographical distribution) model might provide the best solution.

A Type I arrangement would mean less travelling to meetings, while a Type II arrangement would encourage CPG members to mix with members from other parts of the constituency.

In a post-conflict situation like Northern Ireland where constituencies are seriously geographically divided along sectarian lines a Type II arrangement might be a way of reaching across these divisions.

In such circumstances a Type I arrangement might have the effect of accentuating the divisions.

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